(2002) 08 BOM CK 0084

In the Bombay High Court

Case No : First Appeal No''s. 1252, 1325, 1322 of 1996 and 142 of 1997 with Civil Application No''s. 1339, 2907, 2717, 2474, 347 of 2002 and 2763 of 2000

President, Purohit Sangh — APPELLANT

Vs

Prabhakar Ramchandra Gokhale and others — RESPONDENT

Date of Decision : 05-08-2002

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 19, 2(10), 2(10)(a), 47, 47(3)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2002) 08 BOM CK 0084

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : C.P. Deogirikar, D.K. Ghaisas and Madhav Jamdar, for the Appellant; S. Dani, P.N. Joshi, P.S. Dani, D.K. Ghaisas (In F.A. No. 142/1997) and C.P. Deogirikar (In F.A. No. 142/1997), for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—All these four First Appeals and the accompanying Civil Applications can be and are being so disposed by this common judgment.

2. The matter pertains to the Shri Trimbakeshwar Devasthan of Nasik, which is an ancient holy temple and one of the twelve jyotirlings. As it is a "temple", it was registered as a "Public Trust" in the year 1952 known as "Shri Trimbakeshwar Devasthan Nashik" (hereinafter referred to as the "Trust"). That an enquiry u/s 19 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act) in respect of the Trust was undertaken by the Assistant Charity Commissioner whence one Shri Joglekar came to be appointed as the Sole trustee, with the mode of succession specified as hereditary succession. Accordingly, the said Shri Joglekar was exclusively in the control and management of the affairs of the Trust since 1952 till 1965. Some time in 1965, an application u/s 50A(1) of the Act was filed for settlement of scheme before the Joint Charity Commissioner, Bombay. After examining the relevant matters,

the Joint Charity Commissioner, Bombay, framed a scheme vide order dated April 27, 1967. As per this scheme the sole hereditary trustee, during his lifetime, was to nominate his successor and incorporate the name of his successor on a piece of paper which was to be kept in a sealed cover with the Assistant Charity Commissioner. The scheme also provided for appointment of an Advisory Board consisting of seven persons to advise the sole trustee in the management of the affairs of the said Trust. Being dissatisfied with the scheme of appointing an Advisory board of seven persons, the said Shri Joglekar filed an application u/s 72 of the Act before the District Court, Nashik, being Application No. 64 of 1967. Besides, another application u/s 72 of the Act, came to be filed by the Tungar''s contending that they should be included as trustees and not only as the member of the Advisory Board. After considering the said applications, the District Judge, Nashik, by an order dated July 28, 1970, amended some of the clauses of the scheme and held that the provision of sole trustee be retained, but modified the clauses with regard to the composition of the Board. The District Court provided that the Advisory Board would consist of -one to be nominated by the sole trustee, one amongst the elected Counsellors of the Trimbakeshwar Municipal Council and two to be nominated by the Charity Commissioner, inter alia, one belonging to the priest family of Tungar''s and the other from the donor''s of the trust. Obviously both the applicants before the District Court were dissatisfied by the above decision. After this scheme was framed by the District Court, Shri Joglekar, who was the sole trustee under the said scheme, resigned. After his resignation none of the heirs of Joglekar came forward to become the trustee. In this peculiar situation, the Charity Commissioner Bombay had no option but to invoke suo motu powers u/s 50A for modification of the scheme already settled by the District Court. Till such proceedings were to be finalized, the Charity Commissioner by order dated June 30, 1977, appointed one Shri Gokhale as the sole trustee to administer the affairs of the trust. The said suo motu proceedings were registered as proceeding No. 113 of 1979, in which the representative of the Tungar''s - which is also a registered Public Trust, as well as the representative of the Purohit Sangh, appeared and contended that they were closely connected with the day to day activities of the Devasthan; and it was necessary to involve them in the affairs of the Trust by appointing one of their representative as member of the Board of Trustees. Besides, Shri Gokhale who was appointed as the interim sole trustee, also participated in the said proceedings. Presumably with a view to get assistance in the framing of the scheme, the Charity Commissioner directed the Deputy Charity Commissioner to prepare an inspection report. In compliance of that direction, the Deputy Charity Commissioner submitted his Inspection Note dated September 4, 1978. None of the parties adduced any oral or documentary evidence before the Charity Commissioner. In the circumstances the Joint Charity Commissioner, Bombay proceeded to decide the suo motu proceedings No. 113 of 1979 on the basis of the information made available in the said inspection note and the oral submissions advanced by the respective parties. Shri Gokhale who was appointed as the sole trustee to administer the affairs of Devasthan took serious objection to the inclusion of the representative of Tungar''s or for that matter of Purohit Sangh on the Board of Trustees. According to him, Tungars were directly involved in the collection of offerings made to the deity and whereas the Purohits were directly paid by the devotees visiting the Devasthan. In other words, the objection was that both Tungars and Purohits had pecuniary interest and, therefore, had conflict of interest in the affairs of the Trust, for which reason they were not fit even for being considered as members of the board of trustees. The Charity Commissioner considered the materials on record and the rival contentions and found that there was absolutely no dispute that Tungars and Purohits were doing various ceremonies in the temple and were directly associated with the activities of the worship. In the circumstances, the Charity Commissioner found that both the Tungars and the Purohits have lot of share in the management of the affairs of the trust as they were connected with the religious ceremonies of the temple and in fact were responsible for the improvement of the Devasthan. It is in this backdrop the Charity Commissioner thought that it would be in the fitness of things to give representation to both these class of persons who were closely associated and connected with the day to day affairs of the management of the trust. The Charity Commissioner also modified the earlier Scheme to the extent of the composition of the Advisory Board. As per this order the Board of Trustees - who would be in charge of the affairs of the Devasthan and would be responsible for the day to day management and administration of the trust, would consist of only five members. According to the Charity Commissioner, besides the representatives of Tungar''s and Purohit''s respectively, three other persons were to be appointed as members of the Board of Trustees. The eligibility for appointment of those persons was specified as any adult male or female person belonging to Hindu community, a devotee of the said temple and preferably residing at Trimbakeshwar. Insofar as the representative of Tungar''s, the name of Yadav Laxman Tungar was recommended by the Tungar''s Public Trust, and insofar as the representative of Purohit sangh is concerned it was left to the Sangh to recommend the name of a suitable fit person within 3 months to the Assistant Charity Commissioner Nasik, failing which the Assistant Charity Commissioner was to appoint some other person in his place. Insofar as the other three members from the general public is concerned, the Charity Commissioner accepted the applications filed by Shri Damodar Pundlik Adasare, Shri Ramratan Punamchand Sarda and Shri Murlidhar Punjaji Pawar and appointed them as trustees on the Board of Trustees. The Charity Commissioner accordingly disposed of the suo motu proceedings by order dated 30-11-1981.

