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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.396 OF 2023

Shardopasak Shikshan Sanstha PETITIONER
Aurad Shahajani,Taluka – Nilanga
District – Latur
Through its President
Basavraj s/o Vishwanathappa Valande,
Age – 51 years, Occ – Agriculture
R/o Aurad – Shahjani, Taluka – Nilanga
District - Latur

VERSUS

1. The Charity Commissioner, RESPONDENTS
Maharashtra State, Mumbai

2. Ravindra Basavraj Gastagar
Age – 54 years,Occ – Business & Agriculture
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

3. Sundarlal s.o Ramnivasji Darak
Age – 55 years, Occ – Business
R/o Aurad Shahjani, Taluka – Nilanga
District - Latur

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Mr. N.P. Patil – Jamalpurkar, Advocate for the petitioner
Mr. P. N.Kutti, AGP for respondent No.1 - State
Mr. V. D. Sapkal, Senior Advocate a/w Mr. S. B. Gastgar, Advocate for respondents No.2 and 3

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WRIT PETITION NO.1723 OF 2023

1. Basavraj s/o Vishwanathappa Valande, PETITIONERS
Age – 51 years, Occ – Agriculture &
President of Shardopasak Shikshan Sanstha
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga

District – Latur

2. Premchand s/o Ranglal Biyani
Age – 68 years, Occ – Business &
Vice President of Shardopasak Shikshan Sanstha
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

3. Ramesh Dadarao Bagdure
Age – 63 years, Occ – Business &
Secretary of Shardopasak Shikshan Sanstha
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

4. Kishanrao Veerappa Bhingole (Reddy)
Age – 78 years, Occ – Agriculture &
Trustee of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

5. Rajesh Vishwanathapa Valande,
Age – 57 years, Occ – Agriculture
Dy Secretary of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

6. Madolayya Sagayya Mathpati,
Age – 70 years, Occ – Pensioner &
Trustee of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

7. Dagadu Baliram Girbane
Age – 71 yeas, Occ - Pensioner &
Trustee of Shardopasak Shikshan Sanstha,

Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

8. Shivajirao Manikrao Jadhav
Age – 75 years, Occ – Pensioner &
Trustee of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

9. Anil Vyankoba Doijode
Age – 59 years, Occ – Business and
Trustee of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

VERSUS

1. The Charity Commissioner, RESPONDENTS
Maharashtra State, Mumbai

2. The Joint Charity Commissioner,
Latur Region, Latur

3. Ravindra Basavraj Gastagar
Age – 56 years,Occ – Business & Agriculture
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

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Mr. N.P. Patil – Jamalpurkar, Advocate for the petitioner
Mr. P. N.Kutti, AGP for respondent No.1 - State
Mr. V. D. Sapkal, Senior Advocate a/w Mr. S. B. Gastgar, Advocate for respondent No.3

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WRIT PETITION NO.478 OF 2023

Shardopasak Shikshan Sanstha PETITIONER
Aurad Shahajani,Taluka – Nilanga

District – Latur
Through its President
Basavraj s/o Vishwanathappa Valande,
Age – 51 years, Occ – Agriculture
R/o Aurad – Shahjani, Taluka – Nilanga
District - Latur

VERSUS

1. The Charity Commissioner, Maharashtra State, Mumbai — RESPONDENTS

2. Ravindra Basavraj Gastagar
Age – 54 years,Occ – Business & Agriculture
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

3. Sundarlal s.o Ramnivasji Darak
Age – 55 years, Occ – Business
R/o Aurad Shahjani, Taluka – Nilanga
District - Latur

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Mr. N.P. Patil – Jamalpurkar, Advocate for the petitioner
Mr. P. N.Kutti, AGP for respondent No.1 - State
Mr. V. D. Sapkal, Senior Advocate a/w Mr. S. B. Gastgar, Advocate for respondents No.2 and 3

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WRIT PETITION NO.5492 OF 2021

1. Gurudayya Madivalayya Donge — PETITIONERS
Age – 59 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District - Latur

2. Smt. Mahananda Vaijnath Yeole
Age – 59 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

3. Subhash Ambadasrao Tamgale
Age – 65 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

4. Annarao Marutirao Dhobale
Age – 64 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District - Latur

5. Dayanand Baliram Jadhav
Age – 53 years, Occ – Service as
Deputy Meadmaster at Maharashtra Vidyalaya
Aurad Shahajani, Taluka – Nilanga
District - Latur
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

6. Santram Gundajirao Dhebe
Age – 63 years, Occ – Retired Teacher
R/o Shelgi, Taluka – Nilanga
District – Latur

7. Ram Parbatrao Henegave
Age – 65 years, Occ – Retired Teacher
R/o Tagarkheda, Taluka – Nilanga
District – Latur

8. Smt. Mahananda Irbasayya Nagthane
@ Mahananda w/o Veersangappa Kasture
Age – 63 years, Occ – Retired Librarian
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

9. Sitabai Ganpatrao Nirmanale
Age – 60 years, Occ – Retired Teacher
R/o Tagarkheda, Taluka – Nilanga
District – Latur

10. Bhikaji Govindrao Kittekar
Age – 69 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District - Latur

11. Venkat Gopalrao Sagare
Age – 70 years, Occ – Retired Teacher
R/o Savari, Taluka – Nilanga
District – Latur

12. Manohar Gundaji Thete
Age – 62 years, Occ – Retired Teacher
R/o Tagarkheda, Taluka – Nilanga
District – Latur

13. Laxman Ramchandra Ohal
Age – 76 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

14. Smt. Sandhya Kishanlal Sharma
Age – 63 years, Occ – Retired Teacher
R/o Aurad Shahajani, Taluka – Nilanga
District – Latur

15. Ganpatrao Vithoba Nirmanale
Since deceased through LR

15A Sitabai Ganpatrao Nirmanale
Age – 60 years, Occ – Retired Teacher
R/o Tagarkheda, Taluka – Nilanga
District - Latur

VERSUS

1. Ravindra Basavraj Gastagar RESPONDENTS
Age – 54 years,Occ – Business & Agriculture
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

2. The Charity Commissioner,
Maharashtra State, Mumbai

3. Shardopasak Shikshan Sanstha
Aurad Shahajani,Taluka – Nilanga
District – Latur
Through its Chairman
Vishwanath Shankarappa Valande,
Age – 83 years, Occ – Agriculture
R/o Aurad – Shahjani, Taluka – Nilanga
District - Latur

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. D. Chapule, Advocate

for the petitioners
Mr. P. N.Kutti, AGP for respondent No.2 - State
Mr. V. D. Sapkal, Senior Advocate a/w Mr. S. B. Gastgar, Advocate for respondents No.1
Mr. N. P. Patil Jamalpurkar, Advocate for respondent No.3

