



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

**CIVIL APPLICATION NO. 4782 OF 2026
IN FA/1173/2026**

AND

**CIVIL APPLICATION NO. 4783 OF 2026
IN FA/1174/2026**

AND

FIRST APPEAL NO. 1173 OF 2026

AND

FIRST APPEAL NO. 1174 OF 2026

DR. ANANDRAO S/O. KONDADRAO MAHALE AND ORS.

.....APPLICANTS

VERSUS

MR. BIPIN S/O. RAJARAM THORAT AND ORS.

.....Respondents

Mr. P. R. Katneshwarkar, Senior Advocate i/b Mr. Abhinay D. Khot,
Advocate a/w Mr. Atharva D. Khedkar, Advocate for the Applicants
Mr. V. D. Sapkal, Senior Advocate a/w Mr. Rohit N. Pati, Advocate i/b
Mr. Pralhad D. Bachate, Advocate for the Respondent Nos. 3 and 4
Mr. N. B. Khandare, Senior Advocate i/b Mr. D. J. Choudhari,
Advocate for the Respondent No. 2

CORAM : ABHAY J. MANTRI, J.

DATE : 04th MAY, 2026

PER COURT :

**CIVIL APPLICATION NO. 4782 OF 2026
IN FA/1173/2026**

1. Heard the marathon arguments advanced by the learned
Senior Advocates, Shri. Sapkal and Shri. Katneshwarkar for the
Applicants and learned Senior Advocate Shri. Khandare and Advocate

Shri. Choudhari, for the Respondents, has also gone through the record of the case with their assistance. Perused the synoptical notes of arguments along with the judgments relied on by the respective parties.

2. The Applicants/ Appellants are challenging the judgment and order dated 27-02-2026 passed by the learned Joint Charity Commissioner, Chhatrapati Sambhajnagar Region [for short ‘the *Jt.C.C.*’] in Application No.179/2016, whereby allowed the Application filed by the Respondent Nos. 1 and 2 herein and thereby removed the Appellants/Applicants and Respondent Nos. 3 to 7 from the Board of Trustees of the Trust, namely Shri Chhatrapati Shivaji Shikshan Prasarak Mandal, Kannad, Tq. Kannad, Dist. Chhatrapati Sambhajnagar [for short ‘*the Trust*’]. The learned JCC further directed the Board of Trustees to take steps to recover the possession of the open space, including the plot Nos. 107 to 126, in Survey No. 40/2, Kannad, Tq. Kannad, Dist. Chhatrapati Sambhajnagar.

3. While dealing with the controversy between the parties, *I would like to refer to the pleadings from the First Appeal No. 1173 of 2026.*

4. (a) The learned Senior Advocate Mr. Sapkal for the Respondent vehemently argued that the learned Jt.C.C. has not followed the mandate laid down in Section 41-D of the Maharashtra

Public Trust Act, 1950 [for short the '*Trust Act*'] and passed the order contrary to it. During the argument, he drew my attention to the notice [page No.22A], reply [page 50] filed by them and charge framed on 31-01-2023 and modified by order dated 12-02-2026 and contended that the learned Jt.C.C., without giving an opportunity, has passed the impugned order based on modified charges, which were totally distinct and new charges compared to the earlier ones. He further canvassed that neither in the Application nor in the charge was it mentioned when the alleged transaction took place, when the encroachment was carried out, or when the construction was carried out. Nowhere is it mentioned who has signed the documents or sold or transferred the property. Therefore, he propounded that the learned Jt.C.C. framed vague charges.

(b) He further took me through Section 41-D of the Trust Act and submitted that the learned Jt.C.C. shall frame a charge within fifteen days from filing of the reply and decide the said Application within three months from the date of framing of the charge, but in the year 2016, the complaint was filed, and till 31-01-2023, nothing was done in the Application. However, on 31-01-2023, the charges were framed by the then learned Jt. C.C. However, he failed to decide the said complaint within three months from the said date, thereby

violating the mandate laid down in Section 41-D of the Trust Act. He further pointed out the roznama dated 06-10-2025, 12-01-2026, 16-01-2026, 27-01-2026, 29-02-2026, 02-02-2026, 11-02-2026 & 12-02-2026 and submitted that the evidence was closed on 25-09-2025. However, thereafter, the charge was modified on 12-02-2026, and, without affording an opportunity, the impugned order was passed on 27.02.2026 by the learned Jt. C.C. Therefore, the impugned judgment and order are also liable to be set aside.