3. Against this decision, said Shri Prabhakar Ramchandra Gokhale, who was appointed as the interim sole trustee, filed an application u/s 72 of the Act before the District Court at Nasik being CMA No. 109 of 1984. This application essentially took objection to the modification of the scheme by including representatives of Tungars and Purohits. Besides, objection was also taken to the inclusion of Shri Damodar Pundalik Adasare as one of the trustee amongst the

general category of trustees - on the ground that he was staying jointly with his brother who was the tenant in respect of the trust property and, therefore, was unfit as had conflict of interest with the affairs of the trust. In the said proceedings, the three families who have been recognised as Pujaris viz. Dashaputre, Shukla and Telangi also intervened and their intervention application was allowed. They were represented by Advocate Sarda as can be discerned from the record. According to them, inclusion of Tungar''s as members of the Board of Trustees was inappropriate because Tungars had direct pecuniary interest in the offerings made to the deity and there was bound to be conflict of interest with the affairs of the trust. It was further contended on behalf of Pujaris that the term of life term of trusteeship under the present scheme be reduced to a fixed period for better administration of the trust. The representatives of Tungars and Purohits also appeared before the District Court and reiterated their arguments that they were closely connected with the day to day activities of the temple in general and with the worship of the deity in particular. It was, therefore, contended on their behalf that inclusion of their representative would not only be desirable but useful so as to give them representation in the management and administration of the trust. The District Court ''considered the stand taken by the respective parties and, by the impugned judgment and order dated 28-12-1993, was pleased to allow the appeal preferred by Shri Gokhale thereby setting aside the modification of the scheme of including the representative of Purohits and Tungars as ordered by the Charity Commissioner. Instead the Court held that the said two persons would be replaced by the Civil Judge, Senior Division to be nominated by the District Judge who would act as an ex-officio Chairman of Board of trustees of the Devasthan and by the Chief Executive Officer of Trimbakeshwar Municipality as the Ex-officio trustee and in his absence or his inability his next subordinate to be appointed as the Ex officio trustee. The District Court, however, did not disturb the appointments of the other three persons appointed as trustees in the general category.