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CONTEMPT PETITION NO. 224 OF 2023
IN
APPLICATION NO. CC-31 OF 2019

Ravindra Basavraj Gastagar PETITIONER
Age – 54 years,Occ – Business & Agriculture
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

VERSUS

1. Mr. B. D. Kulkarni (DELETED) RESPONDENTS

2. Vishwanath Shankarappa Walande (DELETED)

3. Premchand s/o Ranglal Biyani
Age – 68 years, Occ – Business
Vice President of Shardopasak Shikshan Sanstha
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

4. Ramesh Dadarao Bagdure
Age – 63 years, Occ – Business
Secretary of Shardopasak Shikshan Sanstha
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

5. Basavraj Vishwanat Walande
Age – 52 years, Occ – Business
Joint Secretary, Shardopasak Shikshan Sanstha
Aurad (Sha.) R/o Aurad Shahajani
Taluka – Nilanga, District - Latur

6. Kishanrao Veerappa Bhingole (Reddy)
Age – 78 years, Occ – Agriculture
Director, Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

7. Rajesh Vishwanat Valande,
Age – 57 years, Occ – Business
Director, Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

8. Madolayya Sagayya Mathpati,
Age – 70 years, Occ – Pensioner
Director, Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

9. Dagadu Baliram Girbane
Age – 71 yeas, Occ - Pensioner
Director, Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

10. Shivajirao Manikrao Jadhav
Age – 75 years, Occ – Pensioner
Director, Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga
District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

11. Anil Vyankoba Doijode
Age – 59 years, Occ – Business
Director, of Shardopasak Shikshan Sanstha,
Aurad Shahajani, Taluka – Nilanga

District – Latur
R/o Aurad – Shahjani, Taluka – Nilanga
District – Latur

12. Bharat Ramnivas Darak
Age – 59 years, Occ – Business
Director, Shardopasak Shikshan Sanstha
Aurad Shahjani
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur

13. Ashok Govindlal Chandak
Age – 58 years, Occ – Business
Director, Shardopasak Shikshan Sanstha
Aurad Shahjani
R/o Aurad Shahjani, Taluka – Nilanga
District – Latur
At present Row House No. 14
Tulshi Dham,Phase-3
Hake Nagar, Latur

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Mr. V. D. Sapkal, Senior Advocate a/w Mr. S. B. Gastgar, Advocate for petitioner
Mr. P. N.Kutti, AGP for respondent - State
Mr. N. P. Patil Jamalpurkar, Advocate for respondents No.3 to 11
Mr. R. D. Birada, Advocate for respondents No.12 and 13

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 19th JULY, 2023
PRONOUNCED ON : 13th OCTOBER, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. Since all these petitions raise similar question of law and facts, they were heard together and are being decided by this

common judgment.

3. For the sake of brevity and convenience, litigating parties shall be referred to as "Trust", "Charity Commissioner" and "Objectors".

4. Shardopasak Shikshan Sanstha, Aurad Shahjani, Taluka – Nilanga, District – Latur is a public trust, duly registered in accordance with the provisions of the Maharashtra Public Trusts Act, 1950 (hereinafter for brevity "the said Act") and also under the Societies Registration Act, 1860. The trust is running several schools and colleges at Aurad Shahjani. On 18th September, 1990, the Trust purchased agricultural lands bearing Survey No. 106, admeasuring 4 Acre 20 Guntha and survey No. 118 admeasuring 1 Acre 20 G, situated at Aurad Shahjani, by way of registered sale deeds dated 18th September, 1990 for a consideration of Rs.1,00,000/-. The Managing Trustees of the said Trust claimed to have passed resolution No.4 dated 16th June, 1992 at the instance of teaching and non teaching staff members, to convert the agricultural land, to the extent of 2 Acre 30 Guntha into non agriculture land and allot plots to 41 teaching and non teaching staff members, for a consideration of Rs.6000/- each. The amount to be received from the said proceed was resolved to be utilized for construction of Trust's

Sharda Sadan's dilapidated building. After, obtaining necessary NA permission on 4th January, 1997, the Trust demarcated 45 plots and allotted them to its teaching and non teaching staff.

5. On 20th November, 2018, the Trust filed application under section 36 (5) of the said Act seeking *ex post facto* sanction to alienate 41 plots, which is registered as Application No. 31 of 2019. By order dated 21st December, 2020, learned Charity Commissioner allowed the application and granted *ex post facto* sanction to alienate 41 plots, on certain terms and conditions.

6. The Trust, thereafter, filed Application 6 of 2021 before learned Charity Commissioner for grant of *ex post facto* sanction to the sale of plots No. 42, 43, 44, and 45 contending that at the time of filing Application No. 31 of 2019, four plots bearing Nos.42, 43, 44 and 45, from survey No. 106, were inadvertently remained to be mentioned. By order dated 16th November, 2022, learned Charity Commissioner rejected Application No. 6 of 2021. The said order is challenged by the Trust, by filing Writ Petition No. 396 of 2023.

7. By filing Writ Petition No. 5492 of 2021, teaching and non teaching staff members of the Trust, in whose favour plots were allotted by the Trust, but the same have not been transferred by

way of registered sale deeds, challenged decision of learned Charity Commissioner dated 21st December, 2020 rendered in Application No. 31 of 2019, on the ground that the said decision, adverse to their interest and it is given without hearing them.

8. By filing Writ Petition No. 478 of 2023, the Trust has challenged decision dated 16th November, 2022 passed by learned Charity Commissioner in Application No. 5 of 2021 thereby refusing to grant *ex post facto* sanction to the transaction of sale of 14 *Are* land out of survey No. 192 situated at Aurad Shahjani bearing Gram Panchayt Property No. 10/2, belonging to the Trust for raising funds for construction of technical college building and for purchasing equipment and furniture.

9. By filing Writ Petition No. 1723 of 2023, 9 trustees of the Trust have challenged decision of learned Charity Commissioner dated 8th December, 2022 in Application No. CC 48 of 2021/MISC on the ground that non applicant Ravindra Basavraj Gastgar who has filed the said application before learned Charity Commissioner, has no *locus standi* to file said application seeking initiation of contempt proceedings against the petitioners, as membership of non applicant Ravidndra has already been cancelled by unanimous resolution passed by the Managing

Trustees on 7th June, 2020.

10. Contempt Petition No. 224 of 2023 is registered on the basis of the reference made by Charity Commissioner to this Court. In the reference, learned Charity Commissioner has stated that respondents No.3 to 13 / Trustees of the said Trust are held guilty of civil contempt for willful, deliberate and intentional disobedience of direction issued by learned Charity Commissioner in clause (iii) of operative order dated 21st December, 2020 in Application No. 31 of 2019 and respondent No.6 in the contempt petition has committed breach of clause (iv) of the operative order dated 21st December, 2020 in Application No. 31 of 2019.