(c) Then he emphasises that points framed by the learned Jt.C.C. are inconsistent with the charges framed earlier. As such, it seems that the learned Jt. C.C. has not applied his mind while passing the impugned order. The learned Jt.C.C. amended the charges without any Application, thereby violating the provisions of Section 41-D of the Trust Act and the law laid down in Taylor V/s Taylor. He further contended that Respondent Nos. 1 and 2, i.e. the original Applicants, failed to discharge the burden that lies on them. Therefore, the question of shifting the burden on the Appellants/applicants does not arise at all. No evidence was brought on record to show that the Appellants/Applicants have signed the documents. Except for a single sale deed, no other documents were produced on record to demonstrate that the Appellants have actively participated in the

transfer of the open space/plots in question. No material was brought on record to show that Trustees are liable to be removed from the Trust. No specific averment in the Application that the Appellants in FA No. 1173/2026 have signed any documents. No evidence was brought on record to show that the Appellants have committed forgery. Therefore, he urged for admitting the Appeal and granting a stay to the impugned judgment and order.

5. To buttress his submission, he has relied upon a bunch of judgments, which are as follows:

i] 1990 SCC Online Bom 94 Vijubhai Patel and another Vs The Charity Commissioner & Ors. Para 71 to 73.

ii] 2008 (1) Mh.L.J. 148 Mallikarjuanappa S. Bidve & Ors Vs Joint Charity Commissioner & Ors. Para 18,19,23 & 24

iii] 2012 (3) Mh. L. J. 322 Mukund Waman Thatte Vs Sudhir Parshuram Chitale and Ors. Para 22 to 28.

iv] Eknath Tukaramji Pise and Anr. Vs Rama Kawaduji Bhende & Ors. Para 23 to 25, 28 & 29.

v] Totaram Dasuji Rathod & Ors. Vs Atmaram Kisansing Rathod & Ors. Para 3,16 & 17.

6. Mr. Katneshwarkar, learned Senior Counsel for the Applicants, adopted the argument advanced by the learned Senior Counsel Mr. Sapkal and argued forcefully that nothing has been brought on record to demonstrate that the Appellants have created the

plots 107 to 126 in the open space of the layout plan of the Trust. The open space vested with the Corporation, and therefore, the Appellants/applicants are not required to take care of the said property. He further canvassed that the Appellants/applicants become the members of the Trust from 01-03-2008. He drew my attention to paragraphs 32 and 41 of the impugned judgment and order, and also pointed out the sale deed [page 113-A] on record, which was executed in 1993. At that time, none of the Appellants/Applicants was party to the said sale deeds.

7. (a) *Per contra*, the learned Senior Advocate Mr. Khandare for the Respondent No. 2 strenuously opposed the Application for grant of stay and submitted that the impugned order passed by the learned Jt.C.C. is just and proper and by following the clauses C & D of Section 41-D of the Trust Act. He has taken me through the definition of the trustees under Section 2(18) and submitted that “*trustee*” means *a person in whom either alone or in association with other persons, the trust property is vested, and includes a manager*. Then he drew my attention to clause C of Section 41-D. He took me through the Special Civil Suit No. 129/2024 filed by the Trust and its prayers, as well as the mutation entries on record and contended that those entries, as well as the filing of the suit itself, indicate that the Trustees failed to

discharge their duties to protect the Trust property. In fact, it was the Trustees' duty to protect the Trust property. They cannot escape from their duty; therefore, Trustees are liable to removal under clause 3 of Section 41-D of the Trust Act.

