



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

WRIT PETITION NO. 4785 OF 2024

Shardulsingh Uttamsingh Chahal,
Aged about 66 years,
R/o. Rani Laxmibai Akhada Ward,
Pandharkwda, Tq. Kelapur,
District – Yavatmal.

.... **PETITIONER**

// VERSUS //

1) Wasudeo Kaoduji Shendre,
Aged about 71 years, Occ.-Retd. Teacher,
R/o. Dipstamb Akhada Ward,
Pandharkwda, Tq. Kelapur,
District – Yavatmal.

2) Baban Marotrao Nibrad,
Aged about 71 years, Occ.-Retd. Teacher,
r/o. Tilak Ward, Akhada,
Pandharkwda, Tq. Kelapur,
District – Yavatmal.

3) Shri Devidas Warluji Dhote,
Aged about 72 years,
R/o. Shyam Nagar 2,
Pandharkwda, Tq. Kelapur,
District – Yavatmal.

.... **RESPONDENTS**

WITH

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.... **RESPONDENTS**

Mr. Jugalkishor Gilda, Senior Advocate assisted by Mr. Anup J. Gilda, Advocate for the Petitioner in both Petitions.
Mr. P. A. Gode, Advocate for the Respondents in both Petitions.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 10.02.2025.
DATE ON PRONOUNCING THE JUDGMENT : 27.02.2025.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.
2. As both the matters are involving a similar issue therefore, they are taken up to decide together. Writ Petition No.4785/2024 is taken as leading case for consideration of facts and other material.

3. Being aggrieved by the order dated 17.05.2024 passed by the Joint Charity Commissioner, Amravati whereby rejected the application (Exhibit-72) filed by the petitioner for deciding the application for intervention (Exhibit-41) first filed by the respondents in Inquiry No.41/2013.

4. Petitioner is President of Kelapur Education Society, Kelapur, Tq. Kelapur, District Yavatmal which is a registered Public Trust bearing registration No. F-11/Yavatmal. The said trust has been established with an avowed object of promoting the cause of education. The petitioner submits that one Shri R. G. Patil (Secretary of the trust) had filed a Change Report before the Assistant Charity Commissioner, Yavatmal, under Section 22 of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as “the Act”) for reporting the changes which had occurred in the meeting dated 24.03.1991, in which a new Executive Committee of the trust was elected.

5. The said change report was allowed by the Assistant Charity Commissioner, Yavatmal vide judgment and order dated 02.05.2013. Shri Balwant Upalenchwar and Shri Harishchandra Bhawe have filed an appeal before the Joint Charity Commissioner, Amravati. Shri Upalenchwar had passed away on 11.06.2014 and Shri Bhawe,

another appellant also passed away during the pendency of Appeal before the Joint Charity Commissioner, Amravati.

6. The petitioner submits that the respondents had filed an application (Exhibit-41) praying for grant of leave to them to prosecute the proceedings of Inquiry No.41/2013 as appellants. The respondents in the said application had claimed that they were enrolled as Members of the trust in the alleged meeting dated 14.06.1998. The said Application (Exhibit-41) was allowed by the Joint Charity Commissioner, Amravati by his order dated 18.05.2015. The said order was challenged before this Court vide Writ Petition No.3646/2015, the same came to be disposed of by this Court by judgment and order dated 13.10.2015.

7. The petitioner wishes to bring to the notice of this Court that respondent No.1 filed an application(Exhibit-97) for intervention under Section 73(A) of the Act in Inquiry No.84/1999 before the Assistant Charity Commissioner, Yavatmal on 27.09.2016. The petitioner and other trustees of the trust had filed their response to the said application (Exhibit-97), opposing the prayer made by the respondent No.1. The application (Exhibit-97) filed by the respondent No.1 was allowed by the Assistant Charity Commissioner, Yavatmal by an order dated 30.05.2017, keeping the issue open as to whether the

respondent is an interested person or not. A writ petition was filed before this Court against the said order dated 30.05.2017 and the said writ petition i.e. Writ Petition No.5646/2017 was disposed of by this Court by an order dated 29.08.2017. Shri Shamrao Tathe had filed an application (Exhibit-105) before the Assistant Charity Commissioner, Yavatmal in Inquiry No.84/1999 for reconsideration of the order dated 30.05.2017, passed below Exhibit-97 in view of order dated 29.08.2017 passed by this Court. The said application (Exhibit-105) was allowed by the Assistant Charity Commissioner, Yavatmal by his order dated 23.10.2018 and it observed that on say of intervener he become member after the death of alleged resolution governed in change. As the procedure under Code of Civil Procedure is applicable therefore, the review of order is also tenable. Adding intervener at this stage brings the proceeding at square one, accordingly allowed the application. The petitioner submits that the said order dated 23.10.2018 passed below Exhibit-105 has not been set aside or stayed by any Court till date.

