

(2015) 08 BOM CK 0164

In the Bombay High Court

Case No : First Appeal No. 1249 of 2012

People's Education Society Registered under the Societies
Act, 1860 and Others

APPELLANT

Vs

Mansing S. Moray and Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2, 2 (10), 2(10), 22, 70
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100

Citation : (2015) 6 BomCR 786

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : P.K. Dhakepalkar, Senior Advocate assisted by B.K. Barve, S.K. Halwasia, Sandip Barve, Archana Lad and Shital Tanpure, I/b B.K. Barve and Company, for the Appellant; Amit Borkar, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J—This Appeal is concerned with the rejection of Change Report No. 888 of 2003, filed on 26th February, 2003, to induct four persons as the members of Governing Body of the People's Education Society by the Deputy Charity Commissioner, Greater Bombay, Mumbai Region on 25th October, 2010. In Appeal No. 30 of 2010 under Section 70 of the Bombay Public Trusts Act, 1950 (in short "the said Act"), the learned Joint Charity Commissioner has confirmed the said order and dismissed the Appeal. The appellants moved an application before the City Civil Court at Greater Mumbai, being Charity Application No. 4 of 2012, under Section 72 of the said Act, which has also been dismissed on 3rd July, 2005. Hence this First Appeal which is in the nature of Second Appeal under Section 100 of the Code of Civil Procedure.

2. Before the lower Authorities, two questions were involved : (1) the validity of Resolution No. 6 passed at Item No. 8 in the meeting of the Governing Body of the Society, held on 20th December, 2002; and (2) the eligibility of newly

inducted two members of the Governing Body of the Society in the said meeting. The learned Deputy Charity Commissioner held on the first aspect that the meeting held was valid, and on the second aspect, it is held that the eligibility of these two persons to become members, has not been established in terms of Article Nos. 7 and 20 of the Memorandum of Association, for the reason that it is not proved that they are from the category of Scheduled Caste converts to Buddhism.

3. In the Appeal filed by the reporting trustees under Section 70 of the said Act, the affidavits dated 11th November, 2010 filed by Dr. Gangadhar Pantawane and Principal D.J. Ganjurde were placed on record along with certain documents by way of an additional evidence, to establish that they belong to the category of Scheduled Castes converted to Buddhism and it was prayed to remand the matter back to the Deputy Charity Commissioner for making such inquiries. The learned Joint Charity Commissioner rejected this move and also reversed the finding recorded by the Deputy Charity Commissioner that the meeting of the Governing Body held on 20th December, 2003, was legal and proper. It is held that the meeting was illegal and consequently, the induction of four members was also illegal. In the Charity Application No. 4 of 2012 filed under Section 72, the learned Judge of the Bombay City Civil Court has maintained these findings of the learned Joint Charity Commissioner.

4. This appeal is preferred by the Reporting trustees. This Court admitted the matter on 10th September, 2012, framing the substantial question of law as under:

"a) Whether in an inquiry to determine the validity of a Change report under Section 22 of the Bombay Public Trusts Act, 1950, the Assistant/Deputy Charity Commissioner is obliged to find out the facts and ascertain the truth or is the enquiry akin to a lis between the parties?

b) Whether Section 70(3) of the Bombay Public Trusts Act, 1950 which permits the Joint Charity Commissioner to take additional evidence on record is circumscribed by the provisions of Order 41 Rule 27 or whether the specific statutory provisions will prevail?

c) Whether in an enquiry to determine the validity of a Change report under Section 22 of the Bombay Public Trusts Act, 1950, the Assistant/Deputy Charity Commissioner is empowered to look into the suitability of the appointed members?

d) Whether it is legal and permissible under the provisions of Section 70(3) of the Bombay Public Trusts Act, 1950 to accept additional evidence at the appellate stage and/or he may direct the Deputy or Asstt. Charity Commissioner, Mumbai, to make further enquiry or take such additional evidence by remanding back the matter for fresh hearing?"

5. The matter was heard at length on 30th and 31st June, 2015 and it was part

heard. On 27th July, 2015, this Court framed the following additional substantial question of law:

ADDITIONAL SUBSTANTIAL QUESTION OF LAW:

"Whether the objections regarding the legality and validity of the notice of meeting dated 12th December, 2002 at Exhibit-60, the proceedings in the form of intimation letter at Exhibit-61 and the minutes of the meeting dated 20th December, 2002 at Exhibit-103, could have been entertained and decided by the Court and the authorities below at the instance of a stranger Shri Sudhash Jadhav?"

The substantial question of law at (b) and (c) in the aforesaid paragraph can be clubbed together for the purposes of decision. The matter was actually heard on additional substantial question of law also, but, it was not framed and hence the parties were given opportunity to again address this Court on the additional substantial question of law. The matter was, therefore, kept on 31st July, 2015. Accordingly the matter is heard again at length and parties also filed their written submissions..