(b) He further asserted that the Trust did not obtain permission to transfer or allot the properties. He has pointed out Section 36-A of the Trust Act and submitted that every Trustee shall administer the affairs of the Trust and is duty-bound to protect the property of the Trust. Then he has read over the original charge and modified charge and submitted that the Appellants have failed to discharge their duties pursuant to the mandate laid down in clauses C & D of Section 41-D of the Trust Act. He further propounded that on the point of modification of the charge, the learned Jt.C.C. heard the parties. He has pointed out the same from the order dated 12-02-2026 passed by the learned Jt.C.C. [page 238]. Therefore, it cannot be said that Appellants/Applicants were not heard while modifying the charge.

(c) Then he contended that it is necessary to look at the substance of the charge and not the wording of the charge. By modifying the charge, no prejudice would be caused to the parties. But the same can be elucidated from the charge. He has pointed out the findings recorded by the learned Jt.C.C. in paras 1 to 16, then paras 32

to 33, 37, and 39. He also took me through the cross-examination of the Respondent Mansingh, more particularly the last para of his cross-examination [page 161]. Then he showed the deposition of Mansingh [page 162] and submitted that he did not dispute that the encroachment on plot Nos. 30 and 31 of the Trust has been taken in possession by the learned Tahasildar.

(d) Then he argued that what is material on record indicates that there is a construction on plot Nos. 107 to 126, which exists in the open space within the Trust's layout. The filing of the suit itself indicates that some encroachers have encroached upon the Trust property. Therefore, Trust has filed the suit. He further submitted that the delay was condoned. Non-resistance of the said application itself indicates that the Applicant's act was adverse to the Trust's interests. In fact, the Trustees are the custodians/guardians of the Trust property, but failed to maintain it. Therefore, the passing of the impugned judgment and order by the learned Jt.C.C. is just and proper and urged for the refusal of the Application for the grant of stay.

8. (a) Mr. Choudhary, learned Advocate for the Respondent No.2, has also adopted the argument advanced by Mr. Khandare, learned senior Advocate. He has tendered a synoptical note across the bar, which is taken on record. He pointed out clauses (a), (b) & (c) of

clause-II (i) of the said notes and submitted that alienation of the plot Nos. 107 to 126, themselves indicate that the Trustees have neglected to protect the Trust property. Similarly, the Respondent No. 3, i.e., Mansingh, who was pretending to be the President of the Trust, has not been taken cognisance of by the other Trustees. However, he failed to point out the same from the averments in the Application.

(b) Then he pointed out para 40 of the original Application and submitted that the averment in para itself indicates that the Appellants and Respondent Nos. 3 to 7 in collusion, transferred the property of the Trust. Then he pointed out the prayers in the suit and submitted that said prayers themselves indicate that the Trustees are acting against the interest of the Trust. He fairly admitted that the charge of encroachment on plots No. 30 and 31 was not proved. Then he drew my attention to para 8 of the reply and submitted that in 2016, the Appellants/Applicants were aware of the encroachment on the Trust property. Therefore, he submitted that the order passed by the learned Jt.C.C. is just and proper and urged for the rejection of the stay Application.

9. It is pertinent to note that Mr. Choudhari, learned Advocate, was representing the Respondent Nos. 1 and 2 before the learned Jt.C.C. as well as herein. Therefore, he is aware of the

pleadings and the facts of the case. Therefore, some queries were put to him during the argument. I want to reproduce the answers to the queries provided by the learned Advocate Mr. Choudhari. Those are as follows:

- (i) Mr. Choudhari, learned Advocate, **fairly admitted** that since 01-03-2008, the Appellants/Applicants and Respondent Nos. 1 and 2 in FA No. 1173/2026 are the members of the Trust, so also, the Appellant/Applicant Nos. 1 to 4 were the Trustees from 05-01-2023 till the impugned order was passed.
- (ii) He then **fairly admitted** that all the allotment letters in favour of the allottees of the transferees were issued prior to 2004 in respect of plots Nos. 107 to 126.
- (iii) He further **accepted** that none of the Appellants/Applicants in F. A. No. 1173/2026 transferred those plots in favour of the transferee.
- (iv) He further **conceded** that there is no dispute about the creation of plot Nos. 1 to 106 by following due process of law.
- (v) He **fairly admitted** that allotment letters were issued to allottees or transferees of plots No. 107 to 126 by one

Ramdas Patil, who died in the year 1994, and also one sale deed on record was executed by Laxmanrao Mohite, who is also no more.

