2025:BHC-AUG:13658

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

FIRST APPEAL NO.2877 OF 2023.

1. Girish S/o Arun Pujari
Age- 38 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

2. Krishna S/o Arun Pujari
Age- 32 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

3. Prithwiraj S/o Asus Pujari
Age- 34 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

4. Yogiraj S/o Mukund Pujari
Age- 31 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

5. Dharmaraj S/o Mukund Pujari
Age- 29 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

6. Rajan S/o Mukund Pujari
Age- 28 years, Occu : Pujari,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

....APPELLANTS.

VERSUS

1. The State of Maharashtra
   Through the Asst. Charity Commissioner,
   Charity Commissioner Office, Dist. Beed

2. The Tahsildar,
   Tahsil Karyalay, Ambajogai,
   Tq. Ambajogai, Dist. Beed.

3. Rajkishore S/o Kantaprasad Modi
   Age : 55 years, Occ : Business,
   R/o Guruvarpeth, Tq. Ambajogai,
   Dist. Beed.

4. Suhas S/o Dagdurao Mohite
   Age : 41 years, Occ : Business,
   R/o Guruvarpeth, Tq. Ambajogai,
   Dist. Beed.

5. Prithviraj S/o Shivajirao Sathe
   Age : 53 years, Occ : Business,
   R/o Guruvarpeth, Tq. Ambajogai,
   Dist. Beed.

6. Mr. Bhagwan S/o Sitaram Shinde
   Age : 51 years, Occ : Business,
   R/o In front of Subhog Mangal Karyalaya,
   Mandwa Road, Tq. Ambajogai,
   Dist. Beed.

7. Kamlakar S/o Shivajirao Chausalkar
   Age : 58 years, Occ : Business,
   R/o Chausalkar Colony, Tq. Ambajogai,
   Dist. Beed.

8. Dr. Sandhya W/o Amol Jadhav
   Age : 41 years, Occ : Business,

R/o Mitra Nagar, Shivaji Chowk,
Near Brij Hotel, Latur, Dist. Latur.

9. Akshay S/o Nandkishor Mundada
Age : 33 years, Occ : Business,
R/o “AAI Niwas”, Beed Road,
Tq. Ambajogai, Dist. Beed.

10. Giridhari S/o Nandlal Bharadiya
Age : 69 years, Occ : Business,
R/o Om Shanti Colony,
Tq. Ambajogai, Dist. Beed.

11. Gauri W/o Lalit Joshi
Age : 45 years, Occ : Household,
R/o Kuttar Vihir, Tq. Ambajogai,
Dist. Beed.

12. Shriram S/o Avdhut Deshpande
Age : 55 years, Occ : Employee of trust,
R/o Deshpande Galli, Tq. Ambajogai,
Dist. Beed.

13. Sharad S/o Shivajirao Lomte
Age : 63 years, Occ : Advocte,
R/o Gaund Galli, Tq. Ambajogai,
Dist. Beed.

14. Pooja w/o Ram Kulkarni
Age : 38 years, Occ : Household,
R/o Deshpande Galli, Tq. Ambajogai,
Dist. Beed.

15. Ashok S/o Tulshiram Lomte
Age : 63 years, Occ : Pensioner,
R/o Khadkpur, Tq. Ambajogai,
Dist. Beed.

16. Balasaheb S/o Dajisaheb Lomte
Age : 68 years, Occ : Agriculturst,
R/o Khadakpur, Tq. Ambajogai,
Dist. Beed.

17. Sarang S/o Arun Pujari
Age : 38 years, Occ : Household,
R/o Shri Yogeshwari Devi Temple,
Tq. Ambajogai, Dist. Beed.

18. Sanjay S/o Kisanrao Bhosle
Age : 38 years, Occ : Business,
R/o Khadakpur, Tq. Ambajogai,
Dist. Beed.

19. Ulhas S/o Gopalrao Pande
Age : 52 years, Occ : Agri.,
R/o Bhatt Galli, Tq. Ambajogai,
Dist. Beed.

....**RESPONDENTS.**

...