8. The petitioner submits that an application (Exhibit-57) was filed before the Joint Charity Commissioner, Amravati on 07.07.2017 praying that application (Exhibit-41) filed by the respondents be decided first before considering the merits of the matter. The Joint Charity Commissioner, Amravati had turned down the request and

directed the respondents in Inquiry No.41/2023 to proceed with the hearing of appeal on merits. A Writ Petition No.5132/2017 was filed before this Court against the order passed below Exhibit-57 by the Joint Charity Commissioner, Amravati and the said writ petition was disposed of by this Court by order dated 12.06.2019. The petitioner further submits that he had filed an application (Exhibit-72) before the Joint Charity Commissioner, Amravati on 12.11.2021 with a prayer to first decide application (Exhibit-41) filed by the respondents.

9. The petitioner further submitted that he had placed on record before the Joint Charity Commissioner, Amravati copies of several decisions passed in various change reports filed pertaining to the changes which had occurred in the meetings of the trust. Joint Charity Commissioner, Amravati rejected the application (Exhibit-72) filed by the petitioner vide order dated 17.05.2024, the aforesaid order is the subject matter of challenge in the present writ petition.

10. Learned counsel for the petitioner contended that the Joint Charity Commissioner, Amravati failed to appreciate that the issue of *locus* of the respondents to prosecute the Inquiry No.41/2013 would have to be decided first before proceedings with the adjudication of the said appeal on merits. The respondents were not admittedly members of the trust on the date when changes had occurred in No.102/1991.

Thus, it is crystal clear that application Exhibit-41 ought to be decided first before adjudication of Inquiry No.41/2013 on merits and the Joint Charity Commissioner, Amravati has clearly erred in refusing to follow the said course and as such, the order dated 17.05.2024 passed below Exhibit-72.

11. It is further contended that the respondents according to their own version claimed to be enrolled as members of the trust in the alleged meeting dated 14.06.1998. The resolution which is subject matter of Inquiry No.102/1991 was passed on 24.03.1991 i.e. much prior to the alleged enrollment of respondents as members of the trust. The undisputed position is that prior to filing of change report (Inquiry No.102/1991), the respondents were not the members of the trust and therefore, they cannot be termed as persons having interest for the purposes of the change report which is subject matter of Inquiry No.41/2013. The aforesaid order of the lower authority is subject matter of challenge in the present writ petition.

12. The learned Senior Counsel for the petitioner is relied on following case laws :

- (i) ***Satish Vasant Salpekar Vs. Ashwin Ghatate & Anr.***, reported in ***2018(2) Mh.L.J. 57***,
- (ii) ***T. K. Lathika Vs. Seth Karsandas Jamnadas***, reported in ***(1999) 6 SCC 632***,

- (iii) ***Securities & Exchange Board of India Vs. Mangalore Stock Exchange***, reported in ***(2005) 10 SCC 274***,
- (iv) ***Gagandeep Pratishthan Pvt. Ltd. and Ors. Vs. Mechano and Anr.***, reported in ***(2002) 1 SCC 475***
- (v) ***Deepak Manaklal Katariay Vs. Ashok Motilal Katariya & Ors.***, reported in ***2024 SCC OnLine Bom 3700***.

13. Learned counsel for the respondents supported the order passed by the joint charity commissioner and contended that the lower authority has rightly taken into consideration the facts and documents on record and passed an appropriate order which needs to be confirmed.

14. Learned Counsel for the respondents submits that there was one application filed by one Wasudeo Shendra for intervention, which came to be allowed by the authority, which was challenged before the High Court by way of writ petition bearing Writ Petition No.3646/2015 and 3648/2015. Both the writ petitions have been disposed of on 13.10.2015 and directed to decide the intervention application filed by the intervenors. Thereafter again, two writ petitions bearing Writ Petition Nos.5132/2017 and 5136/2017 filed by the Trust before the High Court, which were finally decided by the High Court on 12.06.2019, wherein it was specifically observed that the Joint Charity Commissioner, Amravati to decide the *locus* of the intervenors and both the orders are filed by the respondents on record.