11. Mr. N. P. Patil – Jamalpurkar, learned advocate for the Trust submits that resolution was passed in the year 1992 to allot plots from land purchased by the Trust to teaching and non teaching staff members of the Trust, so as to generate funds to achieve aims and objects of the Trust and the same was passed in the interest of the Trust. When *ex post facto* sanction was sought under section 36 (5) of the said Act, learned Charity Commissioner has exceeded its jurisdiction by passing the order in Application No. 31 of 2019. While exercising powers under section 36 (5) of the said Act, learned Charity Commissioner

should not have issued directions. Non applicant Ravindra is not a member or trustee of the said Trust. His membership is cancelled by passing unanimous resolution by the Managing Trustees on 7th June, 2020. He submits that the learned Charity Commissioner has adopted discriminatory approach in issuing directions, thereby upholding allotment of some staff members and setting aside allotment in favour of some staff members. It is submitted that the Trust has given notice to its staff members for return of possession of the plots, pursuant to the directions of learned Charity Commissioner, in spite of that, contempt petition is filed. By relying on ***"Kishor Bhikansingh Rajput V/s Preeti Kishor Rajput" 2007 (2) Mh.L.J. 481***, he submitted that subordinate courts should stay their hands away, when the High Court is seized of the matter. It is submitted that when the staff members have already approached this court by filing Writ Petition No. 5492 of 2021, learned Charity Commissioner has erred in proceeding with the contempt petition. Since the plots were allotted and sold by accepting consideration, in the year 1997, by way of registered sale deeds, learned Charity Commissioner ought to have given *ex post facto* sanction, considering the fact that time of almost 30 years has elapsed since the transaction. It is also ignored that the amount, as per the then prevailing market rate was received by the Trust and the same was utilized for carrying out development works for achieving aims and objects of the Trust, hence learned Charity Commissioner has erred in refusing to grant *ex post facto* sanction.

12. He submitted that once learned Charity Commissioner has held that the alienation was not illegal, he was not justified in denying *ex post facto* sanction under section 36 (5) of the said Act. Learned Charity Commissioner has no power to cancel and set aside the sale deeds and at the most, power under section section 66A of the said Act could have been invoked by him. In support of his submissions, re places reliance on ***"Suburban Education Society V/s Charity Commissioner" 2004 (2) Mh.L.J. 792*** and ***"Shailesh Developers and Others V/s Joint Charity Commissioner, Maharashtra" 2007)3) Bom.C.R. 7***.

13. He further submitted that the plots were allotted, by drawing lots in view of earlier permission granted in application No.31 of 2019. Charity Commissioner has erred in rejecting the *ex post facto* sanction in respect of the four plots. The same reflects discriminatory approach on the part of learned Charity Commissioner.

14. In respect of the Contempt Petition, it is argued that the

reference is not tenable in as much as while making the reference, learned Charity Commissioner has held that the contemnors are guilty of willful, deliberate and intentional disobedience of the orders passed by him, which is contrary to section 10 of the Contempt of Courts Act. According to him, learned Charity Commissioner should have simply referred the matter to the High Court, however, he has exceeded his jurisdiction, by observing that the contemnors have committed willful disobedience of the directions given by him.

15. He further submitted that pursuant to the directions of learned Charity Commissioner, the then Chairman of the Trust has purchased 2 Acres of land and was about to execute gift deed in favour of the Trust, which is clear from the affidavit dated 26th November, 2021 filed by the then Chairman namely, Vishwanath Shankarappa Valande, however, in March, 2022, the said Chairman expired. The Trust has given notice to its staff members to return possession of plots allotted to them, pursuant to the directions of learned Charity Commissioner. Therefore, there cannot be said to be any willful disobedience of the orders passed by learned Charity Commissioner.

16. Mr. V. D. Hon, learned senior advocate appearing for the staff members – petitioners in Writ Petition No.5492 of 2021

submits that admittedly, the property was purchased by the Trust in the year 1990 and by Resolution No.4 dated 16th June, 1992, 45 plots were demarcated and in the year 1997, registered sale deeds were executed in favour of the staff members, thereby selling plots to them for consideration of Rs.6000/- each. While passing the impugned order, no opportunity of hearing was given to the allottees / staff members, against whom orders are passed by learned Charity Commissioner. Inquiry under section 36 (5) of the said Act is *quasi* judicial inquiry and hence, opportunity of hearing ought to have been given to the allottees, before passing the order adverse to the interest of the staff members. He further submits that learned Charity Commissioner having held that the alienation was not illegal, was not justified in denying *ex post facto* sanction for the said sale. Learned Charity Commissioner has no power to cancel and set aside sale deeds executed in favour of the staff members. Learned Charity Commissioner has ignored earlier *ex post facto* sanction granted in favour of sale of 41 plots.

17. Learned Assistant Government Pleader for learned Charity Commissioner supported the impugned orders and submitted that considering the record, no fault can be found with the

orders impugned in the present petitions. He further submits that in the reference, learned Charity Commissioner has recorded his *prima facie* finding that the contemnors have committed willful, deliberate and intentional disobedience of the directions given by him and no fault can be found with the same. He, therefore, submits that the writ petitions, which are devoid of merit, are liable to be dismissed and the contemnors may be punished for committing contempt of the directions given by learned Charity Commissioner.

18. Mr. V. D. Sapkal, learned senior advocate for the non applicants submits that no ground, contemplated under section 36 (5) of the said Act is made out by the Trust, in the applications filed seeking *ex post facto* sanction to the sale of plots. He submits that when the sale deeds were executed in the year 1997, unamended section 36 of the said act was in force, which contemplated prior permission of learned Charity Commissioner before dealing with the property of the public trusts, which the Trust has failed to obtain. Present applications, seeking *ex post facto* sanction, are filed after the amended section 36 (5) came into force and there is inordinate delay, which is not explained by the Trust and on this ground alone, the applications should have been dismissed. By taking me through

the impugned decisions of learned Charity Commissioner, he submits that on going through the record, it is clear that learned Charity Commissioner has recorded findings of fact, which are not liable to be interfered in extraordinary writ jurisdiction. Further submissions is that directions given in causes I and II of the impugned order passed in Application No.31 of 2019, are subject to the condition that the Trustees, who were signatories to the resolution No.4 dated 16th June, 1992, except the deceased trustees, should reimburse from their own funds, the land to the Trust, within two months from the date of order, as requested in Exhibit-26. By pointing out Exhibit-26, he submits that it was undertaking given by the Chairman to reimburse two Acre land at village Aurad Shahjani, however, the land is purchased at some other place. By pointing out affidavit filed by the then Chairman of the Trust, in Writ Petition No. 5485 of 2021, which was filed challenging clause (iv) of the order dated 21st December, 2020 passed by Charity Commissioner in Application No. 31 of 2019, it was submitted that 2 acre land is purchased within the radius of 2 km of the institution under registered sale deed and the said land is donated to the Trust by donation and a gift deed, on a stamp paper of Rs.100/- is executed on 18th June, 2021. It was also assured that registered gift deed would be executed in favour of the Trust within a short period and it was submitted that the directions given by learned Charity Commissioner are complied with and, therefore, permission to withdraw the writ petition No. 5485 of 2021 was sought, because only clause (iv) of the order passed in Application No. 31 of 2019 was challenged.