Mr. V.D. Sapkal, Senior Advocate a/w Mr.R.N. Patil i/b Mr.S.R. Sapkal, Advocate for the appellants.
Mr. S.S. Dande, AGP for Respondent Nos.1 and 2.
Mr. S.V. Adwant, Advocate for Respondent Nos.3 and 5.
Mr. D.A. Karnik, h/f Mr. Vivek Dhage, Advocate for Respondent No.8.
Mr. R.L. Kute, Advocate for Respondent No.15.
Mr. A.A. Khande, Advocate for Respondent No.17.
Mr. P.P. Dama, Advocate for Respondent No.18 .

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CORAM : ROHIT W. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 03.03.2025

DATE OF PRONOUNCING THE JUDGMENT : 06.05.2025

JUDGMENT.

1) The present appeal is filed under Section 72(4) of the Maharashtra Public Trusts Act, 1950 (MPT Act). The controversy in the matter pertains to Yogeshwari Devi Mandir, Ambajogai, District-Beed. There exists an ancient temple of a Goddess Yogeshwari Devi at Ambajogai, Tahsil-Ambajogai, District-Beed. A Trust named Yogeshwari Devi Ambajogai, District - Beed came to be registered under the provisions of the MPT Act in the year 1965 vide Registration No. A-999 (Beed). The first scheme of the Trust came to be framed vide Judgment & Order dated 28/02/1973 passed by the learned Charity Commissioner, Maharashtra State, Mumbai in Application No. 6/1971. The said scheme was challenged by one Haripant Kisanrao Pujari by filing a proceeding under Section 72(1) of the MPT Act, which came to be registered as Trust Application No. 86/1988. The parties to the Trust Application No.86/1988 filed a Joint Pursis before the Additional District Judge, Ambajogai and in view of the said Pursis, the Order dated 23/11/1973 passed by the learned Charity Commissioner framing scheme under Section 50-A came to be set aside and the matter was remanded to the Joint Charity Commissioner, Latur for fresh adjudication vide Order dated 28/02/2001. The learned Joint Charity Commissioner, Latur had thereafter transferred the proceedings

to the learned Assistant Charity Commissioner, Beed. The application came to be registered as Scheme Application No.257/2006. Likewise, one Rajkishor Kantaprasad Modi and Suhas Dagdurao Mohite, the respondent Nos. 3 and 4 in the present appeal, filed a separate application for framing of scheme under Section 50-A of the MPT Act, which came to be registered as Scheme Application No. 258/2006.

2) Pending adjudication of the said applications, respective parties in both the proceedings arrived at a compromise and after the matter was so compromised, the learned Assistant Charity Commissioner, Beed disposed of both the applications by common Judgment & Order dated 19/11/2016 framing a scheme for administration of the said Trust in exercise of the powers under Section 50-A of the MPT Act.

3) This common Judgment framing scheme came to be challenged by the present appellants by filing the appeal before the learned District Court, Beed under Section 72(1) of the MPT Act. The said appeal came to be registered as Trust Appeal No. 1/2019. The learned District Judge-3, Ambajogai, District-Beed has dismissed the said appeal vide Judgment dated 28/02/2023.

4) In this backdrop, the present appeal is preferred under Section 72(4) of the MPT Act.

5) It is case of the appellants that Munthakhab with respect to the temple of Goddess Yogeshwari Devi and two other temples of God Ganpati and God Maroti was granted to one Narsubai Wd/o Yograj Ramrao in Fasli Year 1294 i.e. English Calendar Year 1884. It is contended that in terms of the said Munthakhab, Narsubai was entitled to receive the offerings offered by devotees to Goddess Yogeshwari Devi within the sanctum sanctorum i.e. Gabhara of the temple. The said grant is made under the provisions of the Atiyat Enquiries Act. It is claimed that the said grant is a heritable grant and accordingly, after the demise of Narsubai, the right vested with her son, Kisan S/o Yogiraj, and after his demise, the Inam devolved upon his son Haripant Pujari S/o Kisan Pujari. It is then claimed that on demise of Haripant Pujari, the Inam devolved upon his two sons, Arun Haripant Pujari and Mukund Haripant Pujari. The contention is that the Inam of the property was granted in favour of Narsubai with a right of inheritance. It is contended that orders of Virasat (inheritance) of the Inam/Munthakhab are passed by the Competent Authority under the provisions of the Atiyat Enquiries Act. The learned senior counsel appearing for the appellants has drawn my attention to Schedule-I of

the said Trust, in which initially the name of Kisan Pujari was recorded as a trustee. He then draws attention to the fact that the names of Arun Haripant Pujari and Mukund Haripant Pujari were recorded as Trustees in the Schedule-I. It is further stated by the learned advocate that after the death of Arun Pujari, the names of his sons, namely, appellant Nos. 1 to 3 and respondent No. 17, were recorded as Trustees of the Trust vide Order dated 17/08/2015 passed by the learned Assistant Charity Commissioner, Beed in Change Report No. 799/2014.