4. Accordingly, the present four appeals have been filed in this Court taking exception to the abovesaid order passed by the District Court which modifies the scheme as framed by the Charity Commissioner. The First Appeal No. 1252 of 1996 is filed on behalf of Purohit Sangh. Shri Devgirikar Advocate appeared for the said Appellants. Whereas, First Appeal No. 1325 of 1996 is filed by Shri K.R. Railkar and others who are pujaris nominated under the scheme. Shri D.K. Ghaisas, Advocate appeared on behalf of those Appellants. The third set of appeal, being First Appeal No. 1322 of 1996, is filed by Shri S.M. Tungar and First Appeal No. 142 of 1997 is filed by Shri S.N. Tungar and others. Both these appeals are essentially filed by Tungars claiming that representative of Tungars public trust be retained as the member of the Board of trustees. Both these appeals are argued by Shri M.A. Rane, Advocate instructed by Shri Madhav Jamdar, Advocate. On the other hand, the Appellant before the District Court, Shri Gokhale, though respondent in these appeals, has not appeared himself or through any Counsel at the time of hearing of these appeals. Whereas, Shri P.S.

Dani, Advocate appeared for the Devasthan Trust and the present trustees appointed under the scheme which is the subject matter of challenge in the present appeals. Besides, Civil Application No. 347 of 2002 is filed on behalf of the Trust, which is the derivative proceedings in the present appeals, praying that the court be pleased to permit the Trust through its existing Trustees to fill in the vacancy caused on account of the death of one of the Trustees Shri Murlidhar P. Pawar. Whereas, C.A. No. 2763 of 2000 has been filed by one Moreshwar V. Ghaisas, praying for impleading him as a party respondent in the First Appeal No. 1325 of 1996 and also questioning the propriety of appointment of Shri Kashinath Dattatraya Adasare, nephew of deceased D.P. Adasare, who is since deceased and was appointed by the Charity Commissioner under the modified scheme as one of the Trustees of the Board of Trustees. The objection taken in this application is that the said Kashinath Adasare is not a suitable or fit person to be appointed as a trustee of the Devasthan since he is in possession of land belonging to the Devasthan and in any case he ought not to have been appointed for life time. The third application being C.A. No. 1339 of 2002 by Kashinath D. Adasare, who has been appointed as one of the trustee in place of his uncle, who has since expired, Shri D.P. Adasare, for permission to intervene in the First Appeal No. 1325 of 1996 and for adding him as party respondent to the said proceedings and for further relief that he may be allowed to continue to work and discharge his function as a trustee during the pendency of the said application. This application is the fall out of the injunction order passed by this Court in C.A. No. 2763 of 2000, staying the effect of operation of the order passed by the trust appointing Shri Kashinath Adasare as one of the trustee in place of his deceased uncle. There are other Civil Applications filed for bringing heirs and legal representatives of deceased Appellant and/or respondents on record. Even these applications are being disposed of by this common order as Counsel agree that no further orders would be necessary on those applications as the contesting parties are already present before this court and have also prosecuted the matter.

5. Before we advert to the respective arguments it will be apposite to point out that the inspection note as prepared by the Deputy Charity Commissioner adverts to the relevant matters particularly the history of the Devasthan, the activities conducted therein, including the nature of involvement of the Tungars and the Purohits in the worship of the deity and in the affairs of the Trust. That note indicates that the Tungars are hereditary, known as Pujaris. They are hereditary Guravas of the Presiding Idol. They are in this service from the time of Chatrapati Sambhaji Maharaj. They are incharge of the security and cleanliness of the Garbhagriha and Shejghar. They are also required to administer the job of giving bath to the deity and other Upacharas. The Puja offered by the Guravas or Tungars is not the official pooja but they are offering flowers etc. from the time they are associated with the Devasthan. The Tungars come to the Temple at 4-00 a.m. and take about an hour or so to make all preparations viz. cleaning of the Garbhagriha, Shejghar, Sabha-mandap and also performing their puja which they