UNDISPUTED FACTUAL POSITION :

6. The People's Education Society was founded by Bharat Ratna Dr. Bhimrao Ramji Ambedkar (Babasaheb) on 8th July, 1945, and it was registered under the Societies Registration Act, 1860 on 9th July, 1945. It is also registered under the Bombay Public Trust Act bearing PTR No. F - 303(M). The Society is governed by the Memorandum of Association and the Rules which are framed. The entries in the Schedule-I of PTR indicated the names of following trustees entered as on 14th February, 1995:

"(i) Dr. S.P. Gaikwad;

(ii) Shri S.S. Rege;

(iii) Dr. J.V. Deshpande;

(iv) Shri K.V. Talvatkar;

(v) Dr. P.T. Borale;

(vi) Shri M.V. Rao;

(vii) Shri M.D. Tambe;

(viii) Shri M.S. Moray;

(ix) Prof. S.K. Mohgaonkar;

(x) Shri K.H. Rangnath;

(xi) Dr. M.L. Sahare."

7. Shri M.V. Tambe expired on 6th July, 2000, Shri K.B. Talvatkar expired on 15th

May, 2002 and Dr. P.T. Borale expired on 5th October, 2002. As such, three vacancies occurred. It was shown that one more vacancy of Prof. A.M. Donde occurred, as he expired on 9th July, 2001. His name does not figure in the Governing Body of eleven members existed on 14th February, 1995. But, there is no dispute that the vacancy occurred and it was required to be filled in. It is not necessary for me to dig out the process as to whether he was the member of the Governing Body and how the vacancy occurred, as none of the parties have disputed that such vacancy occurred and existed.

8. One Principal D.J. Gangurde, claiming himself to be a Member Secretary of the society issued a notice on 12th December, 2002, calling a meeting of the Governing Body on 20th December, 2002. The meeting was held at 11.00 a.m. and it was presided over by Shri K.H. Rangnath, as the Chairman and Shri S.S. Rege, as the Deputy Chairman. Principal D.J. Gangurde, who claimed to be the Member Secretary was also present. The following persons have marked their attendance in the meeting:

- "(i) Shri K.H. Rangnath, Chairman;
- (ii) Shri S.S. Rege, Deputy Chairman;
- (iii) Dr. S.P. Gaikwad, Member;
- (iv) Shri M.S. Moray, Member;
- (v) Prof. S.K. Mohgaonkar, Member;
- (vi) Padmshri M.L. Sahare, Member;
- (vii) Principal Shri S.L. Khot, Member."

9. In this meeting, at Item No. 8 Resolution No. 6 was passed, which is reproduced below:

"Re: To elect Members of the Governing Body of the Society in place of Sarvashri M.B. Tambe, A.M. Donde, K.B. Talwatkar and Dr. P.T. Borale.

Padmashri Dr. M.L. Sahare proposed the following 4 names for the 4 vacant posts of the Members of the Governing Body which were seconded by Prin. S.L. Khot and supported by Prin. S.K. Mohagaonkar, Shri M.S. Moray, Dr. S.P. Gaikwad and Shri S.S. Rege.

1. Justice Shri Narendra Chapalgaonkar
2. Dr. Gangadhar Pantawane
3. Shri Bhalchandra Varale
4. Prin. D.J. Gangurde

Since there were no candidates for the above vacant posts it was unanimously resolved;

i) that Justice Shri Narendra Chapalgaonkar has been elected as a Member of the Governing Body of the PES in place of Prof. A.M. Donde.

ii) that Dr. Gangadhar Pantawane has been elected as a Member of the Governing Body of the PES in place of Shri K.B. Talwatkar.

iii) that Shri Bhalchandra Varale has been elected as a Member of the Governing Body of the PES in place of Shri M.B. Tambe.

iv) that Prin. D.J. Gangurde has been elected as the Member-Secretary of the Governing Body of the PES in place of Dr. P.T. Borale."

10. On 29th / 30th January, 2003, a meeting of the Governing Body was held in which the following members were present:

"1. Shri K.H. Rangnath, Chairman;

2. Prof. S.M. Khot;

3. Shri B.B. Varale;

4. Dr. Gangadhar Pantawane;

5. Principal D.J. Gangurde, Member-Secretary.

The following members of the Governing Body informed their inability to attend the meeting:

"1. Shri S.S. Rege, Deputy Chairman;

2. Dr. S.P. Gaikwad;

3. Shri N.S. Moray;

4. Principal S.K. Mohgaonkar;

5. Padmashri Dr. M.L. Sahare."

At Item No. 1, Resolution No. 1 was passed confirming the minutes of the last meeting of the Governing Body held on 20th December, 2002, in which four persons were newly inducted as members. It is at Exhibit-104 (record page 883).

11. On 26th February, 2003, the Change Report No. 888 of 2003 was filed by Shri S.S. Rege on the basis of the minutes of the meeting dated 20th December, 2002, for deletion of the names of four deceased members and to add four new members who were inducted. There is no dispute on the aspect of deletion of four deceased members, but the dispute pertained to induction of four members namely:- Shri Justice Narendra Chapalgaonkar (Retd.), Dr. Gangadhar Pantawane, Shri Bhalchandra B. Varale and Shri D.J. Gangurde.

12. Before filing of the Change Report, Shri Justice Narendra Chapalgaonkar (Retd.) resigned from membership on 23rd January, 2003. During the pendency of the Change Report Shri Bhalchandra B. Varale died on 10th September, 2006.

