IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15285 OF 2026

Shashikumar s/o Shamrao Chaudhari,
Age; 85 years, Occ; Legal Practitioner,
R/o; 'Shamendra', Plot No. 468,
Near Kailas Apartment, N-3, CIDCO,
Aurangabad, Tq. & Dist. Aurangabad. ...PETITIONER
(Orig. Respondent/Objector)

VERSUS

Pravin s/o Digambar Manohar,
Age; 61 years, Occ; Business,
R/o; Govind Bhavan, Gore Peth,
Nagpur, Tq. & Dist. Nagpur. ...RESPONDENT.
(Orig. Applicant/Reporting Trustee)

.....
Advocate for the Petitioner : Mr. Vivek J. Dhage
Advocate for Respondent : Mr. R.F. Totla and Mr. V.S. Kabra i/b Shripad S. Kulkarni
.....

CORAM : MANJUSHA DESHPANDE, J.

Reserved on : 27.10.2026
Pronounced on : 30.10.2026

JUDGMENT : -

1. Rule. Rule returnable forthwith, with the consent of the parties. Heard finally at the admission stage.

2. The petitioner is raising challenge to the order dated 21.09.2026, passed below Exhibit–10, by the Deputy Charity Commissioner, Chhatrapati Sambhajinagar, in Inquiry No. 1074 of 2024.

3. The learned Advocate Mr. Dhage, appearing for the petitioner submits that, the respondent - Pravin s/o Digambar Manohar has filed a change report, bearing Inquiry No. 1074 of 2024, under Section 22 of the Maharashtra Public Trust Act, 1950, showing that the election to the Managing Committee of Madhyawarti Marathwada Mahila Shikshan Samiti, Aurangabad (hereinafter referred as 'said Samiti' for the sake of brevity), has taken place and a new Managing Committee has been elected for the period 2024 to 2029. The petitioner has filed objection to the said Inquiry Report and during the pendency of that Inquiry, the petitioner has also filed an application below Exhibit-10, for framing of the preliminary issue, in respect to the maintainability of the Inquiry No. 1074 of 2024.

4. According to the petitioner, no such election as claimed in the change report has taken place on 01.09.2024. No resolution in the meeting of the existing Managing Committee was passed for conducting the election. According to him, in view of the judgment and order passed by the Charity Commissioner in Inquiry No. J-1/19/2018 passed in Judgment dated 12.07.2024, the respondent has no locus to file the change report. The Deputy Charity Commissioner, has made

observations in the order dated 12.07.2024 that, the President of the Trust does not have any right to call the meeting. Since there is no proof of conducting the meeting for election, the change report bearing Inquiry No. 1074 of 2024 itself would not be maintainable. On the aforementioned background, the petitioner has filed the application for framing a preliminary issue, regarding the maintainability of Inquiry No. 1074 of 2024. It is submitted that the Deputy Charity Commissioner, Chhatrapati Sambhajinagar has not taken into consideration the previous judgment and rejected the application for framing preliminary issue by observing that in a proceeding under Section 22 the Act of 1950, preliminary issue cannot be framed.

5. The learned Advocate for the petitioner further submits that, the order passed by the Deputy Charity Commissioner, Chhatrapati Sambhajinagar is an erroneous order, in view of catena of judgments, which lay down that, if a issue regarding maintainability is raised by any of the party, it has to be decided at an earlier stage, before proceeding further with the decision on merits of the matter. In support of his submission he has relied on the decision of this Court in **Balaji Son Of Bhikaji Kapale And Anr. vs Punjaji Son Of Balaji Tayade And Ors. - 2002(1) BOM. CR 155**, wherein this Court has held that,

> *"The provisions of Rule 7 of the Trust Rules and Section 17 of the Small Cause Court's Act the order IX Rule 13 of the Code of Civil Procedure will be applicable for proceedings under Section 22 and 17-A and 72 of the*

Bombay Public Trust Act and Rules."

6. Thus, according to him, the observations made by the learned Deputy Charity Commissioner, while rejecting the application for deciding the preliminary issue, are contrary to the settled principle of law as laid down by this Court.