are doing for all these years. No mantras are recited during their puja nor Aarti is performed, but only Deep is shown as one of the Upcharas. The Upcharas done by them are offering of sandal paste, offering Akshata, flowers and showing the Deep. After performing these rites the temple is thrown open to the devotees and also for performing the normal official pujas. They are associated with the work in the temple from 4-00 a.m. to 10-00 p.m. on any given day. It is also noted that the Tungars are allowed to collect and take away the entire cash offerings whether in the form of notes or coins offered near the idol or on the threshold of the Garbhagriha in a plate. It is relevant to note that the Tungars have 20 acres of land as Inam Class VI, which is registered as the property of their Trust which is also a Public Trust bearing No. A-406 (Nashik). It is also recorded that the Tungars have to bear the outgoings for providing oil for Nanda-Deep of the temple. Electricity, and expenses for repairs maintenance and cleanliness and the like. Whereas, the Purohits are shetropadhyes at Trimbakeshwar from ancient time, atleast for the last 1200 years. Their family are performing "Purohitya" of Purohit. They render service to the devotees or Yajmans who visit the Devasthan for performing religious rites, pujas, Abhishekas and other religious ceremonies. It is also noted that certain ceremonies performed by the Purohits are not connected with the Temple as such. But in connection with the temple, the Purohits perform Rudra, Maharudra or Abhisheka to the Trimbakeshwar Ling and also perform puja on behalf of their Yajmans. These pujas on behalf of the devotees is the source of income and livelihood for Purohits. They also provide facility of lodging and boarding to the visiting devotees and also on Agency basis do the cooking etc. or prasad or Naivaidya to be offered by the devotees to the deity on agreed charges. Besides, they daily perform personal puja and offerings to the deity. The Purohits have a registered Society known as "Purohit Sangh" being Sr. No. F-352 (Nashik). There is, however, no common income of this Sangh as each member has his own personal income from his own Yajamans. The Purohits do not pay anything to the Devasthan Management in respect of the Abhishekas, Pujas, Rudra, Maharudra etc. To put it differently, both the Tungars and the Purohits are actively associated with the activities of the Temple in different ways.

6. It is in this backdrop Mr. Rane, who is espousing the cause of the Tungars, contends that it would not only be desirable but also appropriate to include a representative of Tungars on the Board of Trustees of the Devasthan. He submits that Tungars are closely associated with the activities in the temple and are discharging various duties and rites from 4-00 a.m. in the morning till 10-0 p.m. in the night and are the custodians of the belongings of the deity. He further contends that there is absolutely nothing on record to indicate that Tungars have at any point of time engaged themselves in misappropriation of the Trust properties or conducted themselves in manner prejudicial to the interest of the Trust. He further submits that as per the custom and under the scheme, the Tungars are entitled only for cash offerings which is made near the idol or on the threshold of the Garbhagriha. Whereas, they are responsible to bear the

electricity charges and other maintenance of the deity. He contends that the Tungars are well justified in claiming that they should be allowed to be represented on the Board of Trustees of Trimbakeshwar Devasthan by one of their representative to be nominated by their Trust (Tungar Trust), which is also a registered Public Trust and is amenable to the supervision and control of the Charity Commissioner. He, therefore, submits that essentially the Tungars are not challenging the scheme formulated by the District Court as such, but would be content if one of the representative of Tungars is associated as member of the Board of Trustees. According to him besides the members specified by the District Court in the impugned order, this court may consider of including one additional member to give representation to Tungars and, by increasing one more member on the Board of Trustees would make no difference to the efficiency and proper management and administration of the trust but would promote the smooth functioning of the Trust and further the cause of giving regard to the interest of the Tungars in the activities of the Trust. He further submits that, in any case, the term of life time provided under the present scheme to the trustees is inappropriate and the same be reduced to some reasonable period such as ten years so as to obviate hereditary-ship to continue.

7. Shri D.K. Ghaisas appearing for the Pujari Sangh on the other hand contends that Pujaris were appointed under the Sanad given by the Peshwas and they have right to render several services since their ancestral time. According to him, the claim of Pujaris for including them or their representative as member of the Board of Trustees has not been considered at all by the Charity Commissioner or for that matter by the District Court. He further contends that it was inappropriate to record a finding of fact only on the basis of the inspection note prepared by the Deputy Charity Commissioner and especially when that document has not been proved in evidence. He further submits that the officer, who had prepared the said inspection note and which is the foundation for the conclusion returned by the authority below, was not allowed to be cross examined by the interested persons including his clients (Pujaris) and, the District Court wrongly rejected their application for permission to adduce necessary evidence. According to him, the District Court has returned findings of fact without there being any legal evidence on record.

8. Shri Devagirikar, learned counsel appearing for the Purohit Sangh, contends that there is no occasion to assume any conflict of interest of the representative of the Purohit Sangh with the affairs of the trust and that finding reached by the District Court is wholly untenable and inappropriate. He contends that the District Court has mainly relied on the inspection note, however, there is nothing in the said inspection note that Purohits were working against the interest of the Trust or for that matter their activities were such that it were conflict with the interest of the Trust. He contends that on the other hand, Purohits were giving yeoman''s service to the devotees who visit the Devasthan and, because of those services there has been increase in the number of devotees visiting the temple and resultantly in the income of the Devasthan. He further submits that, in the earlier