Hence, the dispute remained only in respect of induction of two members namely:- (1) Dr. Gangadhar Pantawane and (2) Principal D.J. Gangurde. On 14th /15th May, 2003, a meeting of the Governing Body was held and it was attended by seven members amongst which, Shri M.S. Moray was one. Dr. S.P. Gaikwad informed his inability to attend the meeting. The meeting confirmed at Item No. 2, the minutes of the meeting dated 29th /30th January, 2003.

13. On 22nd July, 2005, the learned Assistant Charity Commissioner allowed the Change Report No. 888 of 2003, and the direction was given to delete the names of the deceased members and to include the names of four newly inducted trustees in Schedule - I of the Public Trust Register. Accordingly, the entry was carried out.

14. The event which occurred after the decision of the said Change Report was that of the holding of the meeting of the Governing Body of the society on 21st May, 2007 at 11.00 a.m. at Nagasena Vidhyalaya, Bangalore, wherein the following trustees were present:

- "(i) Shri K.H. Rangnath, Chairman;
- (ii) Dr. S.P. Gaikwad, Member;
- (iii) Shri M.S. Moray, Member;
- (iv) Dr. Gangadhar Pantawane, Member;
- (v) Principal Dr. D.J. Gangurde, Principal Secretary."

In the said meeting, Resolution No. 2 at Exhibit-111 (record page 1043) was passed at Item No. 2, which is also reproduced below:

"Re: To elect Members of the Governing Body of the People's Education Society in place of 1) Prof. S.K. Mohagaonkar, 2) Justice Shri Narendra Chapalgaonkar, 3) Prof. S.L. Khot, 4) Shri S.S. Rege, 5) Shri B.B. Varale and 6) Dr. M.L. Shahare.

Shri M.S. Moray proposed the following two names for the vacant posts of the Members of the Governing Body which were seconded by Prin. Dr. D.J. Gangurde and supported by Shri K.H. Ranganath, Dr. S.P. Gaikwad and Dr. Gangadhar Pantawane.

1. Prof. S.L. Bhagawat.
2. Principal Dr. R.A. Wavare.

Dr. Gangadhar Pantawane proposed the following three names for the vacant posts of the Members of the Governing Body which were seconded by Shri M.S. Moray and supported by Shri K.H. Ranganath, Dr. S.P. Gaikwad and Dr. D.J. Gangurde.

1. Dr. M.P. Mangudkar.
2. Shri Vinayak K. Pradhan.

3. Dr. S.N. Bushi.

Dr. S.P. Gaikwad proposed the name of Dr. D.G. Deshkar for the vacant post of the Member of the Governing Body which was second by Dr. Gangadhar Pantawane and supported by Shri K.H. Ranganath, Shri M.S. Moray and Dr. D.J. Gangurde.

Since there were no other candidates for the above six vacant posts all the above six candidates were declared elected unanimously and it was therefore resolved.

1. that Dr. D.G. Deshkar has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Justice Shri Narendra Chapalgaonkar who resigned on 24/01/2003.

2. that Prof. S.L. Bhagwat has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Prof. S.K. Mohagaonkar who resigned on 06/02/2003.

3. that Dr. Vinayak K. Pradhan has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Shri S.S. Rege, who expired on 10/12/2004.

4. that Dr. M.P. Mangudkar has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Prof. S.L. Khot, who expired on 02/08/2005.

5. that Dr. R.A. Wavare has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Shri B.B. Varale, who expired on 10/09/2006.

6. that Dr. S.N. Bushi has been declared elected unanimously as a Member of the Governing Body of the People's Education Society, Mumbai in place of Dr. M.L. Shahare, who expired on 05/04/2007."

15. After lapse of the period of about three years, the order dated 22nd July, 2005, accepting the Change Report No. 888 of 2003, was made the subject matter of challenge in Revision Application No. 6 of 2008 filed under Section 70A by one Shri Subhash Sambhaji Jadhav, resident of Aurangabad, before the Joint Charity Commissioner. In the said application Shri K.H. Rangnath, Shri D.J. Gangurde, Shri S.P. Gaikwad, Dr. Gangadhar Pantawane, Shri M.S. Moray, Dr. D.G. Deshkar, Prof. S.L. Bhagwat, Shri Vinayak K. Pradhan, Dr. M.P. Mangarudkaar, Dr. R.A. Wavare and Dr. S.N. Bushi, were the respondent Nos. 1 to 10, respectively. On 14th January, 2009, the learned Joint Charity Commissioner set aside the order dated 22nd July, 2005, passed by the Assistant Charity Commissioner. It was noted in the order that the Revision Petitioner had filed one objection on 7th January, 2003, before the Assistant Charity Commissioner claiming audience. It was found that the question of membership was required to be considered as per the Memorandum of Association and the Rules and Regulations of the society and this aspect was not addressed to by the

learned Assistant Charity Commissioner in the order impugned and therefore the matter was remanded back for fresh inquiry under Section 22 of the said Act.