19. He submitted that by filing application Exhibit-26 before Learned Charity Commissioner, the then Chairman and Secretary of the Trust had sought permission to purchase land from Halgara Shivar, which is at a distance of 3 to 4 km from Aurad Shahjani. It was mentioned that Terna and Majra rivers flow from west and north sides of Aurad Shahjani village and there are dams built on both these rivers. State highway going from Aurad Shahjani is converted into national highway and, therefore, it has become difficult to get land abutting the road from Aurad Shahjani. Hence, the said condition was requested to be relaxed and permission was sought to purchase land from Halgara Shivar.

20. By pointing out the affidavit filed by the Trust, he submits that the land is purchased by the then Chairman in Tagarkheda Shivar in Nilanga Taluka and not in village Halgara and, therefore, the directions given by Learned Charity Commissioner are breached.

21. He further submits that since the application was filed by the Trust under the proviso to section 36 of the said Act, there was no need to hear the staff members before passing the impugned orders. He pointed out the affidavits filed by some of the allottees before Learned Charity Commissioner on 7th August 12019, supporting the prayer for grant of *ex post facto* sanction. Further, by pointing out the NA order, he submits that in the first map only 41 plots were shown, however, by producing fabricated map, second application seeking *ex post facto* sanction was filed for additional four plots, which were not there in the first map. By pointing out the observations of learned Charity Commissioner, on this issue, he submits that the impugned orders are rightly passed by learned Charity Commissioner. In support of his submissions, in relied on ***"Avinash Kishorchand Jaiswal and Another V/s Shri Rammandir Deosthan, Pavner and Others" 2020 (3) Mh.L.J. 323.***

22. In respect of the contempt petition, he submits that learned Charity Commissioner was moved within limitation and clause III of the order passed by learned Charity Commissioner in Application No. 31 of 2019 gives continuing cause of action and since the said clause is breached by the contemnors, the reference is rightly made by learned Charity Commissioner for

initiating contempt proceedings against the contemnors.

23. In reply, Mr. Jamalpurkar, learned advocate for the Trust, submits that the allotment of the plots has taken place in the year 1997. No objection was raised by the non applicants for 25 years. He submits that this is not a case, wherein any Trustee has earned any pecuniary benefit from allotment and sale of plots. The non applicants have no *locus standi* to file the contempt proceedings.

24. Heard learned advocates for the parties at length. Perused the memos of all the writ petitions, contempt petition, documents annexed along with the same, citations relied on by the respective learned advocates and the impugned orders.

25. So far as challenge raised in Writ Petition No. 396 of 2023 is concerned, it is clear from the record that while filing application No.31 of 2019, seeking *ex post facto* sanction for 40 plots, it was nowhere disclosed by the applying trustees that plot Nos. 42 to 45 were also sold, as according to them, those plots were sold prior to the filing of the said application. In this application, learned Charity Commissioner has passed following order :

> *"1) Application is conditionally partly allowed as under:*

(i) The permission is granted ex-post facto for the alienation already made in respect of the plots on which either the allottees or their transferees have erected pakka constructions by due permission, till the date of passing of the order i.e. 21-12-2020.

(ii) The permission is also granted for the alienation of the plots where the allottees have already transferred by registered sale deeds, the open plots allotted to them till today I.e 21-12-2020.

(iii) For rest of the plots, the permission is rejected. For these plots, the trustees and the trust shall take action for recovery of the possession of the same and start the proceeding within 180 days from today as per law and shall return the investment of Rs.6000/0 with interest of the rate of savings account of Nationalized Bank, out of the trust funds on recovery of possession.

(iv) The above permission in clause (i) and (ii) above, shall be subject to that condition, the trustees who are signatories of the alleged resolution dt. 16-06-1992 except the deceased, reimburse from their own funds, 2 Acres of land to the trust, within a period of two months from the date of order, as requested in Exh.26

(v) The inquiry shall be conducted by the Inspector of the jurisdiction concerned under the agis of the concerned Assistant/ Deputy Charity Commissioner, immediately, by visiting the spot of the plots and verify that out of the alienated 40 Plots out of Survey No. 106 by aplicant Trust, on which of the plots there is pakka construction with due permission of the local body concerned till today, which of the plots are resold till the date of present order by executing registered sale deeds, and which plots are with the allottees out of the total 40 Plots and submit the report though Joint Charity Commissioner, Latur to this Authority, within 15 days from today.

(vi) The enquiry report shall form part of this record by way of compliance and shall be accordingly entered in Schedule-I of the applicant trust.

(vii) Inform the order to the Hon'ble High Court by way of compliance."

26. The Trustees have placed on record two NA orders dated 18th April, 1996 and two maps as "New" and "Old". The New NA order of the same date bearing No. 1996/Jama/Akrushi/CR/21 is passed on application dated 31st November, 1995. The map filed along with this order shows 45 plots. The old order of the same outward number passed on the basis of the same application dated 31st November, 1995 has a map showing only 41 plots. It is, therefore, clear that there is only a single order by which 41 plots were sanctioned. The Trustees have failed to substantiate their contention that in fact 45 plots were sanctioned and not 41 plots. They have also failed to explain as to why plot Nos. 42 to 45 though were sold prior to filing of application No.31 of 2019, were not mentioned in the said application.

27. It is pertinent to note that when the plots were sold in the year 1997, unamended section 36 of the Trusts Act was in operation, which prohibited transfer of Trust property without prior sanction of learned Charity Commissioner. Even application

No.31 of 2019 was filed after inordinate and unexplained delay.

28. The record further reveals that pursuant to clause V of the order passed in application No. 31 of 2019, an inquiry was conducted by the Inspector from the Office of Assistant Charity Commissioner, by visiting the spot of the plots. During the course of this inquiry, the Trustees realized that they have sold plot Nos. 42 to 45 and hence, the present application 6 of 2021 is filed afterthought.

