



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.11499 OF 2024**

1. Mujib Khan s/o Majid Khan Pathan,  
Age: 60 years, Occu. Member of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.
2. Sayed Waili Wajid s/o Sayed Wali Ahmed,  
Age: 72 years, Occu. Member of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.      ..Petitioners

Versus

1. Abdul Sattar s/o. Mohammed Shikur,  
Age: 48 years, Occu. Members of trust,  
R/o. Dafedaar, Galli, Hingoli, Tq. & Dist. Hingoli.
2. Sayed Usman Ali s/o Sayed Hussain Ali,  
Age: 70 years, Occu. Members of trust,  
R/o. Pensionpura, Hingoli, Tq. & Dist. Hingoli.
3. Mohammed Sattar @ Sardar s/o Abdul Gani (Died)
4. Shareq Mohammed Khan s/o Bashir Mohammed Khan,  
Age: 60 years, Occu. Members of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.
5. Shaikh Sikandar s/o Shaikh Sarwar,  
Age: 70 years, Occu. Members of trust,  
R/o. Khadakpura, Hingoli, Tq. & Dist. Hingoli.
6. Salim Khan s/o Majid Khan Pathan,  
Age: 82 years, Occu. Members of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.
7. Nasruddin Kazi s/o Gausuddin,  
Age: 54 years, Occu. Members of trust,  
R/o. Kazipura, Hingoli, Tq. & Dist. Hingoli.
8. Sau Shaheen Parveen w/o Mujib Khan Pathan,  
Age: 55 years, Occu. Members of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.

9. Bhujang s/o Sadoba Bhagat,  
Age: 60 years, Occu. Members of trust,  
R/o. Phaltan, Hingoli, Tq. & Dist. Hingoli.
10. Shaikh Nihal s/o Haji Shaikh Ismail,  
Age: 54 years, Occu. Business,  
R/o. Pensionpura, Hingoli, Tq. & Dist. Hingoli.
11. Shaikh Shakil s/o Shaikh Khalil,  
Age: 54 years, Occu. Members of trust,  
R/o. Bagwanpura, Hingoli, Tq. & Dist. Hingoli. ..Respondents  
(Resp.1, Orig. Appellants)

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H. I. Pathan, Advocate for Petitioners.

Mr. P. S. Agrawal, Advocate for Respondent Nos.1 and 6.

Respondent Nos.2 to 5, 8 to 10, 12, 14 to 16 and 19 are dismissed as per order dated 18.03.2025.

Respondent Nos.11, 13, 17, 18, 20 to 23 are served.

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**CORAM : S. G. CHAPALGAONKAR, J.**  
**DATED : 25<sup>th</sup> FEBRUARY, 2026.**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.
2. The petitioners impugns order dated 29.07.2024 passed below Exhibit-23 by Ad-hoc District Judge-1, Hingoli in Miscellaneous Civil Appeal No.22/2012, whereby application of petitioners for transposition as appellants has been rejected.
3. Qaide-Millat Maulana Mohammed Ismail Saheb Education Society is public trust registered under provisions of Maharashtra Public Trust Act, 1950 (for short 'MPT Act'). The respondent nos.22 and 23 were admitted as members of Educational Trust against deceased members. Eventually, Change Report in Enquiry

No.249/2010 was submitted to Assistant Charity Commissioner, Hingoli. On 26.02.2010, Assistant Charity Commissioner allowed Change Report. The respondent no.1 assailed order accepting Change Report in Appeal before Joint Charity Commissioner at Aurangabad. The petitioners were proforma respondents in Appeal. Admittedly, petitioners have never raised challenge to Change Report, but they were made party/respondents in Appeal being Members of Trust. On 31.07.2012, Joint Charity Commissioner dismissed Appeal upholding order of Assistant Charity Commissioner. The respondent no.1 assailed concurrent orders in Miscellaneous Civil Appeal filed under Section 72 of MPT Act before District Judge at Aurangabad. Later on, respondent no.1 filed pursis below Exhibit-20 informing that he is not willing to proceed further with Appeal and sought withdrawal of Appeal. The petitioners filed application below Exhibit-23 seeking transposition as appellants and continuation of Appeal. The District Judge rejected petitioners' application vide impugned order. Hence, this Writ Petition.