16. This order dated 14th January, 2009 passed by the learned Joint Charity Commissioner was further challenged by filing Charity Application No. 4 of 2009 under Section 72 before the City Civil Court of Greater Bombay by Dr. D.J. Gangurde, as the sole appellant. The respondent Nos. 1 to 11 in this application were Shri Subhash Sambhaji Jadhav, Shri K.H. Rangnath, Dr. S. P. Gaikwad, Dr. Gangadhar Pantavane, Shri M.S. Moray, Dr. D.G. Deshkar, Shri S.L. Bhagwat, Shri Vinayak M. Pradhan, Dr. M.T. Mangarudkar, Dr. R.A. Wavare and Shri S.N. Bushi, apart from the Charity Commissioner as respondent No. 12. The said application was dismissed on 24th November, 2009.

17. The aforesaid decision was the subject matter of First Appeal No. 39 of 2010, filed before this Court in which Dr. Digambar Jawaji Gangurde, Mr. K.H. Rangnath, Dr. Gangadhar Pantawane, Shri M.S. Moray, Dr. D.G. Deshkar, Prof. S.L. Bhagwat, Shri Vinayak M. Pradhan, Dr. M.P. Mangrudkar, Dr. R.A. Wavare were the appellants, whereas Shri Subhash Sambhaji Jadhav, Dr. S.N. Bushi, the Charity Commissioner and Mr. S.P. Gaikwad were the party respondents. The said Appeal was disposed of by recording Consent Terms by this Court on 4th February, 2010, as under:-

"CONSENT TERMS

The impugned Order dated 24.11.2009 passed by City Civil Court, Mumbai in Charity Application No. 4 of 2009 would take effect with the following modifications.

1. The Deputy Charity Commissioner shall dispose of the Change Report No. 888 of 2003.
2. The Surviving Trustees shown in Change Report No. 888 of 2003 are permitted to prosecute the pending Change Report before the Deputy Charity Commissioner by filing oral and documentary evidence if any.
3. The Trustees in office as on today managing the affairs of the trust shall to function.
4. The Respondent No. 1 or any person claiming through of under him will not have any right to be heard or be represented before the Deputy Charity Commissioner in Change Report proceedings.
5. The Deputy Charity Commissioner shall dispose of the Change Report as expeditiously as possible and in any event within 6 months from today.
6. First Appeal disposed of accordingly no order as to cost."

OBJECTIONS TO THE CHANGE REPORT

18. Before the Change Report No. 888 of 2003 was filed, the respondent No. 3 before this Court, Shri Sudhas Narayan Jadhav, resident of Mumbai, filed an

objection which is reproduced below.

"Sir,

Kindly take note that I have objection to the manner in nominating the following persons as the members of Governing Body of Trustees of the above mentioned trust.

1. Mr. D.C. Gangurde,
2. Mr. Varale Bhalchandra
3. Mr. Gangadhar Pantawane
4. Mr. Chapalgaonkar.

I further request that before the above mentioned persons being accepted as Trustees, I should be given an hearing and my objection be noted in light of the judgment given by the Hon"ble High Court, Mumbai, in regard to the above mentioned persons.

With regards."

Shri Prakash Ambedkar, the learned counsel for the respondent No. 3, Shri Sudhas Narayan Jadhav invited my attention to the objections dated 2nd May 2009 at Exhibit-12 (record pages 115 to 127), dated 1st July 2009 at Exhibit-16 (record pages 167 to 175) and dated 16th June 2010 at Exhibit-51 (record page 303). My attention was also invited to the objections dated 2nd March 2010 at Exhibit-29 and dated 4th March 2010 at Exhibit-28 filed by Dr. S.P. Gaikwad and Mr. M.S. Moray respectively (record pages 625 and 611), to the Change Report. One another person Shri Subhash Sambhaji Jadhav resident of Aurangabad had also filed objections dated 1st July 2009 at Exhibit-18 (record page 171), dated 9th July 2009 at Exhibit-19 (record page 189), dated 05.10.2009 at Exhibit-23 (record page 227) and dated 6th November 2009 at Exhibit-24 (record page 139). Except these objections, neither any other Trustee nor any stranger filed any objection to the Change Report. Atleast, it is not brought to my notice.

PROOF OF CHANGE REPORT

19. In support of the Change Report, the reporting trustee Shri K.H. Rangnath examined himself at Exhibit-56 and he was cross examined at the instance of the objectors viz. Shri Sudhas Jadhav, Shri Moray and Dr. S.P. Gaikwad. Another reporting trustee Principal D.J. Gangurde also entered the witness box and examined himself as a Member-Secretary. He was also cross examined at the instance of Shri Sudhas Jadhav, Shri S.V. Moray and Dr. S.P. Gaikwad. Both these witnesses have proved notice dated 12th December 2002 at Exhibit-60 (record page 361) in respect of meeting of Governing Body held on 20th December 2002, the intimation about distribution of Agenda given on 16th December 2002 at Exhibit-61 (record page 363), the attendance in the meeting dated 20th December 2002 marked as Exhibit-72 (record page 409), the minutes of the

meeting dated 20th December 2002 at Exhibit-103 (record page 861), minutes of the meeting dated 29th/30th January 2003 at Exhibit-104 (record page 883), confirming the minutes of earlier meetings, minutes of the meeting dated 14th/15th May 2003 at Exhibit-105 (record page 899), the minutes of the meeting dated 21st May 2007 at Exhibit-111 (record page 1043). None of the objectors entered the witness box in support of their objections.