7. He further reinforces his submission, by relying on the decision of the Hon'ble Supreme Court in the case of **RBANMS Educational Institution v. B. Gunashekar and Another (Civil Appeal No. 5200 of 2025, decided on 16 April 2025)**, wherein, the Hon'ble Supreme Court has held that

> *"A pure question of law that can be decided at the early stage of the litigation ought to be decided at the earliest stage."*

8. Similarly, he has also relied on the decision of this Court in **Adesh Shivaji Narke v. Shree Dnyaneshwar Maharaj Sansthan and Ors.**, reported in **2025 DGLS (Bom) 1200.**

9. According to the learned Advocate for the petitioner, the maintainability of proceeding is a pure question of law, therefore, it requires to be decided at the preliminary stage, when such objection is raised without waiting for the stage, where the other issues involving the merits of the matter, are likely to be decided. He therefore, submitted

that the order passed below Exhibit-10 rejecting the application of the petitioner is required to be set aside.

10. Per Contra, Mr. R.F. Totla, learned Advocate for the respondent submitted that the subject matter of the pending proceeding is an inquiry under Section 22 of the Maharashtra Public Trust Act. Section 22, itself contains the mechanism in reporting an inquiry into the change, in the entries of the registered Public Trust. The Deputy Charity Commissioner is empowered to verify the correctness of such entries, to ascertain as to whether such change has occurred. Section 22 nowhere provides that the Charity Commissioner must frame the preliminary issue regarding the maintainability and decide it first. According to him, the present application is not maintainable since it is against the provisions of Section 22 of the Maharashtra Public Trust Act. Mr. Totla, further places reliance on the order passed by this Court in **Shashikumar Shamrao Chaudhari Vs.Vijaykumar Savlaram Shashtri and Ors, (Writ Petition No. 7079 of 2019) decided on June 17, 2019**, in respect of the same trust as in the present Writ Petition. The aforementioned decision was relied in support of his submission based on merits of the inquiry, pending before the Deputy Charity Commissioner. He further submitted that since there is no provision of framing preliminary issue under the Maharashtra Public Trust Act, the Deputy Charity Commissioner has rightly passed an order rejecting the application filed by the petitioner.

11. Heard the rival submissions, and perused the documents along with case laws cited by the respective parties.

12. The inquiry No. 1074 of 2024 is pending before the Deputy Charity Commissioner, Chhatrapati Sambhajinagar. A detailed objection to the change report has been filed by the petitioner raising doubt about the maintainability of the inquiry itself. During the pendency of the inquiry, an application has been filed by the petitioner for framing of preliminary issue about the maintainability of the change report and an inquiry initiated pursuant to such change report. It is the submission of the learned Advocate for the petitioner that, if the inquiry itself is not maintainable, it is not necessary to carry out the exercise of conducting inquiry, hence if the preliminary issue about the maintainability is framed, the inquiry itself can be disposed of without going through the procedural rigors of Section

13. Section 22 of the Act is reproduced herein below for convenience :

> "22. Change.—
>
> (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the

> Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.
>
> (1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18. Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.
>
> (2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner.
>
> (3).....
>
> (3A).....
>
> (4) ....."

14. Upon reading Section 22 of the Maharashtra Public Trust Act, Section 22 (2) provides that for the purpose of verifying the correctness of the entries in the register kept under Section 17, for ascertaining as to whether any change occurred in any of the particulars recorded in the register, the Deputy or the Assistant Charity Commissioner may hold an inquiry in the prescribed manner. If any objections are received to the proposed change, an inquiry is contemplated within three months from filing of such objection. After initiating of such inquiry, the findings are required to be recorded by the

Deputy Charity Commissioner. The proceedings are required to be completed within a period of one year from initiating such inquiry. Thus, upon going through Section 22, it no where contemplates of framing of any preliminary issue. Section 22 merely provides about the procedure to be followed while making any inquiry about the change that has occurred in the trust. Section 73 of the Maharashtra Trust Act provides for the powers of the Civil Court to be exercised by the Officers while holding inquiries under the Act. The powers of the Officers are limited only to the extent of proof of facts by affidavits, summoning and enforcing the attendance of any person, examining him on oath, ordering discovery and inspection, compelling the production of documents and issuing of commissions etc. Section 73 of the Maharashtra Public Trust Act is reproduced here in under, which reads thus :

"73. Officers holding inquiries to have powers of civil court.—

In holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908 in trying a suit —

(a)proof of facts by affidavits,

(b)summoning and enforcing the attendance of any person and examining him on oath,

(c)ordering discovery and inspection, and compelling the production of documents,

(d)issuing of commissions."