6) The principal contention of Mr. Sapkal, senior counsel for the appellants, is that the appellants, who are Trustees of the Trust, have a statutory right of audience in Section 50-A proceedings. He contends that the scheme is framed without issuing notice and affording opportunity of hearing to the appellants, who are Trustees and, therefore, the order framing scheme is liable to be quashed and set aside on account of non-compliance of the mandate of the said provision. He further contends that the learned Assistant Charity Commissioner has abruptly stopped enquiry on the basis of the compromise arrived at between the parties, which is impermissible in law. The learned senior advocate contends that jurisdiction to frame a scheme under Section 50-A of the MPT Act can be exercised only on arriving at a satisfaction that there exists a need and necessity for

framing of a scheme. This satisfaction is required to be arrived at independently by the learned Assistant Charity Commissioner and the same could not have been done on the basis of the compromise arrived at between the parties. He contends that the subjective satisfaction of the Authority in the present matter is not based on independent assessment of facts but, on the compromise between the parties to the proceedings before him.

7) Per contra, it is argued by Shri S.V. Adwant, D.A. Karnik, R.L. Kute, A.A. Khande and P.P. Dama, the learned Advocates for respondent Nos.3, 5, 8, 15, 17 and 18 respectively, that the appellants cannot claim the status of Trustees and were therefore, not entitled for hearing in the matter as contended by them. They state that the Trust was registered in the year 1965 and there was no settled scheme for administration of the Trust, as a consequence of which, it had become necessary to frame an appropriate scheme under Section 50-A of the MPT Act. They have contended that the parents of the appellants, lt. Arun and Mukund, had also consented for framing of scheme. They further contended that the scheme framed by the learned Assistant Charity Commissioner is properly framed with due application of mind and it lays down a detailed procedure for appropriate administration and functioning of the Trust. In the light of aforesaid, they contend

that there is no merit in the appeal and the same is liable to be dismissed.

8) The learned advocates for the respondents disputed the status of the appellants as Trustees. They contend that since the appellants are not Trustees, there was no question of affording any opportunity of hearing to them. Mr.Advant contends that, office of Priest is a heritable office. The appellants can only claim right to offer prayers and perform rituals in the temple on the basis of the alleged right of holding post of Priest by inheritance. He contends that a Priest cannot claim status of trustee. He has placed reliance on several authorities to contend that a Priest or Poojari or Archaka is merely a servant and cannot claim to be a trustee.

9) He further contends that the appellants are claiming to be trustees by inheritance on demise of their fathers, Arun Pujari and Mukund Pujari. In this regard, he states that names of Arun and Mukund were recorded as Trustees in Schedule-I pursuant to the orders passed in Change Report Nos.491/1971 and 408.1978. He has drawn my attention to the Judgment dated 09/08/1988 passed by the learned Joint Charity Commissioner, Aurangabad in Suo Motu Revision Application No. 4/1986, by which the orders passed in Change Report

Nos. 491/1971 and 408/1978 came to be quashed and set aside. He contends that in view of the Judgment dated 09/08/1988, Arun Pujari and Mukund Pujari, the fathers of the appellants, cannot claim status of Trustees. It is then contended that the present appellants are claiming to be Trustees by virtue of inheritance, however, since their fathers are held not to be Trustees, the appellants also cannot claim to be Trustees by inheritance. As regards the Order dated 07/08/2015 passed in Change Report No. 799/2014, whereby the names of the appellant Nos. 1 to 3 and respondent No. 17 are ordered to be recorded as Trustees, it is contended that the said Judgment & Order dated 07/08/2015 is passed by the learned Assistant Charity Commissioner without noticing the Judgment & Order dated 09/08/1988. It is contended that foundation of the order accepting Change Report No. 799/2014 and recording the names of the appellant Nos. 1 to 3 and respondent No. 17 as Trustees is that they are sons of Late Arun Pujari. In view of the aforesaid submissions, it is contended that there is no foundation for the appellants to contend that they are trustees and therefore, entitled to right of audience as per mandate of Section 50-A(2) of the MPT Act.