scheme, the Charity Commissioner had included the representative of Purohits as one of the trustee on the Board of Trustees and since there was no evidence or material on record to suggest that Purohits were acting against the interest of the trust, there can be no just or tangible reason to exclude their representative in the modified scheme. He submits that there is nothing on record and, it is nobody''s case that Purohits share any amount in the offerings made by the devotees as such, and, therefore, exclusion of the Purohit by the District Judge was inappropriate - as it is incomprehensible even to suggest that Purohits have any conflict of interest with the Trust. He further contends that he is not opposed to the present scheme of inclusion of a nominee of the District Judge or the Chief Executive Officer of the Trimbakeshwar Municipal Council as Ex Officio member of the Board of Trustee. However, according to him, the term of office of life term given to the other three trustees is inappropriate and, instead, the same should be fixed term to obviate the possibility of concentration of power and misuse of authority. He has suggested that the maximum term in the office as a trustee should not exceed six years. He has also brought to my notice certain clerical mistakes occurring in the scheme which was finalized by the District Court pursuant to the impugned judgment. Inasmuch as, in clause 4, instead of "Board of trustees" it is mentioned "sole trustee". He has also pointed out other similar mistakes in the present scheme which are essentially of clerical nature. He further submits that by adding one more person as the Board of Trustees, namely, a representative of the Purohit Sangh, it will not adversely affect the efficient management and administration of the Trust but such inclusion would give representation to persons who are directly associated with the day to day activities of the Trust and, therefore, subserve the common good.

9. Mr. Moreshwar Ghaisas, Advocate, who has appeared in the Civil Application No. 2763 of 2000 contends that the appointment of Kashinath Adasare, nephew of deceased Dattatraya Adasare, is wholly inappropriate. He submits that the applicant therein had also made an application for being considered to be appointed as a Trustee. However, without considering his application, the said Kashinath Adasare was appointed as the trustee for reasons best known to the Authority. The fact that the said Kashinath Adasare was not a fit person for being appointed as a trustee, as he had conflict of interest with the affairs of the trust, notwithstanding. He further contends that the present scheme would encourage succession of trusteeship on hereditary basis which ought not to be permitted, having regard to the nature of Devasthan, which is a public trust.

10. Mr. More, Advocate appearing in C.A. No. 1339 of 2002 contends that he should be allowed to continue as a trustee since the resolution of the trust has not been questioned before the appropriate authority. He submits that there is no evidence on record that the applicant in the said application has acted contrary to the interest of the trust or his activities were in conflict with the affairs of the trust.

11. Mr. Dani, learned Counsel for the Trust and also for the present trustees, on

the other hand contends that, no one can claim a right to be appointed or for that matter for even being considered for being appointed as a trustee. He further contends that it is not as if Tungars, Purohits or Pujaris are completely excluded from the zone of consideration. They would still be entitled for being considered if found to be eligible in the category of residents of Trimbakeshwar. He submits that on the one hand, Tungars, Pujaris and Purohits have taken objection to the life term provided in the scheme, but on the other hand, if their argument was to be accepted, it would result in accepting a plea of succession of trusteeship by hereditary succession for them which would be still worst than the life term trusteeship. He further points out that so far as Tungars are concerned, clause 32 of the scheme entitles them to collect the cash offerings made before the deity and that singular fact is a good reason to hold that they have pecuniary interest in the offerings made before the deities and resultantly conflict of interest with the affairs of the Trust. He has further pointed out that the petitioner in Writ Petition No. 2762 of 2002 filed before this Court, who is the Appellant No. 6 in First Appeal No. 142 of 1997, had opposed the installation of a cash box before the idol. This is clearly indicative of the fact that Tungars were acting against the interest of the Trust in allowing the Devasthan to augment its fund, as they have direct interest in the offerings made before the deity, for they are entitled to take away the entire cash offerings. Insofar as the Pujaris are concerned, the learned Counsel contends that they cannot be heard or permitted to argue for the first time before this Court that their representative be also included in the Board of Trustees. Inasmuch as, they did not appear before the Charity Commissioner nor they made such grievance before the District Court. Reliance was placed on the contentions raised by Shri Sarda, Advocate as recorded by the District Court in para 15, in this behalf, wherein it is mentioned that Mr. Sarda took objection to the Tungars to preserve sanctity and with regard to the tenure of the trustees should be fixed. He, therefore, submits that as no other plea was taken on behalf of the Pujaris even before the District Court, therefore, they cannot be permitted to raise new plea in the present appeal. Insofar as Purohits are concerned, the learned Counsel contends that though Purohits are not entitled to share the offerings made to the deity as such, but they have direct and conflicting interest in the affairs of the Trust. Inasmuch as, they undertake performance of Poojas of the devotees for which they charge separately to the devotees. According to him, every Pooja performed in the temple ought to be performed through the Trust and, if any representative of Purohits was to be included in the Board of Trustees, they would not allow the Trust to regulate such matters, which would resultantly affect the income of the trust. In the circumstances, Mr. Dani contends that all the appeals preferred by the respective parties will have to be dismissed - especially because the scope of the present appeals is in the nature of a second appeal and, in none of the appeals, it is possible to suggest that any question of law much less a substantial question of law would arise for consideration. He has placed reliance on the decision of the Division Bench of this Court reported in Shivprasad Shankarlal Pardeshi, since deceased by his heirs Vs. Leelabai Badrinarayan Kalwar since deceased by her heirs and others, .