At the instance of the Objector – respondent No.2, the Chief Executive Officer, Zilla Parishad, Latur directed the concerned Gram Panchayat, Nilanga to enquire and submit report. The Extension Officer, Gram Panchayat, Nilanga after inquiry, submitted report dated 19th March, 2021, wherein it is stated that the Trustees have committed fraud by alienating more plots, when there was sanction for only 41 plots. It is specifically mentioned in the said report that Plot Nos. 42 to 45 are demarcated on the premises of school and they were sold. Thus, the learned Charity Commissioner has rightly recorded a finding that "*prima facie, those plots are not legally sanctioned by the appropriate authority by valid sanction order and sanction map. The applicant (Trust) has no any authority to sell out those plots to the concerned purchasers. The selling out of those plots is a illegality.*"

29. It is further held that the plots were sold without calling public offers. Total valuation of residential open plots as on 15th January, 1992 was Rs.5,100/- By comparing market value with the value mentioned in the sale deed, it is held that two plots were sold for consideration much less than the plots sold in 1997. After considering the record, learned Charity Commissioner has held that it is proved on record that *"Plots No. 42 to 45 are not legally sanctioned by the appropriate authority. Those plots were sold for a much less consideration than to the market value. The applicant (Trust) has not taken any efforts for getting the best consideration for the plots. There was not any urgency to sell out the plots without prior permission".* It is further held that no *bona fides* are shown or sufficient evidence is placed on record to show that there was compliance of section 36 (5) of the said Act.

30. It is also held that only after the objector filed various proceedings including writ petition alleging that the trustees have alienated property of the Trust without prior permission of learned Charity Commissioner and misappropriated the funds, only thereafter, the Trustees have filed application for *ex post facto* sanction. The said application is also not filed within reasonable time, after passing of the order in application No. 31 of 2019.

31. It is obvious from the record that the Trustees have failed to comply with the requirement under section 36 (5) said Act. Application No. 6 of 2021 seeking *ex post facto* sanction for sell of plot Nos. 42 to 45, which were not sanctioned in the original sanction order and the layout submitted along with the same and in view of the inquiry conducted by the Inspector from the office of the Deputy Charity Commissioner and the Extension Officer of Gram Panchayat, Nilanga, the Trustees have committed illegality in selling these plots. Learned Charity Commissioner is justified in rejecting application No. 6 of 2021 by giving cogent reasons. The Trustees have failed to make out any case to cause interference in the order impugned in Writ Petition No. 396 of 2023, in exercise of extraordinary writ jurisdiction.

32. Petitioners in Writ Petition No. 5492 of 2021 are teaching and non teaching staff members of the Trust, to whom plots were sold by the Trust. Their contention is that learned Charity Commissioner has passed order in Application No. 31 of 2019 adverse to their interest, without hearing them and, therefore, the said order is unsustainable in law. Admittedly, application No.31 of 2019 was filed seeking *ex post facto* sanction to sale of plots in the year 1996, in favour of the staff members of the Trust. They were not party to the said proceedings i.e.

Application No.31 of 2019 and learned Charity Commissioner has rightly passed orders, thereby protecting interest of the staff members, who have built their houses on the plots sold to them and / or of those who have transferred their plots in favour of subsequent purchasers. Mr. Sapkal, learned Senior Advocate appearing for the objector has rightly pointed out that some of the staff members had filed affidavits before the learned Charity Commissioner on 7th August, 2019, thereby supporting the prayer for grant of *ex post facto* sanction to the sale transactions.

33. Apart from above, even if for the sake of arguments the contention of the staff members is accepted, in the peculiar facts of the present case, this Court refuses to interfere in it as setting aside of this order would amount to condoning serious illegalities committed by the Trust, of selling out the Trust property, without obtaining prior permission of learned Charity Commissioner, as per the unamended section 36 of the said Act. In this regard, useful reference can be made to ***"Champalal Binani V/s Commissioner of Income Tax, W.B. 1971 (3) SCC 20***.

34. This Court, while exercising jurisdiction under Article 227 of the Constitution of India, is not sitting as appellate Court and the petitioners have failed to make out a case to warrant

interference in the impugned order.

35. So far as Writ Petition No. 478 of 2023 is concerned, the same is filed by the Trust, challenging the order passed by learned Charity Commissioner in Application N. 5 of 2021. By filing said application, the Trust prayed for *ex post facto* sanction under section 36 (5) of the said Act and to sell out 14 *Are* land from survey No. 192, GP No. 10/2, situated at Aurad Shahjamni, which was sold during the period 26th March, 2013 to 30th September, 2013. This application was opposed by the objector, by filing objection. It appears from the record that application No. 21 of 2013 which was filed for the same relief, was dismissed for want of prosecution on 16th March, 2016. Thereafter, it appears that application Nos. 3 of 2014 and 106 of 2015 were filed seeking permission to sell out the Trust properties, those were decided on 27th August, 2015 and 8th January, 2016. It is clear from the record that at the time of filing application No. 21 of 2013, the Trust was aware of the provision of section 36 (1) (A) of the said Act. The application was filed on 16th April, 2013 and the resolution for selling out the property, was passed on 20th March, 2013. By this resolution it is resolved that earlier, after getting sanction of the Joint Charity Commissioner, land in survey Nos. 106 and 118 was sold. In this view of the matter,

the Trust was duty bound to sell the property, after obtaining prior sanction of learned Charity Commissioner under section 36 (1) (A) of the said Act. Admittedly, section 36 (5) of the said Act is amended and came into force on 10th October, 2017.

36. It is further clear from the record that before selling out the Trust property, in the year 2013, no public notice was issued and the Trust has failed to take efforts to get best price. At the time when the Trust land was sold on 4th October, 2013, to Chungut Santan Thakur for a consideration of Rs.7 lakhs, at that time market price of the said land was Rs.8,40,000/-. The Trust has failed to make out any urgency for executing sale deed before getting sanction from learned Charity Commissioner.

37. It is evident from the record that the consideration amount received from the sale effected in the year 2013 was utilized for construction of school building. Learned Charity Commissioner has accepted the same fact, but has proceeded to hold that it cannot be accepted that the construction was urgent and, there was emergency to execute the sale deed without prior permission. The learned Charity Commissioner has further proceeded to hold that criteria enumerated in clause "a" to "g" of section 36 (5) of the said Act are not fulfilled by the Trust. However, fact remains that without obtaining prior permission

under section 36 (1) (a) of the said Act, the Trust executed sale deed, after filing the application and the said fact was not informed to the learned Joint Charity Commissioner, in the restoration application. Thus, the Trust has suppressed material facts in restoration application. The ground of ill-health of the President also did not weigh with the learned Charity Commissioner. The learned Charity Commissioner has rightly held that the President and the Trustees were well aware of the requirement of section 36 (1) of obtaining prior permission,which is reflected in the resolution, referred *supra*. They were prosecuting number of proceedings through their advocate, hence they ought to have obtained prior sanction. Even after amended section 36 (5) came into effect on 10th October, 2017, application No. 5 of 2021, was not promptly filed. The same is filed on 6th August, 2021. The delay is not explained and the ground of illness of the President is rightly rejected by learned Charity Commissioner.