10) As regards to subjective satisfaction, it is contended that the fathers of the appellants, lt. Arun Pujari and Mukund Pujari, were

parties to the proceedings and had consented for framing of a scheme. It is stated that there exists no scheme for proper administration of the Trust and the grant made under the Atiyat Enquiries Act also does not provide for administration and day-to-day functioning of the Trust, as a consequence of which framing of a proper scheme was absolutely essential.

11) As regards contents of the scheme, it is stated that the learned Assistant Charity Commissioner has not framed the scheme merely acting on the compromise but, has also applied his mind and has made appropriate changes in the draft of scheme submitted by the parties. In the light of aforesaid, it is urged that the learned Assistant Charity Commissioner as also the learned District Court have properly applied their mind to the facts of the case and the provisions of law and, therefore, the impugned Judgments & Orders do not warrant any interference.

12) In reply to the submissions canvassed by the learned advocate for the respondents, the senior advocate Mr. Sapkal for the appellants contends that right to assume the office of trustee is by way of inheritance under the original grant. He contends that this position was altered by the scheme framed in the year 1973, which was quashed vide order dated 28/02/2001. The contention is that since the

scheme framed in the year 1973 was set aside, the right to assume office of trustee by inheritance will have to be recognized and accordingly it needs to be held that after the demise of Haripant Pujari, his sons Arun Pujari and Mukund Pujari were holding the office of the trustee by inheritance. Likewise, after death of Arun Pujari on 20.12.2006, his sons the appellant nos.1 to 3 and the respondent no.7 became trustees by virtue of inheritance as per the original grant. Likewise he contends that on demise of Mukund Pujari on 17.09.2015, his sons the appellant nos.4 to 6 also became trustees by inheritance. It is therefore submitted that the appellants should have been afforded opportunity of hearing in compliance of statutory mandate of Section 52-A(2) of the MPT Act. In the alternative, he contends that the order in Change Report No. 799/2014 is based on a Resolution dated 21/07/2012. He contends that even if it is assumed that the appellant Nos. 1 to 3 cannot assume the office of trustees by inheritance, it cannot be disputed that the change report based on Resolution has been accepted by the learned Assistant Charity Commissioner vide order dated 07/08/2015. He states that the said order was not challenged and was therefore binding on all concerned.

13) In view of the above, Mr.Sapkal strongly contends that the impugned order framing scheme is liable to be quashed on account of

failure on the part of the learned authority to afford opportunity of hearing to the appellants.

14) Apart from the mends, the respondents have a technical objection is raised with respect to the prayer clause in the appeal. Drawing attention to the prayer, it is contended by the learned advocates that the appellants have merely prayed to quash and set aside the Judgment dated 28/02/2023 passed by the learned District Judge in Trust Appeal No. 1/2019, however, there is no prayer to quash the Judgment & Order dated 19/11/2016 passed by the learned Assistant Charity Commissioner framing scheme under Section 50-A.

15) The learned senior advocate for the appellants contended that the order framing scheme merges with the appellate order passed by the District Judge and, therefore, it was not necessary to challenge the initial order passed by the learned Assistant Charity Commissioner. However, he has also made oral motion seeking leave to amend the appeal in order to incorporate prayer to challenge the order framing scheme passed by the learned Assistant Charity Commissioner. He has drawn attention to the order dated 11.10.2024 granting leave to amend Civil Application No.9029/2023, which is an application for grant of stay. He contends that inadvertently leave was sought to amend the civil application and not the memorandum of appeal. He

contends that leave should be granted to amend the memorandum of appeal in order to avoid technicalities.

16) Mr. Adwant, the learned advocate appearing for the respondent Nos. 3 and 5, opposed the motion contending that the same was made beyond the prescribed period of limitation. He further contended that the order of first appellate authority will merge in the order of appellate authority only if the appeal is allowed and the order is reversed. He contends that if the appeal is dismissed, the doctrine of merger will not apply.