4. Mr. Pathan, learned Advocate appearing for petitioners submits that Change Report in Enquiry No.249/2010 has been wrongly accepted by Assistant Charity Commissioner. The petitioners are life Members of Trust. They are interested in administration of Trust. They were also aggrieved by wrongful

acceptance of Change Report, which was challenged by respondent no.1. Although they were added as respondents in Appeal No.15/2010 before Joint Charity Commissioner, they supported respondent no.1 (original appellant). Even in Miscellaneous Civil Appeal No.22/2012 filed before District Judge, Hingoli, they were supporting challenge raised in Appeal on behalf of respondent no.1. Now respondent no.1 sought withdrawal of Appeal, which cannot be permitted in light of scheme under Section 72 of MPT Act. If respondent no.1 do not wish to continue Appeal, petitioners who are also aggrieved by acceptance of Change Report, can be permitted to continue with Appeal by transposing them as appellants. The provisions of Code of Civil Procedure are applicable to proceeding under MPT Act in view of Section 76. The District Judge could have adopted purposive interpretation of provisions contained under MPT Act read with Code of Civil Procedure and permitted petitioners to transpose themselves as appellants and continue with proceeding. Mr. Pathan heavily relied upon observations of High Court of Madras in case of ***R. Dhanasundari Alias R. Rajeswari Vs. A. N. Umakanth***<sup>1</sup> to contend that transposition of respondents is permissible when appellant seeks to withdraw Appeal and respondents having interest in prosecution of Appeal seeks transposition in light of provisions under Order XXIII Rule 1-A of Code of Civil Procedure.

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<sup>1</sup> LAW (MAD)-2006-10-9.

5. Per contra, Mr. Agrawal, learned Advocate appearing for respondent nos.1 and 6 points out that Change Report has been accepted by Assistant Charity Commissioner vide order dated 26.02.2010. The petitioners never challenged Change Report. They were added as proforma parties in Appeal filed by respondent no.1. Even after dismissal of Appeal by Joint Charity Commissioner, they did not independently challenge order before District Judge. The Miscellaneous Civil Appeal No.317/2012 was exclusively prosecuted by respondent no.1. Even Appeal before District Judge was exclusively prosecuted by respondent no.1. Now under garb of transposition, they cannot be permitted to raise challenge to order passed in 2010. He would, therefore, justify order impugned in petition.

6. Section 22 of MPT Act provides that where any change occurs as regards to any of entries recorded in register to be maintained under Section 17, trustees are required to report change within 90 days. Once such change is reported, Deputy or Assistant Charity Commissioner is required to hold enquiry in prescribed manner and issue notice inviting objections and pass further orders either accepting or rejecting change report. Section 70 of MPT Act provides for Appeal against findings of Deputy or Assistant Charity Commissioner recorded under Section 22. Sub-Clause (2) of Section 70 prescribes that such an Appeal to be filed within 60 days

from recording of findings or passing of order. It is, therefore, imperative that any person aggrieved can file Appeal within 60 days raising challenge to order accepting change report. The petitioners never challenged aforesaid order. They were added as respondents in Appeal before Joint Charity Commissioner being Members of Trust. Even after dismissal of Appeal filed by respondents, petitioners never thought it necessary to challenge order before District Judge.

7. The contentions of Mr. Pathan, learned Advocate appearing for petitioners that since challenge was raised by respondent no.1, it was not necessary for petitioners to file independent Appeal, cannot be accepted. If petitioners were also aggrieved by acceptance of Change Report, it was for them to raise challenge within stipulated period. The petitioners cannot seek their transposition as appellants and permission to continue proceeding, when they failed to raise such challenge within limitation immediately after acceptance of Change Report. The petitioners cannot exercise right, which has been lost by limitation under garb of transposition. The District Judge has rightly considered Scheme of Maharashtra Public Trust Act alongwith provisions contained under Order XXIII Rule 1-A of Code of Civil Procedure. Pertinently, Order XXIII Rule 1-A has application to original suits. In present case, petitioners want to exercise powers of

transposition in Appeal before District Judge, which cannot be permitted.

8. In result, Writ Petition sans merit. Hence, dismissed.

9. Rule stands discharged.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

Devendra/February-2026