38. Further finding is recorded that only after facing proceedings under sections 41D, 41E of the said Act, contempt proceedings, writ petitions filed alleging that the trustees have alienated Trust property without prior permission of learned Charity Commissioner and misappropriated funds of the Trust,

the Trustees have filed application for *ex post facto* sanction. It is also observed that at the time of filing application No.31 of 2019, this application No. 5 of 2021 was not filed. Therefore, only for avoiding consequences of proceedings filed by the objector, before the learned Joint Charity Commissioner and this Court, application No.5 of 2021 is filed to regularize or to legalize the contravention of the provision of section 36 (1) (a) of the said Act. This action of the Trust lacks *bona fides.*

39. Learned Charity Commissioner has passed a well reasoned order and has correctly appreciated the material on record and the relevant provisions. There is no illegality or perversity in the order impugned in writ petition 478 of 2023. No case is made out by the petitioner to warrant interference in the impugned order, in exercise of extraordinary writ jurisdiction.

40. In writ petition No. 1723 of 2023 decision of the learned Charity Commissioner, thereby allowing application No. 48 of 2021 and holding that the trustees have committed contempt by willfully, deliberately and intentionally disobeying clause III of the operative order dated 21st December, 2020 in Application No.31 of 2019 is challenged. Contempt Petition No. 224 of 2023 is filed by the objector for initiating contempt action against the trustees.

41. It is contended by the Trustees that the objector has no *locus standi* to file contempt proceedings i.e. CC No. 48 of 2021 before learned Charity Commissioner as his membership is already cancelled by unanimous resolution passed on 7th June, 2020, by the Managing Trustees.

42. Contempt proceeding is a fallout of resolution dated 16th June, 1992, passed by the Trust, to sell out 2 Acre 30 Guntha land, by allotting plots, to the teaching and non teaching staff members of the Trust, for construction of their houses. It is not in dispute that out of 11 managing trustees, who were signatories to the said resolution, only two are alive. Managing Committee member Shri. Basavraj Gastgar, who is no more, is father of respondent No.3. It is a matter of record that by way of registered sale deeds plots were allotted to teaching and non teaching staff members of the Trust and the sale proceeds were credited in the Trust account. It further appears from the record that after alienation of the said plots, the consideration amount was spent for construction of college and school buildings. Out of the 40 plots, 12 teaching and non teaching staff members have sold their respective plots to other persons and their purchasers have constructed their houses on the purchased plots. One employee Mr. Kadam has constructed his house there, since

long. 12 allottees have alienated their respective open plots and their purchasers, till date, have not made any construction over the said plots. 15 teaching and non teaching employees have failed to construct their houses on the allotted plots.

43. In the order passed in Application No. 31 of 2019, learned Charity Commissioner has held that it was the responsibility of the Trustees to file legal proceedings within 180 days from passing of the order, for recovery of possession. It is further observed that clause IV of the operative order in application No. 31 of 2019, is applicable to the Trustees, who are signatories to the resolution dated 16th June, 1992. The then President Mr. Valande and Kisanrao Bhingole Reddy were alive at the time of the passing of the said order and they were required to reimburse 2 Acre 30 Guntha land to the Trust within two months. An undertaking is filed at Exhibit-26 by Mr.Valande and Mr. Ramesh Dadarao Bagdure – President and Secretary of the Trust for purchase of 2 Acre 30 Guntha land within the area of Halgara Shivar. Said land ought to have been purchased within 2 km from Halgara, but the land is purchased within jurisdiction of another village and in different area i.e. at Tagarkheda. No registered gift deed is executed in favour of the Trust. Therefore, it is held that there is no compliance of the undertaking in

respect of purchase of 2 Acre 30 Guntha land, in Halgara Shivar, therefore, there is willful disobedience committed by the Trustees.

44. It is the contention of the then President of the Trust Mr. Valande that 2 Acre land situated at village Tagarkheda is purchased by him, by a registered sale deed dated 16th April, 2021, since he wanted to comply with the direction given by learned Charity Commissioner in Application No. 31 of 2019. A notarized gift deed is also executed by Mr. Valande on a stamp paper of Rs.100/-, in favour of the Trust on 18th June, 2021. In the said gift deed, it is mentioned that he is ready to execute registered gift deed, in favour of the Trust, within short time, after completion of formalities of the Revenue Department. It is further contention of Mr. Valande that on 9th March, 2022, an application was filed along with necessary documents before the Tahsildar, Nilanga for recording the land, purchased by him, in the name of the Trust.

45. It is further case of the Trustees that the then President Mr. Valande, had issued notices in compliance of the direction to recover possession of certain plots, to the respective plot holders, on 13th February, 2021, for recovery of possession. Thus, it is clear that necessary steps are taken in compliance of

the directions given by learned Charity Commissioner.

46. It was claimed by Mr. Valande, that 2 Acre 30 Gunatha land purchased by him from his own funds, is situated at a distance of 2 km from the Trust. There is nothing on record to show that this is not the position and / or the objectors have brought anything on record to controvert the said position. Mr. Valande, the then President expired in March, 2022. Thus, before execution of the registered gift deed, Mr. Valande has expired. Record indicates that he has taken steps for compliance of the undertaking given by him, by applying to the Revenue Authorities to record name of the Trust to the land purchased by him. Thus, it is clear that Mr. Valande had taken steps in compliance of the undertaking filed by him and merely because registered gift deed is not executed during his lifetime and the land was not purchased at a particular place, that by itself cannot be said to be willful disobedience of the orders, to reimburse the land to the Trust. Since, notices were issued to the plot holders, for recovery of possession of 16 plots, learned Charity Commissioner has erred in coming to the conclusion that since legal proceedings are not initiated, there is willful disobedience of the directions given in application No.31 of 2019. While recording said finding, learned Charity Commissioner has

ignored pendency of Writ Petition No. 1723 of 2023.

47. Record indicates that all possible efforts are made by the then President Mr. Valande to comply with the undertaking and directions issued in Application No. 31 of 2019 and there appears substantial compliance of the same. It appears that effective steps are taken by the trustees to comply with the directions of Charity Commissioner. Material on record does not indicate willful disobedience on the part of the contemnors. In this view of the matter, learned Charity Commissioner has erred in holding that there is willful disobedience on the part of the trustees in complying with the undertaking and directions. Contempt proceedings, therefore, are liable to be dropped and writ petition No.1723 of 2023 deserves to be allowed.