17) On hearing the respective submissions, the following points arise for consideration in the present appeal :-

(i) Is the appeal liable to be dismissed on the ground that there is no prayer to challenge the initial order passed by the Assistant Charity Commissioner although appellate order passed by the learned District Judge is challenged ?

(ii) Should leave to amend prayer clause be granted to the appellant in order to incorporate specific prayer in order to challenge the order passed by the Assistant Charity Commissioner ?

(iii) Are the impugned orders bad in law since the scheme is framed without hearing the appellants ?

(iv) Has the learned Assistant Charity Commissioner properly arrived at satisfaction for the need to frame the scheme under Section 50-A of the MPT Act ?

POINT NOS.(i) and (ii) :-

18) I am not impressed with the objections raised by the learned advocates for the respondent Nos. 3 and 5. His contention that the doctrine of merger will apply only if the appeal is allowed and the order of first authority is reversed by the first appellate authority is not correct. The principle, which is canvassed by the learned advocate, applies in cases of review and not in cases of appeal. In a case of review, it is well settled that the initial order does not merge with the order of review, if the review is rejected, however, if the review is allowed, the original order merges with the order of review. However, in cases of appeal, irrespective of the outcome of the appeal, the order by the first authority will always merge with the order of the appellate authority. In this regard support can be taken from the judgments of Hon'ble Supreme Court is cases of (1) **Kunhayammed .vrs. State of Kerala** reported in **(2000) 6 SCC 359,** (2) **Chandi Prasad .vrs. Jagdish Prasad** reported in **(2004) 8 SCC 724** and (3) **Shanthi .vrs. T.D. Vishwanathan** reported in **(2019) 11 SCC 419.** In that view of the matter, the prayer in the appeal for quashing and setting aside the Judgment & Order dated 28/02/2023 passed by the learned District

Judge in Trust Appeal No. 1/2019 will also include the challenge to the Judgment & Order dated 19/11/2016 passed by the learned Assistant Charity Commissioner.

19) Even otherwise, the objection is technical in nature and is liable to be rejected as such. I am also of the opinion that in cases like the present, where inadvertently some prayer is not incorporated in the memo of appeal, the amendment in prayer should relate back to the date of filing of appeal. The appeal is filed on 02/05/2023 within the prescribed period of limitation.

20) In view of aforesaid, the objection raised by Mr. Adwant is rejected and leave is granted to amend the prayer clause in order to incorporate the prayer for quashing and setting aside the Order dated 19/11/2016 passed by the learned Assistant Charity Commissioner.

21) It needs to be mentioned that during the course of hearing when this objection was raised, it was informed that the preliminary objection was rejected and leave to amend the appeal memo was granted and that reasons and formal order in that regard will be incorporated in the final judgment itself.

POINT NO. (iii) :-

22) Arun Pujari and Mukund Pujari are arrayed as non-applicant nos.4 and 5 respectively in scheme application no. 258/2006. However, pending the adjudication of the said application, both Arun and Mukund expired on 20.11.2006 and 17.09.2015 respectively. The order framing scheme is passed by the learned Assistant Charity Commissioner on 19/11/2016 i.e. after the demise of Arun and Mukund. As regards appellant nos.1 to 3, they were recognized as trustees vide order dated 07.08.2015 passed in change application no. 799/2014. Perusal of the order depicts that the same is passed on the basis of a resolution dated 31.07.2012, appellant nos.1 to 3 and respondent no.17 were inducted as trustees. It is undisputed that the said order is not challenged.

23) I have perused the application in Change Report No. 799/2014 and the Judgment dated 07/08/2015 passed therein. It appears that the application for incorporating the names of the appellant Nos. 1 to 3 and respondent No. 17 was moved for recording their names as Trustees in view of the Resolution dated 21/07/2012. It further appears that the said Resolution is passed in view of the demise of Arun Pujari, who is stated to be the Chief Priest. The application also states that the names should be recorded as Chief Priest. A perusal of the Order dated 07/08/2015 accepting the change

report will demonstrate that the learned Assistant Charity Commissioner has referred to the fact of demise of Arun Pujari on 20/12/2006. It is mentioned in the order that Late Arun Pujari was Chief Priest and after his demise, his sons were entitled to the Office of Chief Priest by inheritance. In that view of the matter, the learned Assistant Charity Commissioner has ordered that the names of the appellant Nos. 1 to 3 and respondent No. 17 be recorded in Schedule-I of the Trust.