12. Having considered the rival contentions, there can be no doubt that in view of the plain language of section 72(4) of the Act and the above decision in Shiv Prasad Pardeshi''s case (supra), the present appeals will have to be treated as appeals against the decree from which an appeal ordinarily lies. And, therefore, the present appeals, though registered as First Appeals, will be subject to the limitations prescribed in section 100 of the Civil Procedure Code. In the circumstances, I shall first proceed to formulate the questions, which, to my mind, would arise for my consideration and are substantial questions of law, viz :

i) When the Charity Commissioner has reason to believe that "in the interest of the proper management or administration of a Public Trust" an existing scheme needs to be modified, what are the broad factors to be borne in mind?

ii) When it is a case of the management and administration of a public religious trust such as the Trimbakeshwar Devasthan, is it not appropriate to ensure diversified representation and involvement of all concerned or the section of the public who have interest in the Trust and in particular associated with the day to day activities of the temple or the devasthan, unless the appointment was to impede the objective or working of the Trust?

iii) Whether disqualification on account of "conflict of interest" is a matter of fact attached to an individual and purely personal one or can it be generalized so as to exclude all the persons belonging to the families of "Tungars", "Purohits" and "Pujaris", a class as a whole?

iv) When section 47 of the Act mandates that "any person interested in a trust" should be made a trustee, coupled with the definition of "person having interest" in section 2(10)(a) of the Act - which postulates that a person who is entitled to 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, will it be appropriate to totally exclude the "Tungars", "Pujaris" and "Purohits" from the management or administration of the trust?

v) When no oral or documentary evidence was adduced before the Charity Commissioner in the suo motu enquiry u/s 50A of the Act however, when District Court in the proceedings u/s 72 of the Act having rejected the request made by the parties for permission to lead evidence, could a finding of fact be recorded merely on the basis of an Inspection Report that the "Tungars" and "Purohits" have interest in the earning from the devotees thereby disentitling them from participating in the management on the specious ground that their presence was likely to create conflict of interest?

vi) When the Trust was fully capable of regulating the activities within the complex of the Devasthan for maintaining discipline so as to facilitate convenience and interest of the devotees, and especially when the provisions in the present scheme make such provision, could the presence of one representative of "Tungars", "Purohits" or "Pujaris" each on the Board of Trustees not ensure promotion of the execution of the Trust and its policies?

vii) What could be an ideal composition of the Board of Trustees in a religious trust such as the "Shri Trimbakeshwar Devasthan Trust"?

viii) Whether the tenure of "Life Term" of the trustees is appropriate? If not, the term should be fixed and for what period?

ix) Should this Court undertake the exercise of filling up the vacancy caused due to the death of trustees i.e. Damodar Adasare and Murlidhar Pawar respectively?

x) What order?

13. Reverting to the first question formulated above, I have no manner of doubt that the factors and parameters which are required to be kept in mind while formulating a scheme as spelt out by the Division Bench of this Court in Fakir Mohamed Abdul Razak Vs. The Charity Commissioner, Bombay and Others, . will apply with full force even at the time of modification of the scheme in exercise of powers u/s 50A(3) of the Act. It will be use to advert to some of the extracts of this decision. In paragraph 35 the Court has observed thus:

"It is well settled that in suits like the suits for settling the Scheme, the Court has a duty once it is found that it is a Trust for public purposes, to consider what is best in the interests of public. Settling a scheme is one of the most important reliefs relating to the administration of public trust. The primary duty of the Court is to consider the interest of the public for whose benefit the trust has been created. It has large powers to frame suitable schemes in cases where trust property has been diverted from its proper purposes, and the objects of the trusts are not being carried out and the persons in management are not properly accounting for the realisation from the trust property or otherwise misconducting themselves. Further in settling a scheme for the administration of a charitable trust involving the appointment of trustees or managers, the Court is bound to secure persons whom it regards as suitable. A Court cannot abandon its duties lightly relying on mere statements of Advocates without placing any material on record to show who is who and what is what as was done by the learned District Judge in the present case"

Again in paragraph 36 it is observed thus:

"......Appointing trustees is not like appointing sub-committee in association dealing generally with public affairs. The Court is called upon to appoint such trustees men who can apply their mind to the management of the Trust and to find out whether those persons have got necessary physical and intellectual capacity and social standing which would justify their appointment as trustees of the public trust......."