48. There is no material on record to indicate that there is willful disobedience on the part of contemnors, of the directions issued by Charity Commissioner. In that view of the matter, contempt proceedings are liable to be dropped by giving certain directions to the contemnors.

49. In ***"Balwantbhai Somabhai Bhandari Vs Hiralal Somabhai Contractor (Died) LRs" AIRONLINE 2023 SC 732***, the Apex Court has held :

"42. If a party, who is fully in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is willful. To establish contempt of court, it is sufficient to prove that the conduct was willful, and that the contemnor knew of all the facts which made it a breach of the undertaking.

43. The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court; (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court; and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court must be willful. [Patel Rajnikant Dhulabhai and Another V. Patel Chandrakant Dhulabhai and Others, reported in (2008) 14 SCC 561]

44. It behoves the court to act with as great circumspection as possible, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights, including benefit of doubt. [Kanwar Singh Saini V. High Court of Delhi reported in (2012) 4 SCC 307].

53. In Ashok Paper Kamgar Union V. Dharam Godha and Others reported in (2003) 11 SCC 1, the expression 'willful disobedience' in the context of Section 2(b) of the Act was read to mean an act or omission done

> *voluntarily and intentionally with the specific intent to do something, which the law forbids or with the specific intention to fail to do something which the law requires to be done. Willfulness signifies deliberate action done with*
>
> *56. Hence, the expression or word "willful" means act or omission which is done voluntarily or intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. evil intent and bad motive and purpose. It should not be an act, which requires and is dependent upon, either wholly or partly, any act or omission by a third party for compliance.*

50. Mr. V. D. Sapakal, learned Senior Advocate, in support of the Contempt Petition, has placed reliance on ***"K. Shamrao V/s Assistant Charity Commissioner" 2003 (3) SCC 563***, wherein it is held that Assistant Charity Commissioner has almost all the powers which an ordinary Civil Court has, including power of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted. Therefore, it is held that Assistant Charity Commissioner is a "Court" for the purposes of sections 2 and 3 of the Contempt of Courts Act, 1971.

51. In ***"Anil Ratan Sarkar and Others V/s Hirak Ghosh and***

Others" (2002) 4 SCC 21, the Apex Court has held that disobedience of a clear and unambiguous order of a court, not capable of more than one interpretation, would amount to contempt of court.

52. In ***"Baradakhanta Mishra V/s BhimsenDixit" (1973) 1 SCC 446***, it is held that – Commissioner of Hindu Religious Endowments, Orissa did not follow previous decision of High Court, which was held to be deliberate and *mala fide* conduct on his part in not following the law laid down in previous decision which undermines constitutional authority and respect of the High Court, therefore, it is held that it was calculated not only to undermine constitutional authority and respect of High Court, generally but was also likely to subvert Rule of Law and engender harassing uncertainty and confusion in administration of law. Thus, it is held - *"disobedience of order of high authority creates confusion in administration of law"*

There cannot be any dispute about the above propositions, however, on facts, since this Court has held that there is substantial compliance on the part of the contemnors in complying with the undertaking and directions of the Charity Commissioner and there is no willful disobedience on their part, the above citations are of no assistance to the objectors.

53. In ***"Shailesh Developers and Others V/s Joint Charity Commissioner Maharashtra" 2007 (3) Mh.L.J. 717***, Full Bench of this Court has held :

> *"29. While exercising power either under Clause (b) or Clause (c), the Charity Commissioner can impose conditions having regard to the interest, benefit or protection of the trust. Before passing an order of sanction or authorization, the Charity Commissioner has to be satisfied that the trust property is required to be alienated. Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary in the interest of the trust or for the benefit of the trust or for the protection of trust, it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to grant sanction to a particular proposal of the trustees or to reject it. It is the duty of Charity Commissioner to ensure that the transaction of alienation is beneficial to the trust and its beneficiaries. He has to ensure that the property is alienated to a purchaser or buyer whose offer is the best in all respects. It is not necessary in every case that the Charity Commissioner has to ensure that property is sold by the trustees to the person offering highest price or consideration. What is the best offer in the interest of the trust will again depend on facts and circumstances of each case."*

54. By relying on these observations, Mr. Jamalpurkar, learned advocate for the Trust contends that in the present case, learned Charity Commissioner has erred in imposing conditions. Considering the facts of the present case and since this Court is of the considered view that Charity Commissioner is justified in imposing conditions in the present matter, this argument is

unacceptable.

55. In ***"Suburban Education Society V/s Charity Commissioner" 2004 (2) Mh.L.J. 792***, Division Bench of this Court, while considering purport of section 36 of the said Act, has held that -

> *"12. From the perusal of the above section, it is clear that the Charity Commissioner is empowered to scrutinize any application for sale or transfer of the immovable property which is owned by the Trust in order to ensure that the property is being sold for an adequate consideration and that the money is going to be utilised for fulfilling the aims and objects of the Trust and is not likely to be frittered away by the Trustees. The Apex Court as also this Court has time and again held that the Charity Commissioner should consider the need of the Trust and grant permission wherever the property of the Trust is being sold after following proper procedure so that the market value of the said property is received by the Trust.*
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> *13. The Division Bench of this Court in the case of Madhukar Sunderlal Sheth and Ors. V. S. K. Laul and Ors, reported in 7995 Mh.L.J. 1107 (the Judgment delivered by Mrs. Sujata Manohar, J. as she then was) has observed in paragraph No. 5 as under :--*
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>> *"5. The Charity Commissioner, under the Bombay Public Trust Act is required to give his sanction bearing in mind the interest, benefit and protection of the trust. He has to apply his mind, inter alia, to the price at which the property is to be sold under the agreement. The Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may*

have entered into, are liable to be examined by the Charity Commissioner at the time when he grants his sanction. Approval by the Charity Commissioner ensures reasonableness of the agreement of sale. These factors will also have to be borne in mind by the Income Tax Authorities while exercising their power under Section 269 UD. The discretionary power under that section cannot be exercised arbitrarily. It will have to be exercised bearing in mind the purpose for which it is conferred. Hence the submission of the petitioner that if there is delay on the part of the Charity Commissioner in granting sanction, and there is a rise in the property market, the purchaser of such a property will be at a disadvantage, loses its force. The question of consideration has to be considered by the income-tax authorities in the context of the special circumstances which accompany a sale by a public trust. The purchaser can also apply in accordance with law for an early sanction by the Charity Commissioner."