10. To buttress his contentions Mr. Choudhari, learned Advocate for the Respondent, has relied upon the following judgments:

i] 2003 (3) Mh.L.J. 215 Vrajlal Janabhai Vs State of Maharashtra.

ii] 2012 (2) SCC 392 C. Bright Vs District Collector and others

iii] 2013 (3) SCC 594 State Represented by Inspector of Police Vs N. S. Ganeshwaran.

11. I have deeply considered the oral submissions advanced by the learned senior Advocates of the parties at length, as well as the learned Advocate Mr. Chaudhari, and have gone through the record.

12. At the outset, it appears that the Respondents No. 1 and 2 had filed an Application before the learned Jt.C.C. on 18-05-2016. The pleadings in the Applications appear vague and general. Nowhere in the Application is it specifically mentioned who transferred the plots, when they were transferred, or when plot Nos. 107 to 126 were created, or when these plots were sold or transferred in favour of a third person. Similarly, when funds were misused, it is not mentioned who misused them, who signed the documents, or who issued the allotment letters. Thus, it appears that averments in the Application are

vague. It also appears that the charge framed by the learned Jt.C.C. on 31-01-2023 and modified on 12-02-2026 are not consistent with the pleadings in the Application. Prima facie, it seems that charges were not framed in accordance with the allegations in the Application. Moreover, it prima facie appears that the charges modified by the order dated 12-02-2026 are not consistent with the charge framed on 31-01-2023, but the modification adds to the charge. Similarly, it appears that after the close of the evidence, the charge was modified, and, without affording an opportunity, the judgment was passed.

13. Having considered the lengthy rival arguments of the learned senior Advocates as well as the above discussion, prima facie it appears that the controversial questions of facts and law are involved in the case and therefore, to determine the same, a detailed hearing is required. In view of the above, it would be appropriate to consider the law laid down in the judgments cited by the learned respective parties at the time of the final hearing. Thus, both Appeals are “**Admitted**”.

14. Issue notice to the Respondents in both Appeals bearing First Appeal Nos.1173 of 2026 and 1174 of 2026. Mr. Chaudhari, learned Advocate, waives service of notice for the Respondent No. 2 in both the appeal. Mr. Bachate, learned Advocate, waives service of

notice for Respondent Nos. 3 and 4 in FA/1173/2026 & Mr. Khot, learned Advocate waives service of notice for Respondent Nos. 5,6,8 & 9 in FA/1174/2026.

15. As a result, the Application bearing No. 4782/2026 is allowed in terms of prayer clause (B) to the extent of the Applicants/Appellants in F.A. No. 1173/2026.

16. Needless to clarify that, Respondent No. 3, Mansingh, and Respondent No. 4, Pandharinath, were members of the Trust from 1989 and 1985, respectively, till they were removed. It also prima facie appears from the record that, before 2004, the plots were created in the Trust's open space and transferred in favour of the allottees and the transferee. Prima facie, it seems that in 1994, Respondent No. 3, Mansingh, was President/ Chairperson of the Regulatory Board and sanctioned four resolutions under his chairmanship. It is apparent that in 1993, the Trust sold its plot in favour of Sau. Meena Kulkarni, without obtaining the permission of the Charity Commissioner. Likewise, the filing of proceedings by the Trust before the Divisional Commissioner, Aurangabad, to challenge the order passed by the Additional Collector, Aurangabad, for condoning the delay in the application filed by Sk. Wahed and others, and a suit for the declaration of the owners of the open space in the layout, in which

plot Nos. 107 to 126 were created in the open space, before the C.J.S.D. Aurangabad itself indicates that, during their tenure as Trustees/members, they prima facie failed to protect the Trust properties as contemplated in Section 36-A of the Trust Act. Consequently, prima facie, in my view, they are not entitled to the interim relief as prayed in Connected Appeal No. 1174/2026. **Hence, the Application bearing No. 4783/2026 filed by them is rejected.**

17. Both Applications are disposed of accordingly.

[ABHAY J. MANTRI, J.]

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