On perusal of Section 73 of the Maharashtra Public Trust Act, it is evident that when the Officer under the Act is holding an inquiry, as in

the present case, the powers of Civil Court, are vested in officer only to the extent as provided under Clause (a to d) read with the Proviso and except for the purpose mentioned in Clauses (a to d), no other powers are vested in the Deputy Charity Commissioner, in the matters of inquiry. Assuming that, the Deputy Charity Commissioner is governed by the provisions of the Code of Civil Procedure, 1908. Section 9 (A) of the Code of Civil Procedure, 1908. an enabling provision which permitted framing preliminary issue was introduced way of State Amendment in 1977, which has now been deleted w.e.g. 27.06.2018. Thus, neither under the Maharashtra Public Trust Act, nor under the Code of Civil Procedure, 1908, there is any enabling provision, which would permit framing preliminary issue in case of an inquiry under Section 22 of the Maharashtra Public Trust Act.

15. One more aspect that needs to be considered is that, in the impugned order itself it is observed by the Deputy Charity Commissioner that, the petitioner has previously also filed an application for framing preliminary issue, in Inquiry No. 19 of 2018, which was rejected by the Deputy Charity Commissioner and the challenge to the said order was raised in the Writ Petition No. 7079 of 2019, which had been turned down by this Court. Although, the petitioner has relied on certain decisions of this Court, as well as the decision of the Hon'ble Supreme Court. The decisions relied by the petitioner would not be applicable to the facts of the present case. Although the petitioner has relied on the

decision in **Balaji Son Of Bhikaji Kapale And Anr.** (supra) which lay down that the provisions of Rule 7 of the Trust Rules, Section 17 of the Small Cause Court and the Section 9 (a) of the Code of Civil Procedure, 1908, will be applicable, in case of the proceedings under the Maharashtra Public Trust Act. It is worthwhile to note that the subject matter of the aforementioned cited judgments was regarding the application for setting aside the Ex-parte order.

16. In the present case, the question is whether it is necessary to frame the preliminary issue about the maintainability of inquiry under Section 22 of the Act. Thus, the aforementioned decision would not be applicable in the present case. Similarly in the reported decision in case of**, RBANMS Educational Institution** (supra), the issue before the Hon'ble Supreme Court was rejection of plaint and non disclosure of cause of action, wherein the Hon'ble Supreme Court has held that the question of law can be decided at the early stage of litigation. The observations of the Hon'ble Supreme Court are in reference to the subject matter of challenge i.e. rejection of plaint, will not be applicable in the present case. It is held that the pure question of law, can be decided at the early stage of the litigation. Considering the above observations in the context of the present case, the subject matter of the inquiry is about the change in the trust which requires an inquiry to be conducted and based on such inquiry an order is required to be passed in such proceedings, such proceedings cannot be dismissed by framing a preliminary issue only

and upon necessary inquiry is conducted by the Deputy Charity Commissioner, the change report can be allowed or reject.

17. If at all the petitioner desires that, the issue raised by him should be decided before dealing with the merits of case under Section 22 of the Maharashtra Public Trust Act, the said issue can be framed as first issue, to be decided prior to any other issues. The petitioner is at liberty to make such request to the Deputy Charity Commissioner. Thus, I am of the view that there is no error committed by the learned Deputy Charity Commissioner, while passing the impugned order. Hence the order does not deserve any interference.

18. As such, the Writ Petition is dismissed being devoid of any merit.

19. Rule is discharged.

(MANJUSHA DESHPANDE, J.)

Mahajansb/