24) The contention of the respondents is that the prayer in the application was for recording the names as Chief Priest and not as Trustees.

25) It appears from perusal of the order that the learned Assistant Charity Commissioner has passed the order for recording the names of the appellant Nos. 1 to 3 and respondent No. 17 as Trustees/Priests. What transpires from the order is that the learned Assistant Charity Commissioner has ordered to record the names of the appellant Nos. 1 to 3 and respondent No. 17 in Schedule-I of the Trust in exercise of the powers under Section 22 of the MPT Act. The power under Section 22 is to determine the correctness or otherwise of events relating to entries recorded in Schedule-I of the Public Trust. The format of Schedule-I is provided under Rule 5 of the MPT Rules. The statutory format

provides for recording the names of the Trustees. The learned Assistant Charity Commissioner has also directed recording of the names as Trustees/Pujaries. Although it can be inferred from the order that the same is based on assumption of right to the Office of Trustees by inheritance, the order also makes a reference to the Resolution for appointing the appellant Nos. 1 to 3 and respondent No. 17 as Trustees.

26) It is undisputed that this Order dated 07/08/2015 is not challenged till date. The order is passed by the Competent Authority having jurisdiction to pass the same. Even if it is assumed that the order is erroneous, it will have to be challenged. The order cannot be ignored unless it is set aside.

27) The other contention of the respondents is that the appellants cannot claim right to the office of trustees by virtue of inheritance in view of the order dated 09/08/1988 passed in Suo Motu Revision Application No. 4/1986, wherein it is held that the fathers of the appellants were not Trustees of the Trust. In this regard, it needs to be mentioned that the Order dated 07/08/2015 recording the names of the appellant Nos. 1 to 3 and respondent No. 17 as Trustees is not passed merely on the basis of inheritance. It also refers to the Resolution appointing the appellant Nos. 1 to 3 and respondent No. 17

as Trustees. In view of the Resolution, it cannot be said that the Order dated 07/08/2015 is ineffective and inconsequential in view of the Order dated 09/08/1988 since right to the Office of Trustees is not claimed merely by inheritance but also on the basis of the Resolution.

28) Thus, there is an order passed by the Competent Authority recording the names of the appellant Nos. 1 to 3 as Trustees. It is undisputed that a scheme under Section 50-A cannot be framed without hearing the Trustees. It is also undisputed that the appellant Nos. 1 to 3 are not parties to the scheme proceedings and the order in the said proceedings is passed without affording opportunity of hearing to them. In my considered opinion, it was necessary for the learned Authority to issue notice and hear the appellant nos.1 to 3 before passing any order before deciding the scheme application. It also needs to be mentioned that when there exists an order recognizing the status of the appellant Nos. 1 to 3 as trustees, the same cannot be ignored and it cannot be contended that they did not have right to be heard in the matter on the ground that they are not Trustees.

29) The contention of the respondents is that the order dated 07/08/2015 by which names of appellant nos.1 to 3 and respondent no.17 are recorded as trustees by accepting the change report, is obtained by practicing fraud upon the authority, in as much as, the said

order is passed on the basis of alleged right of the said persons to assume office of Priest/Trustee on demise of their father Arun Pujari and the earlier order dated 09.08.1988, by which it was held that Arun Pujari was not a trustee was suppressed from the authority. It is therefore contended that the order dated 07.08.2015 is a nullity in the eyes of law. The said contention could not have been decided without affording opportunity of hearing to them. The said question was required to be decided after due compliance with the principles of natural justice and on affording opportunity of hearing. In my considered opinion, even if it is to be held that the appellants cannot claim to be Trustees despite the Order dated 07/08/2015 in their favour in the light of earlier order dated 09/08/1988, the said question also cannot be decided without hearing them. In this context, reference needs to be made to the Judgment of the Hon'ble Supreme Court in the matter of **S.L. Kapoor Vs. Jagmohan** reported in **(1980) 4 SCC 379**, wherein it is held as under :-

> "*24. …….*
>
> *In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is*

> *unnecessary. It ill comes from a person who has denied justice that the person who has denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, nor because it is not necessary to observe natural justice but, because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."*

30) As regards the appellant nos.4 to 5, there is no order recording their names as trustees. However, it is their contention that they are entitled to the office of trustee by virtue of inheritance. This is common ground between the appellant nos.1 to 3 and 4 to 6. The respondents contend that the right to inheritance is with respect to office of Priest and not office of Trustee.