15. The learned Counsel for the respondents relied on the judgment in *Saiyad Mohammad Bakar El-Edroos (Dead) by LRs. Vs. Abdulhabib Hasan Arab & Ors.*, reported in (1998) 4 SCC 343.

16. I have heard both the parties at length, considered the documents on record as well as orders passed by this Court and citations relied on by the parties.

17. Learned Senior Counsel for the petitioner relied on *Satish Vasant Salpekar* (supra), wherein this Court held in para 5 as under :

“5. Merely because all the petitioners were appointed as trustees by the subsequent order dated 19.05.2016 of the learned Joint Charity Commissioner, passed in exercise of powers under Section 47 read with Section 41-A of the said Act, would not make them as the persons having interest in the trust for the purpose of the change reports which were filed on 20.02.2009 i.e. prior to they becoming the trustees of the trust. The contention to that effect is, therefore, rejected.”

However, in my considered opinion, this Court has already expressed that the said application can be considered at the time of final hearing. There is no reason to file such subsequent application without there being any change in the circumstances. The change reports of respondents are rejected in between that cannot be the

ground to file such application in appeal as it cannot be said to be finally concluded.

18. Learned Senior Counsel for the petitioner also relied on ***T. K. Lathika*** (supra), in support of his contention that first the question of maintainability has to be decided and only if that point was found in affirmative, the merits need have been gone into. It may be right in the facts and circumstances of the said matter, however, in the present matter, this Court refused to pass such directions to decide the *locus* first.

19. Learned Senior Counsel for the petitioner also relied on ***Securities & Exchange Board of India*** and ***Gagandeep Pratishthan Pvt. Ltd.*** (supra), wherein the similar view is taken that, “the issue as to the maintainability of the appeal was raised by the appellant, the said issue must be decided first before passing any further order”.

20. Learned Senior Counsel for the petitioner placed reliance on ***Deepak Manaklal Katariay*** (supra), wherein this Court in para 13 and 14 observed as under :

“13. Maintainability pertains to whether a legal proceeding is competent to be entertained, factoring in procedural and substantive requirements. Maintainability relates to whether the suit is procedurally valid and not inherently barred. A case dismissed for lack of maintainability does not

necessarily negate the existence of jurisdiction, as it may only reflect procedural infirmities. Unlike jurisdiction, maintainability addresses preliminary objections arising from procedural non-compliance or statutory bars rather than the inherent authority of the court. Examples of factors affecting maintainability include:

(i) Bar under Statutes: Prohibitions on the initiation of proceedings due to legislative provisions (e.g., res judicata under Section 11 of CPC).

(ii) Limitation Period: Filing of proceedings after the prescribed period under the Limitation Act, 1963.

(iii) Locus Standi: The legal standing of the petitioner to institute proceedings.

14. *Jurisdiction derives its authority from statutes conferring power on the court. Maintainability arises from procedural and statutory compliance requirements for initiating proceedings. Lack of jurisdiction results in the nullity of proceedings, as the court inherently lacks authority to adjudicate. Non-compliance with maintainability bars leads to dismissal without deciding the merits of the case but does not affect the court's inherent power."*

However, this matter relates to whether the suit is procedurally valid and not inherently barred.

21. As against this, learned Counsel for the respondents relied on ***Saiyad Mohammad Bakar El-Edroos*** (supra), wherein the Hon'ble Apex Court held that an application in prescribed form under Section 50-A of the Bombay Public Trust Act, 1950 was moved by two persons

having interest in a public trust. On that basis a proceeding was initiated before the Charity Commissioner for settling a scheme for the trust. On 23.01.1979 one of the original applicant died. After a long lapse of time, the son of the deceased applicant moved an application on 11.10.1983 for permitting him to join as a party to the said proceedings, as he had interest in the said Trust. Another set of two persons claiming to have interest in the trust made similar application under the same section for being joined also as applicant in the said scheme. The Charity Commissioner allowed both, the substitution of the son of the aforesaid deceased applicant and impleadment of the aforesaid second set of two persons as a party to the said proceedings. The appeal challenging the said order came to be dismissed. The Hon'ble Apex Court in view of wide powers to check and control the irregularities, malpractices and misconduct in the functioning of any public trust held that non substitution or delayed substitution of such deceased person would make no difference. When initiation of proceedings is in accordance with law, which requires consideration for settling a scheme for better management, the proceeding cannot culminate or be defeated on the principles of abatement as provided in Code of Civil Procedure. For a public cause, this discretion of the Charity Commissioner cannot be faulted or could be said to be illegal. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved.