CONSIDERATION OF OBJECTIONS

20. In the light of the aforesaid factual position and the evidence led by the parties, I would like to first of all deal with the additional substantial question of law as to whether the objections regarding legality and validity of the notice of meeting dated 12th December 2002 at Exhibit-60, the proceedings in the form of intimation letter at Exhibit-61 and the minutes of meeting dated 20th December 2002 at Exhibit-103. Though the Deputy Charity Commissioner has recorded the finding that the meeting held on 20th December 2002 was legal and valid, the learned Joint Charity Commissioner as well as the learned District Judge have concurred in setting aside such finding and further holding that all these proceedings were illegal and invalid.

21. In view of the consent terms accepted by this Court on 4th February 2010 in First Appeal No. 39 of 2010, the objections raised by the stranger Shri Subhash Sambhaji Jadhav, a resident of Aurangabad, at Exhibits-18, 19, 23 and 24 did not deserve any consideration. The consent terms accepted by this Court clearly records the finding that Shri Subhash Sambhaji Jadhav shall have no right to be heard or represented before the Deputy Charity Commissioner in the Change Report proceedings. Shri Subhash Sambhaji Jadhav did not challenge this order, but remained silent though he was the respondent in First Appeal No. 39 of 2010. None of the parties have raised any dispute in respect of this position, even before this Court.

22. I have gone through the objections dated 2nd May 2009 at Exhibit-12 (record pages 115 to 127), dated 1st July 2009 at Exhibit-16 (record pages 167 to 175) and dated 16th June 2010 at Exhibit-51 (record page 303) filed by another stranger Shri Sudhas Narayan Jadhav, a resident of Mumbai, who is the respondent No. 3. There is not even whisper about the legality and validity of the proceedings or the documents at Exhibits-60, 61, 72 and 103. Though a relief was claimed that the Change Report be rejected on the ground that it is not in conformity with the composition of members of the Governing Body, the objection is totally vague and unspecific. How and in what manner it is not in conformity has not been stated. It is stated that no notice was issued, no meeting was held. It is not the objection that Principal D.J. Gangurde was not the Member-Secretary. It is not the objection that Principal D.J. Gangurde was not competent to issue notice of meeting. Shri Sudhas Narayan Jadhav, the objector did not enter the witness box to depose and make himself available for cross examination, though he cross examined the two reporting trustees namely Shri K.H. Rangnatha and Dr. D.J. Gangurde. Even in such cross examination, no

questions are put to these witnesses on the legality and validity of such documents and proceedings. The questions were put to these witnesses in respect of objections which were not pleaded or raised.

23. Shri Prakash Ambedkar, the learned counsel or the respondent No. 3 invited my attention to the application dated 7th June, 2010 at Exhibit-49 (record page 831) filed by a reporting trustee Shri Rangnath, claiming the relief that Shri Sudhas Jadhav, the respondent No. 3 herein, should not be permitted to participate in the proceedings of Change Report. Inviting my attention to the order dated 29th June, 2010, below Exhibit-49 (record page 837), it is urged that the Deputy Charity Commissioner rejected such application holding that the respondent No. 3 has been participating in the proceedings right from beginning, though there is no specific order passed under Section 73A of the Bombay Public Trusts Act. According to him, the Court is deemed to have passed an order under Section 73A of the said Act.

24. Section 73A of the Bombay Public Trusts Act, 1950, is relevant and the same is reproduced below.

"73A. Power of Enquiry Officer to join persons as party to proceedings. - In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person or such terms and conditions as the officer holding the enquiry may order."

The aforesaid provision speaks about the intervention in any proceedings under the Act by a stranger claiming himself to be a person having interest in the trust. The Authority before whom such proceedings are pending has to first of all find out as to whether such person can be termed as a "person having interest in the public trust". If it is so found, then the Authority may permit such person to participate in the proceedings on such terms and conditions which he may deem fit and proper.

25. The expression "person having interest in the trust" is defined under Section 2(10) of the said Act, which is reproduced below.

2. Definitions. - In this Act unless there is anything repugnant in the subject or context, -

...

...

(10) "person having interest" includes -

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof.

(b) in the case of a math, a disciple of the math or a person of the religious

persuasion to which the math belongs,

(c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf.

(d) in the case of a society registered under the Societies Registration Act, 1860 (XXI of 1860), any member of such society, and

(e) in the case of any other public trust [any trustee or beneficiary]"

The Authorities considering such application under Section 73A of the said Act cannot mechanically, without application of mind to the aforesaid provisions of the Act and merely for the sake of asking, permit any person claiming to have an interest in such trust, to participate in the proceedings. The expression "person having interest in the public trust" represents the persons having bonafide and genuine interest in public trust as against an interest with an ulterior motive or malafide intention. The Authority is, therefore, required to consider the contents of any such application, if made and the bonafides in claiming participation. If required, the Authority may ask the party concerned to enter the witness box and be subject to the cross-examination so as to establish his bonafides and the status as a "person having interest in the public trust". The recording of finding that the person is or is not having such bonafide interest in the public trust, is a sine qua non for permitting intervention in the matter. Otherwise, the very object in introducing the provision of Section 73A of the said Act shall frustrate, resulting misuse of the provision. No doubt, the definition is inclusive, but it cannot be said that the person acting against the interest of such public trust or has no interest in the public trust or having hostile interest or has no connection with such public trust, can be permitted to participate in the proceedings without establishing the bonafides and testing his case on the touchstone of the provision of Section 73A read with Section 2(10) of the said Act.