31) It needs to be emphasized that even if their status of appellants as trustees or right to become trustees by inheritance is disputed, the issue pertaining to their status also cannot be decided without hearing them. Even if it is to be held that the appellants are not entitled to audience since they are not Trustees, the said issue also needs to be decided after affording an opportunity of hearing to them.

32) It will be pertinent to mention that initially the Muntakhab under the Hyderabad Atiyat Inquiries Act was granted to Vasrubai w/o Yograj Ram Rao (Soma Guru). After her demise, the grant was inherited by her decedents vide orders of inheritance passed under the said Act. Vide order dated 13.04.2012, the order of Virasat (Succession) was passed in favour of the appellant nos.1 to 3 and respondent no.17 on demise of their father Arun Pujari, who was holding the Grant by succession during his life time. Perusal of the scheme framed by the learned Assistant Charity Commissioner will indicate that the right of the appellants to receive offerings offered to Goddess within the sanctum santoram as granted under the grants is also altered. Thus the order passed is adverse to their interest. It is obvious that order adverse to the interest of a person cannot be passed without hearing the concerned person. The impugned order framing scheme is therefore liable to be quashed and set aside on the ground that the appellants are not afforded opportunity of hearing although their rights to receive offerings is adversely affected. The impugned order is unsustainable on the ground that it is passed in breach of principles of natural justice.

33) So far as the right to receive offerings is concerned, it is a personal right of descendants of original grantee Narsubai. The

appellant are undisputedly descendants of Narsubai. The right to receive offerings is a heritable right, is also undisputed. In view of the above, after demise of Arun and Mukund, the names of their legal representatives were required to be brought on record. This was also not done and the scheme is formed whereby their right to receive offerings is also restricted to perishable commodities only. The right to receive offerings of non-perishable items is taken away. This also could not have been done without hearing the appellants.

34) The learned advocates for the respondents have strongly opposed the contention with respect to opportunity of hearing to the appellants on the ground that the fathers of the appellants, Late Arun Pujari and Mukund Pujari, were parties to the Scheme Application No. 258/2006. It is contended that the appellants were aware about the said proceeding and yet they did not participate in the proceeding after the demise of their respective fathers. It is contended that the appellants are, therefore, estopped from assailing the order on this count. The said contention is also liable to be rejected since Arun Pujari, the father of the appellant Nos. 1 to 3, had died in the year 2006 and the order is passed after a period of around 10 years thereafter. Likewise, Mukund Pujari expired on 17.09.2015. In my considered opinion, it was the duty of the learned Assistant Charity

Commissioner to issue notice and afford opportunity of hearing to the appellants and in any case to the appellant Nos. 1 to 3, in whose favour an order recognizing them as Trustees of the Trust was passed. The order cannot be justified merely on the ground that the appellants were aware about the proceedings. The learned Authority was under legal obligation to issue notice and hear the Trustees. The said statutory duty is observed in breach. Apart from this, their names were also required to be brought on record as legal representatives of their fathers late Arun and Mukund, since their personal right to receive offerings in the temple was also involved in the matter. The contention of the respondents that the impugned order cannot be set aside on the ground that the appellants were aware about the pending proceedings cannot be accepted and is liable to be rejected.

POINT NO. (iv) :-

35) The other contention raised by Mr. Sapkal is that the learned Assistant Charity Commissioner has not arrived at the subjective satisfaction on the basis of the enquiry conducted by him. He contends that the subjective satisfaction to frame the scheme is arrived at on the basis of the settlement between the parties. He also contends that the scheme is framed as per the settlement and not by independent application of mind. Per contra, the learned advocates for

the respondents argued that the decision is not based merely on compromise. They contend that while the evidence was being recorded in the matter, the parties arrived at settlement in the interest of the Trust. They contend that the learned Assistant Charity Commissioner stopped the enquiry since there was no issue before him with respect to the need to frame a scheme since both the parties agreed that it was necessary to frame the same. They further contend that admittedly, there is no scheme in existence for proper administration and day-to-day functioning of the Trust and, therefore, it was necessary to frame a scheme under Section 50-A of the MPT Act.