In paragraph 37 it is observed thus: "The Court has further to consider in settling the Scheme the past history of the institution and the way in which the management of the trust has been carried on till the settlement of the scheme and the appointment of the trustee. The Court has also to find out whether the persons who are interested, and particularly the devotees of the religious institutions like a Dargah, are satisfied with the new scheme of management which the Court proposes." In paragraph 40 while adverting to the other precedents, the Court observed thus : "In Mahomed Ismail Arief vs. Ahmed Moolla Dawood, 43 Ind App 127 = AIR 1916 PC 132 the Privy Council laid down the principle that the Court has complete discretion in settling a scheme of management; it may defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but its primary duty is to consider the interests of the general body of the public for whose benefit the trust was created. It may vary any rule of management which it finds either not practicable or not in the best interest of the institution. Mr. Ameer Ali, J. who delivered the judgment observed at page 136 as follows:?

"The present case, however, in their Lordships'' opinion, illustrates the mischief of leaving the power of appointing or electing trustees in the hands of an indeterminate, and necessarily fluctuating body of people, whether they call themselves Panchayat or Jamat. In order to avoid so far as possible a recurrence of the trouble that has brought about this long-drawn litigation, their Lordships think it desirable, in the interests of the institution which form the primary matter for consideration, that the appointment of future trustees should be entrusted to a committee of the worshippers the composition of which should be in the discretion of the judge, with due regard to local conditions and needs, subject to the provision that, so long as circumstances do not vary, a majority of such committee should be Randherias, and that in settling the scheme the Judge should lay down rules for their guidance in the discharge of any supervisorial functions that may appear necessary to confide to them and for filling up vacancies on their body subject to his control."

These principles were followed by the Privy Council in AIR 1946 34 (Privy Council) ."

13A. Undeniably, the factors or parameters which would apply for framing or settling of the scheme would apply with full force even for the purpose of modification of the scheme. The parties in this case have accepted the position that modification of the earlier scheme was imperative.

14. In the circumstances, the next question is; who can be labelled as a suitable and fit person for being appointed as the trustee? Before we proceed to examine this aspect, it will be apposite to advert to two provisions of the Act. Section 47 of the Act provides for power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees. The same reads thus :?

"Section 47 . Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees. - (1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust ?

(a) disclaims or dies:

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf.

(c) leaves India for the purpose of residing abroad;

(d) is declared as insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the position as trustee;

(h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or (i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard ?

(a) to the wishes of the author of that trust;

(b) to the wishes of the persons, if any, empowered to appoint a new trustee;

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust.

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) The order of the Charity Commissioner under sub-section (2) shall be

deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court."

(emphasis supplied)

This provision requires that "any person interested in a public trust" be considered for the appointment as a trustee. Section 2(10) defines the expression "person having interest". It is an inclusive definition. The same reads thus : "Section 2(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, dargha, 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, any member of such society; and

(e) in the case of any other public trust (any trustee or beneficiary)" (emphasis supplied) As this case relates to a temple clause (a) of section 2(10) will have bearing to examine the question in issue. The appointment of a person as a Trustee has to be made from amongst the best suited public spirited persons. It is imperative that such a person is having interest in the Trust. A person having interest has been defined in section 2(10) of the Act. It is an inclusive term and includes the beneficiaries. The person who can be said to have interest must be a person who has got substantial or real interest in the trust property, but that does not make them persons who are interested in the trust. Those persons who are hostile and their object is to see that the trust is destroyed would fall in the latter category or can be said to be having interest in conflict with the trust to incur disqualification.

15. In a case of a religious public trust, undoubtedly, the Authority or the Court will have to keep in mind the requirements of section 47(3) of the Act and the interest of or the proper management and administration of such trust. The persons to be appointed, by law, are required to be persons who have interest in the affairs of the trust which is real, substantive and an existing one, though not direct one. It is well settled that merely being resident of the area is not enough for being labelled as a suitable and fit person. At the same time the legislative scheme would suggest that the management and administration of a public religious trust such as the Trimbakeshwar Devasthan should be entrusted to such

persons so as to preserve the interest of the public or the section of the public who have interest in the trust. Obviously, regard being had to the fact that the appointment will promote and not impede the execution of the trust or its policies. By the very nature of the activities in a place used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof, it is antithesis to a private and closed door management of its affairs. On the other hand there has to be complete openness and transparency in its administration and above all by observing democratic values or principles. To put it differently, it is a public trust "for the community, by the community and of the community" or any section thereof. If such is the purport of the Trust then diversified representation and involvement of all concerned or the section of the public who have interest in the Trust and in particular associated with the day to day activities of the temple or the devasthan is inevitable and the most appropriate step to further and promote the objectives of such a Trust.