26. Perusal of the order dated 29th June, 2010 below Exhibit-49, does not reflect any such application of mind by the Deputy Charity Commissioner while permitting the respondent No. 3 to participate in the proceedings. There is no finding recorded that the respondent No. 3 has established that he is a person having bonafide interest in the trust in question as required by Section 73A read with Section 2(10) of the said Act. In the absence of finding on such jurisdictional fact, the Court and the authorities below have committed an error of law in permitting the respondent No. 3 to participate in the proceedings of Change Report. Even otherwise, the respondent No. 3 has not made out a case in the pleadings and evidence either under clause (a) or clause (b) or clause (c) of sub-section (10) of Section 2 of the said Act, which is reproduced above. The Courts and the Authorities below have, therefore, committed an error in entertaining and deciding the objection regarding legality and validity of the proceedings of

the meeting dated 20th December, 2002 at Exhibit-103 on its own merits at the instance of the respondent No. 3 Shri Sudhas Jadhav. The substantial question of law at Sr. No. 1 is, therefore, answered accordingly.

27. In spite of permitting the respondent No. 3 to participate in the proceedings of the Change Report, it is not known as to what purpose has been achieved by him except to create hurdles and impediments in the routine proceedings before the Deputy Charity Commissioner. The respondent No. 3 is a stranger and he has neither raised any specific objection, nor has entered the witness box. There is lack of definite approach and definite object and interest in the trust reflected upon reading of the haphazard cross-examination conducted on the part of the respondent No. 3. The evidence in cross examination which travels beyond the objections raised at Exhibits-12, 16 and 51 was not admissible.

28. The respondent Nos. 1 and 2 viz. Shri Mansingh S. Moray and Dr. S.P. Gaikwad, filed their objections at Exhibit-28, dated 2nd March, 2010 and at Exhibit-29, dated 4th March, 2010, respectively in the proceedings of Change Report. The objections are identical and there is absolutely no difference. It was one of the objections raised that Dr. Gangadhar Pantwane was disqualified for becoming a member as he was indicted in the land grabbing of the society by the High Court in Second Appeal No. 202 of 1992 and Principal D.J. Gangurde was disqualified by virtue of Lentine Commission's Report and in the light of Writ Petition Nos. 40 of 1996 and 3193 of 2002. It is their specific stand that such objections raised in the meeting held on 20th December, 2002, were not recorded in the minutes of the meeting. Except this, there is no other objection raised by the respondent Nos. 1 and 2.

29. Before proceeding to deal with the objections raised by the respondent Nos. 1 and 2, I would like to note certain factual position which is not disputed by them. It is not the objection of the respondent Nos. 1 and 2 either that the meeting dated 20th December, 2002 at Exhibit-103 was not held or that the proceedings of the said meeting including the notice at Exhibit-60, intimation at Exhibit-61 or the minutes are in any manner illegal or invalid. It is also not their objection that they were not served or knowing the Agenda of the said meeting. The respondent Nos. 1 and 2 have not only participated in the meeting dated 20th December, 2002, by marking their attendance at Exhibit-72, but also in the meeting dated 22nd July 2005. In the meeting dated 14th/5th May, 2003 at Exhibit-105, the minutes of the earlier meeting dated 29th/30th January 2003, at Exhibit-104, confirming the minutes of the meeting dated 20th December, 2002, at Exhibit-103, were confirmed. The respondent No. 1 - Shri M.S. Moray participated in the said meeting.

30. In none of the meetings held subsequent to 20th December 2002, the respondent Nos. 1 and 2 raised any objection to the effect that the minutes of the meeting held on 20th December, 2002 were not correctly recorded. In their objections at Exhibit Nos. 28 and 29, the respondent Nos. 1 and 2 have not challenged the legality and validity of the proceedings of the meeting dated 20th

December, 2002. The Deputy Charity Commissioner, therefore, could not have permitted the respondent Nos. 1 and 2 to cross examine the reporting trustees on the legality and validity of the proceedings of the meeting dated 20th December, 2002 or of the documents at Exhibits-60, 61, 72, 103, 105 and 111. In the absence of such objections, the surprise cross-examination cannot be admitted in evidence to reject the Change Report in question.

31. The Change Report was filed on 26th February 2003 and thereafter several events have occurred which are noted in the earlier paras till the date of filing of the objections at Exhibit Nos. 28 and 29 by the respondent Nos. 1 and 2 on 2nd March, 2010 and 4th March 2010. They had not challenged the initial acceptance of the Change Report by the Assistant Charity Commissioner on 22nd July, 2005. In Revision Application No. 6 of 2008 challenging the acceptance of Change Report, they were the respondents along with the other reporting trustees. The learned Joint Charity Commissioner set aside the said Change Report on 14th January, 2009, which was maintained by the learned City Civil Judge by dismissing the application under Section 72 of the said Act on 24th November, 2009. The respondent No. 1 Shri M.S. Moray was one of the appellants in First Appeal No. 39 of 2010 filed before this Court being aggrieved by the orders passed setting aside the acceptance of Change Report. The respondent No. 2 also did not raise any challenge to the initial acceptance of Change Report. It is thus apparent from the conduct that there was tacit support of the respondent Nos. 1 and 2 to the stand taken by the other reporting trustees for acceptance of the Change Report, from 26th February, 2003, till 2nd March, 2010, when for the first time objections at Exhibit-28 and 29 were filed.