Similarly, the learned Single Judge of this Court (Shri S.P. Bharucha, J., as he then was) in the case of Arunodaya Prefab V M. D. Kambli and Ors., reported in 7979 Mh.L.J. 104 in paragraph No. 22 of the Judgment has laid down what is the duty of the Charity Commissioner when an application is made under Section 36. The Paragraph No. 22 reads as under :

"22. Before parting with this case, I would add this note of caution. If the Charity Commissioner directs trustees to invite offers for sale of trust property in respect whereof the trustees have already entered into an agreement for sale and applied for sanction thereof, there are bound to be difficulties of the sort which have occurred in this petition. If the Charity Commissioner is inclined to direct the trustees to invite offers for the sale of trust property, he must first ascertain that the trustees would be willing to sell the property to one of these offers. Where an agreement for sale has been arrived

at and is sent up for sanction, the Charity Commissioner must satisfy himself of the adequacy of the price offered upon the basis of instance of sale in the locality or upon an architects report or upon some similar basis."

16. The Charity Commissioner does not dispute the fact that the Trust has no funds for expansion or that due to growing strength of students it was necessary to provide additional facilities for their cultural and other activities. The Charity Commissioner, however, conies to the conclusion that though the offer of the purchaser in both the proceedings is highest, he records a finding that these Plots are purchased out of the funds raised by the parents donations given by the parents at the time of admission of their children to the School and that this fact should not be ignored. He further states that the Trust requires open land in future and the same would not be available in that locality. In our view, the finding that the plots are purchased out of the funds raised by the parents and donations given by the parents at the time of admission is not borne out by the record, except the mere statement of respondent No. 3. There is no evidence to suggest that these plots have been purchased out of the donations which have been given by the parents at the time of taking admission for their children. The observation of the Charity Commissioner that, in future, the Trust requires the open land also is equally unfounded. The Charity Commissioner also, in our view, has completely erred in observing as under :--

"Moreover, Swetamber Murtipujak Jain Sangh is intending to construct temple. As a matter of fact at present our nation required more educational institutions than the temples. A prayer to the God can even be made by sitting in one corner of our residential house, but school cannot be maintained in our residence."

In our view the said observation made by the Charity Commissioner is absolutely unfounded inasmuch as the scope of authority which is *exercised by the Charity Commissioner under Section 36 (1) (a) is very limited. The Charity Commissioner in the first place is required to consider whether the Trust has a genuine need for the purpose of selling its immovable property and secondly whether the said property is being sold in the interest of the Trust and its beneficiaries. The Charity Commissioner is not supposed to substitute his own ideas and views vis-a-vis the functioning of the Trust. It is very strange that the Charity Commissioner has observed as under :--*

"No doubt the trust intending to provide better conductive infrastructure to the children of junior and senior K. G. level to provide better fundamental education to them, which requires heavy funds. However, that problem can be solved by securing loans from other Institutions like banks and other financial institutions etc. It is not necessary to put the plots for sale."

These observations clearly demonstrate that the Charity Commissioner does not dispute the fact that the funds are required by the Trust. However, he is of the view that instead of selling the plots, the Trust should approach the Financial Institutions for loan. In our view, the said approach of the Charity Commissioner is absolutely unwarranted."

This decision can be distinguished on facts and is of no assistance to the case of the Trust.

56. In ***"Avinash Kishorchand Jaiswal and another V. Shri Rammandi Deosthan, Pavnar and Others" 2020 (3) Mh.L.J. 323,*** relied on by Mr. Hon, learned senior advocate appearing for petitioners in Writ Petition No. 5492 of 2021, Full Bench of this Court has held that, before selling or alienating immovable property belonging to public trust, previous sanction of Charity

Commissioner under section 36 (2) (c) is mandatory. Power under this section can only be exercised on the application made under section 36 (1) (c) by a trust or the trustees, any sale or alienation of immovable property of the public trust without such sanction is null and void. While deciding application for sanction, Charity Commissioner has to have regard to the interest, benefit and the protection of trust. This power cannot be exercised *suo motu*. It is further held that power of revocation of said sanction granted by Charity Commissioner can be exercised either on application for revocation or *suo motu* or on his own by Charity Commissioner. This power is to be exercised, subject to the satisfaction in respect of three things - (i) that such sanction was obtained by fraud or misrepresentation made to him or by concealing from him, the facts material for the purpose of giving sanction, (ii) that such sanction was obtained by fraud practised upon the Charity Commissioner before grant of such sanction, and (iii) that the person in whose favour such sanction was granted is given a reasonable opportunity to show cause why the sanction should not be revoked. The power to revoke sanction includes the power to refuse revocation of sanction on the ground that there is a failure to satisfy the required conditions (i) and (ii) above or that the Charity Commissioner has no jurisdiction to revoke the sanction on the grounds other than those mentioned in section 36 (2) of the said Act. In para 12, it is held that each sanction granted by Charity Commissioner to sale Trust property affects the civil rights of the persons in whose favour such order was passed. Therefore, such power cannot be exercised unless a reasonable opportunity to show cause under section 36 (3) of the said Act is provided to him as to why sanction granted should not be revoked. It is also held that “the person” under section 36 (3) of the said Act, means a person who was a party to the proceedings under section 36 (1) (a) of the said Act or a person in whose favour order of sanction was passed. It does not include a person (i) who was not the party to the proceedings under section 36 (1) (a) and /or (ii) in whose favour such sanction was not granted and (iii) who is the purchaser of the trust property from the person in whose favour the sanction was accorded for sale or alienation. Since petitioners in Writ Petition No. 5492 of 2021, are the persons to whom trust property was alienated, without obtaining mandatory prior sanction under section 36 of the said Act and as they were not party to the application 31 of 2019 or 6 of 2021, in view of the aforesaid ratio, they are not entitled to any relief. Fact remains that, as is observed herein before, some of them had participated in hearing of these applications. Therefore, this decision is of no assistance to their case.

57. In the light of above discussion, following order is passed.

ORDER

A. Writ Petitions Nos. 396 of 2023, 5492 of 2021 and 478 of 2023 are dismissed.

B. Contempt Proceedings No.224 of 2023 are dropped.

C. Writ Petition No. 1723 of 2023 is allowed in terms of prayer clause “C”.

D. The Trustees are directed to take effective steps, within a period of two months from the date of receipt of writ of this order, for recovery of trust property in accordance with the directions issued by Charity Commissioner in Application No.31 of 2019 and 6 of 2021.

58. At this stage Mr. N. P. Patil – Jamalpurkar, learned advocate requests to grant stay to this order. For the reasons stated in this order, the request is rejected.

[NITIN B. SURYAWANSHI]
JUDGE