22. Initially one Balwant Nanaji Uplenchwar and Harishchandra Vishnu Bhave have filed an appeal before the Joint Charity Commissioner challenging the order passed by the learned Assistant Charity Commissioner in Change Report Case Nos.102/1991 and 187/1992. Both the appellants expired during the pendency of appeal, therefore, respondent Nos.2 to 4 in Writ Petition No.3646/2015, filed an application in the Appeal seeking permission to get impleaded themselves as “Appellants”. The same was opposed by the petitioner therein. The Joint Charity Commissioner allowed the application filed by respondent Nos.2 to 4 and has permitted them to get themselves impleaded as appellants and prosecute the appeal. The said order was subject matter of Writ Petition No.3646/2015 with Writ Petition No.3648/2015. After hearing both the parties, this Court observed in para 6 as under :

“6. Considering the facts of the present case, in my view, the respondent Nos.2 to 4 can be permitted to get themselves impleaded as the appellants provisionally to prosecute the appeal and the issue of their locus to prosecute the appeal should be considered by the learned Joint Charity Commissioner at the time of hearing of the appeal on merits, after considering all the material available on the record.”

23. Thereafter, Wasudeo Kaoduji Shendre filed one application in Inquiry No.84/1999 for intervention. In view of the earlier order

passed by this, the Assistant Charity Commissioner, Yavatmal allowed the application for intervention below Exhibit-97. However, the application filed by the present petitioner below Exhibit-101, praying for direction to the intervenors to lead evidence prior to such impleadment, came to be rejected. The petitioner herein also filed an application for re-consideration of the order passed below Exhibit-97, dated 30.05.2017, on the sole ground that the applicants/intervenors become Members after the change occurred, therefore, they are not interested person. The said application below Exhibit-105 came to be allowed. The petitioner filed Writ Petition No.5132/2017 with Writ Petition No.5136/2017, as their applications Exhibit-57 and Exhibit-67, praying that the applications (Exhibit-41 and 45) filed by respondent Nos.2 to 4 seeking permission to get themselves impleaded as appellants be decided first, before considering the merits of the appeal. The learned Joint Charity Commissioner has not acceded the request made on behalf of the petitioner and has directed the petitioner to proceed with the hearing of the appeal on merit. It was contention of the petitioner's that in view of the judgment passed by this Court in Writ Petition Nos.3646/2015 and 3648/2015, the learned Joint Charity Commissioner is under an obligation to decide the issue of *locus* of respondent Nos.2 to 4 and he cannot take up the appeal on merits. This Court observed while disposing of the petitions as under :

“The apprehension of the petitioner that the Joint Charity Commissioner will decide the appeals on merits without adjudicating the issue of locus of the respondent Nos.2 to 4 is ill-founded. Learned Joint Charity Commissioner has to adjudicate the issue of locus of respondent Nos.2 to 4 as directed by this Court while deciding Writ Petition Nos.3640/2015 and 3648/2015, Only point left at the discretion of the Joint Charity Commissioner is, at what stage the adjudication on the issue of locus of respondent Nos.2 to 4 has to be.”

24. It appears that in between two Change Reports filed by Wasudeo Shendre came to be rejected. On that basis again, the petitioner moved an application below Exhibit-72 claiming similar relief of deciding respondents intervention application first. The said application came to be rejected by the Joint Charity Commissioner in view of the order passed in writ petitions. It is held by the Joint Charity Commissioner that the *locus standi* of appellants would be decided at the time of final hearing of the appeal as per the directions of this Court. In order to decide the status and *locus standi* of the appellants, full-fledged hearing is required and, therefore, in the opinion of Joint Charity Commissioner, it would be just, proper and legal to decide the *locus standi* of the appellants at the time of final hearing of the appeal and the application came to be rejected.

25. As such, the orders dated 17.05.2024, passed below Exhibit-72 and Exhibit-86 in Inquiry Nos.41/2013 and 40/2013,

cannot be faulted with passed by the learned Joint Charity Commissioner, Amravati in view of earlier order passed by this Court. Therefore, the Writ Petitions are devoid of merits and both are **dismissed** with costs. However, the Joint Charity Commissioner is hereby directed to decide the appeal and application within two months from passing of this order.

(SMT. M.S. JAWALKAR, J.)

Kirtak