32. In the objections at Exhibit Nos. 28 and 29, the contention of the respondent Nos. 1 and 2 is that Dr. Gangadhar Pantawane was disqualified for becoming a member of the Trust as he was indicted in the land grabbing of the society by the High Court in Second Appeal No. 202 of 1992. A copy of this decision is placed on record. Shri Prakash Ambedkar, the learned counsel appearing for the respondent No. 3 has taken me through the relevant portion in the said judgment and has conceded that there is no such indictment of Dr. Gangadhar Pantawane by the High Court. It was the another objection that Principal D.J. Gangurde was also disqualified by virtue of Lentine Commission's Report. Their case in the said objection was that in fact they had raised such objection in the meeting dated 20th December, 2002, in which these two persons namely Dr. Gangadhar Pantawane and Principal D.J. Gangurde were inducted as members by the Governing Body. However, such objections are not recorded in the minutes of the meeting. The respondent Nos. 1 and 2 have not entered the witness box to substantiate such plea and to demonstrate as to how both these persons were disqualified from being inducted as the members of the Governing Body of the Society. The Court and the authorities below have not even taken the efforts to find out that really there was such indictment and incurring of disqualification.

33. The parties have strongly contested the issue that Dr. Gangadhar Pantawane

and Principal D.J. Gangurde did not belong to Buddhist community. There cannot be any dispute that in terms of Article Nos. 7 and 20 of the Memorandum of Association, these two persons were not qualified to be chosen as the members of the Governing Body of the Trust, if they do not belong to the category of Scheduled Caste converted to Buddhism. In spite of granting opportunity to produce evidence on record to substantiate the fact that these two persons were Buddhist, the Courts below have recorded the finding that the reporting trustees have failed to avail the opportunity provided to them to prove such fact.

34. None of the learned counsels appearing for the parties could bring to my notice any objection other than those at Exhibit-12, Exhibit-16, Exhibit-18, Exhibit-19, Exhibit-23, Exhibit-24, Exhibit-28 and Exhibit-29. In none of these objections the question was raised as to the eligibility or qualifications of these two persons namely Dr. Gangadhar Pantawane and Principal D.J. Ganjurde. However, the Court and the authorities below have devoted lot of pages to discuss such objection. In the absence of any such objection being raised, the question of reporting trustees leading any evidence to establish eligibility and qualifications of these two persons to become the members of the Governing Body in terms of Articles 7 and 20 of the Memorandum of Association did not arise. Be that as it may, in the Appeal before the Joint Charity Commissioner under Section 70 of the said Act, affidavits were filed evidencing the fact that these persons actually belong to the category of Scheduled Caste converted to Buddhism.

35. Coming to the substantial question of law at Sr. Nos. (b) and (d) regarding grant of permission by the Joint Charity Commissioner in Appeal under Section 70(3) of the Bombay Public Trust Act, to take additional evidence on record, the decision of the learned Single Judge of this Court in the case of Rahul S/o. Sudhir Ghare and others vrs. The Joint Charity Commissioner, Amravati and another, reported in 2007 (6) ALL MR 638 need to be seen. After taking into consideration the provision of Section 70(3) of the said Act and the provisions of Order 41, Rule 27 of C.P.C. regarding production of additional evidence in the appellate Court, this Court has held in paragraph 7 as under;

"7.

Perusal of clauses (a), (aa) & (b) of sub-rule (1) shows that such permission to lead additional evidence can be granted if any of the circumstances enumerated in the above clauses require. Clauses (a) & (aa) clearly define the limits of powers of appellate court when an order allowing additional evidence can be made. These two clauses (a) and (aa) are the clauses alike sub-section (3) of Section 70 of the Act. It is thus seen that the power under sub-section (3) of Section 70 of the Act would consequently be not power akin to the one provided under Rule 27 of the Code of Civil Procedure. As per clause (b) of sub-rule (1) of Rule 27 of the Code of Civil Procedure if the appellate Court requires or feels any particular additional evidence to be necessary to enable it to pronounce a judgment, this clause (b) can be invoked. In my opinion, the scope of sub-

section (3) of Section 70 of the Act is broader than the provisions of Order 41, Rule 27 of the Code of Civil Procedure."