36) Perusal of the Judgment passed by the learned Assistant Charity Commissioner would demonstrate that the enquiry was initiated for framing of scheme. The evidence was being recorded in the proceedings. While the evidence was being recorded, a Joint Compromise Pursis came to be filed by the parties to both the scheme applications viz. Scheme Application Nos. 257/2006 and 258/2006. In view of the said settlement, the enquiry was closed and the scheme has been framed. It is apparent that the enquiry was halted in view of the compromise. The inference which can be drawn from such act on the part of the learned Authority is that the compromise between the parties before it was considered as a circumstance by the learned

Authority to stop further enquiry, otherwise there was no need to abruptly stop the proceedings.

37) Perusal of the order passed by the learned Assistant Charity Commissioner demonstrates that two points were framed for determination with respect to the need to frame a scheme and what should be the appropriate scheme. The learned Assistant Charity Commissioner has observed that there is no set of Rules and Regulations for proper administration of the Trust and, therefore, it was necessary to frame a scheme for proper administration of the Trust. The subjective satisfaction regarding needs to frame a scheme as also the contents of the scheme must be arrived at after hearing the appellant Nos. 1 to 6. Since the order is passed in breach of the said mandatory provision and the matter needs to be remanded on the said ground, it will not be necessary to make further comments with respect to merits of the matter.

POINT NO. (v) :-

38) The learned advocates for the respondents contend that the matter should not be remanded since the appellants have not prayed for remand of the proceedings. In my considered opinion, it is in the interest of the respondents that the matter is remanded for fresh consideration inasmuch as if the matter is not remanded, the impugned

order, which is being quashed, will cease to operate and then if any party wants a scheme to be framed, fresh proceedings will have to be filed, which will not be in the interest of the respondents. It is also pertinent to mention that it is the contention of the respondents that there existed no scheme for proper administration and functioning of the Trust. The temple in question is important center of worship. In that view of the matter, it will be appropriate that the proceedings are remanded to the learned Assistant Charity Commissioner for fresh decision in accordance with law.

39) The order is set aside principally on the ground that the appellants have not been heard before passing of the order framing scheme. The case is not decided finally on merits. In that view of the matter also it will be appropriate in the interest of justice to direct the learned Assistant Charity Commissioner to decide the matter afresh after affording opportunity of hearing to the appellants.

40) In the appeal before the learned District Court, the appellants had filed an application for grant of stay to implementation of the scheme framed by the learned Assistant Charity Commissioner vide Order dated 19.11.2016. The said application for grant of stay was rejected by the learned District Court. The parties agree that the scheme framed by the impugned order is implemented and affairs of

the Trust are being managed as per the said scheme. In the present matter also, there is no interim order granting stay to implementation of the impugned scheme. In that view of the matter, it will be appropriate in the interest of justice that till adjudication of the scheme application afresh by the learned Assistant Charity Commissioner, the administration of the Trust will be governed by the impugned scheme. This arrangement will be subject to final adjudication of the scheme application by the learned Assistant Charity Commissioner.

41) In view of the above, the appeal is partly allowed in the following terms :-

ORDER

1) The judgment and order passed by the learned District Judge-3, Ambajogai, District Beed in Trust Appeal No.1/2019 dated 28.02.2023 is hereby quashed and set aside. Similarly, the common judgment and order passed by the Assistant Charity Commissioner, Beed in Scheme Application Nos.257 and 258 of 2006 dated 19.11.2016 is also quashed and set aside.

2) The matter is remanded to the learned Assistant Charity Commissioner, Beed for deciding the proceedings afresh giving an opportunity of hearing to the appellants.

3) The parties are directed to appear before the Assistant Charity Commissioner, Beed on 16.06.2025. The parties are put to notice that a separate notice for appearance will not be issued.

4) The learned Assistant Charity Commissioner, Beed is directed to decide the proceedings within a period of nine months from the date of appearance of parties i.e. on or before 16.03.2026.

5) The administration of the Trust will be conducted as per the existing scheme framed under the impugned order dated 19.11.2016 till the final decision in the matter.

6) All findings recorded above are for the purpose of determining the right of audience claimed by the appellants. The Scheme Application will be decided on its own merits, without being influenced by the above observations.

<u>JUDGE.</u>