Thus, it is apparent that the power of the Joint Charity Commissioner under Section 70(3) of the said Act is wider than the power of the Civil Court under Order 41, Rule 27 of C.P.C. The power under Section 70(3) of the said Act is not circumscribed by the conditions for exercise of such power incorporated under Order 41, Rule 27 of C.P.C. The lower appellate Court and the Authorities ought to have, therefore, seen that the appellants were not provided an opportunity to produce evidence regarding eligibility and qualification of two persons inducted as members before the Deputy Charity Commissioner. In the absence of any such objection in writing, there was no occasion for the reporting trustees to avail the opportunity to lead evidence before the Deputy Charity Commissioner on this issue. At any rate, the power of the learned Joint Charity Commissioner under Section 70(3) of the said Act is wide enough to grant such permission which ought to have been granted keeping in view the facts and circumstances of this case. The two substantial questions of law at Sr. No. (b) and (d) are answered accordingly.

36. The Charity Commissioner is the custodian of the trust properties. The Bombay Public Trust Act confers upon him not only the judicial control over the affairs of the public trust, but also the administrative control. While exercising quasi judicial powers, the Charity Commissioner cannot overlook the interest of the trust and whether the trust is being properly administered and managed and the trustees occupying the position are eligible and qualified in terms of the Memorandum of Association governing the trust. If a question arises before the Charity Commissioner in any proceedings as to the fitness, suitability, eligibility and qualification of the person to be appointed or continued as a trustee of any public trust, the Charity Commissioner is empowered in exercise of its power of superintendence to make such enquiries and decide such question. The substantial questions of law at Sr. No. (a) and (c) are, therefore, answered holding that the Charity Commissioner is obliged to find out the facts and ascertain the truth in the allegations so made in respect of the fitness, suitability, eligibility and qualification of a person to be appointed as the trustee or the member of the trust.

37. From the discussion above, the conclusions reached can be summarized as under;

"(I) The stranger Shri Subhas Sambhaji Jadhav, resident of Aurangabad and Shri Sudhas Narayan Jadhav, resident of Mumbai, have failed to establish that they are the persons having interest in the trust as defend under Section 73A read with Section 2 (10) of the Bombay Public Trust Act. The Courts and authorities below have, therefore, committed an error in entertaining the objections regarding legality and validity of the notice dated 12th December, 2002 at Exhibit-60, intimation about distribution of Agenda dated 16th December, 2002 at Exhibit-61, the attendance of the meeting dated 20th December, 2002 at

Exhibit-72 and the minutes of the meeting dated 20th December, 2002 at Exhibit-103.

(II) None of the trustees including the objectors i.e. Respondent No. 1 Shri M.S. Moray and Respondent No. 2 Dr. S.P. Gaikwad raised any objection in respect of the legality and validity of the documents at Exhibits-60, 61, 72 and 103 which are the part and parcel of the proceedings of the meeting of Governing Body held on 20th December, 2002. The Courts and authorities below have committed an error in permitting the objectors to cross examine the reporting trustees on these aspects of the matter and to record the finding that these proceedings were illegal and invalid.

(III) The objections at Exhibit-28 and 29 regarding eligibility and qualifications of Dr. Gangadhar Pantawane and Principal D.J. Gangurde to become the members of the trust have not been considered on its own merits by taking into consideration the judgment delivered by this Court in Second Appeal No. 202 of 1992 and the Lentine Commission's Report in the light of Writ Petition Nos. 40 of 1996 and 3193 of 2002, and the provisions of Articles 7 and 20 of the Memorandum of Association.

(IV) The objection that Dr. Gangadhar Pantawane and Principal D.J. Gangurde did not belong to the category of Scheduled Caste converts to Buddhism and were not qualified to be chosen as the members of the trust on the basis of Article 7 and 20 of the Memorandum of Association was not raised before the Deputy Charity Commissioner and hence, the Court and the authorities below have committed an error in holding that the reporting trustees have failed to avail the opportunity provided to the reporting trustees to establish this fact.

(V) The powers of the authorities below under Section 70(3) of the Bombay Public Trust Act are wide enough to permit the parties to lead additional evidence and it is not circumscribed by the conditions mentioned in Order 41, Rule 27 of the Civil Procedure Code. In the present case, the authorities below ought to have remanded the matter back to the Deputy Charity Commissioner by permitting the reporting trustees to produce additional evidence on record which is required to be considered."

38. In view of above, the first appeal is allowed and the following order is passed.

"i] The order dated 25th October, 2010, passed by the Deputy Charity Commissioner, Greater Bombay, Mumbai Region, in Change Report No. 888 of 2003 is hereby quashed and set aside.

ii] The order dated 3rd May, 2012 passed in Appeal No. 30 of 2010 by the learned Joint Charity Commissioner is hereby quashed and set aside.

iii] The judgment and order dated 3rd July, 2005 passed by the learned Judge, City Civil Court at Mumbai in Charity Application No. 4 of 2012 is hereby quashed and set aside,

iv] The matter is remitted back to the Deputy Charity Commissioner, Mumbai Region, Mumbai, to consider and decide the eligibility and qualifications of Dr. Gangadhar Pantawane and Principal Shri D.J. Gangurde to become the members of the Governing Body of the trust in the light of the observations made by this Court, by permitting the parties to lead oral as well as documentary evidence.

v] The parties to appear before the learned Deputy Charity Commissioner on 1st September, 2015. No fresh notices shall be issued to the parties. No other objections shall be entertained and the matter shall be decided within a period of three months from the date of first appearance of the parties before him."

The record and proceedings be immediately sent to the lower authorities. No orders as to cost.