16. Once we reach at this position, the next question that needs to be examined is, whether persons belonging to a particular section can be generally disqualified on the ground of "conflict of interest" with the affairs of the trust or the issue of disqualification is a matter of fact attached to an individual? I have no hesitation to hold that disqualification is essentially of an individual and cannot be because of the fact that the person belongs to the family of "Tungar", "Pujari" or "Purohit" as such, as the case may be. A person can be said to be disqualified or would render himself unfit for being appointed as the trustee only when he has direct interest in the trust or the devasthan and is hostile to the affairs of the Trust and his object is to see that the Trust is destroyed. To put it differently, there is perceptible difference between "person having interest in the trust" and "person having conflict of interest". The former is the quintessence for being eligible to be considered or for being appointed as the trustee. This mandate flows from the provisions of section 47 read with section 2(10) of the Act. Therefore, merely because the "Tungars" have the right to take away the entire cash offerings in the form of notes or coins near the idol or the threshold of the Garbhagriha in a plate or that the "Purohits" entertain the Yajmans or offer their services for consideration or the "Pujaris" are engaged in the performance of the official puja in the temple, cannot be said to be hostile to the affairs of the Trust or having direct interest so as to conflict with the administration and management of the Trust. As observed earlier, section 2(10) of the Act would envelope even the beneficiary of the Trust. Understood thus, it is incomprehensible that the "Tungars", "Purohits" or the "Pujaris" in the devasthan can be singled out as a class from the administration and management of the Trust. This view would answer point number (iii) and (iv) above.

17. Reverting to question (v) above, there is substance in the argument canvassed on behalf of the Appellants that the Inspection Report cannot be the sole basis for returning a finding of fact that the "Tungars" and "Purohits" have conflict of interest with the affairs of the Trust. To return a finding of fact of

"conflict of interest", there ought to be positive legal evidence; and the Authority, Much less the District Court, could not have drawn inference on that issue only on the basis of the Inspection Report. In any case, it is not necessary to elaborate on this aspect as I have already held that merely being a "Tungar", "Purohit" or "Pujari" cannot be any disqualification or render a person unfit. Moreover, the legislative scheme would require involvement of all sections of the Public such as the "Tungars", "Purohits" and the "Pujaris", who have interest in the trust and more particularly engaged in the day to day activities of the devasthan.

18. As observed earlier, by the very nature of the activities in a place used as a place of public religious worship such as the Shri Trimbakeshwar Devasthan, it would be appropriate to involve the representatives of the persons associated with the activities of the Devasthan and who have interest in the Trust so as to further and promote the objectives of the Trust. Recognising participation and representation of all sections of the public who have interest in the trust is the concomitant of upholding the democratic values to the administration and management of the Devasthan. Obviously, permitting one representative of the "Tungars" "Purohits" and "Pujaris" each on the Board of Trustees would only promote the administration and management of the Trust. Besides, inclusion of these three persons on the Board of Trustees would not create any imbalance in the management of the Trust but guarantee their support to each of the regulatory measures prescribed by the Board of Trustees for efficient and better execution of the policies of the Trust and for facilitating the convenience and interest of the devotees in particular.

19. The next question that needs to be addressed is : what should be the ideal composition of the Board of Trustees in respect of a religious trust such as the Shri Trimbakeshwar Devasthan Trust? Having regard to the enormity of the number of devotees visiting the Devasthan it would be appropriate that the Board of Trustees of such a trust should consist of persons from all sections of the public having interest in the trust. To put it differently, the composition should be such so as to provide representation to all sections of persons interested in the trust; At the same time the maximum number of members on the Board should be so determined as to ensure participation and representation of all sections of the persons interested in the trust and also that the same does not become unwieldy or impede the execution of the trust or its objectives and policies. To provide representation to all sections of persons having interest in the trust, inclusion of not only the representatives of the devotees but also that of "Tungars", "Purohits" and "Pujaris" each would be imperative. The next question is as to what should be the dispensation to obviate the possibility of overbearing or outweighing the interest of the devotees in general and the efficient and independent administration and management of the affairs of the devasthan in particular. The appropriate combination would be to retain two representatives of the devotees, one representative of "Tungars", "Purohits" and "Pujaris" each and to include two impartial and independent persons such as the

nominee of the District Judge to act as the Ex-Officio Trustees and the Chairman of the Board and the other being the Chief Executive Officer of the Trimbakeshwar Municipal Council as the Ex-Officio Trustee and in his absence or his inability, his immediate subordinate nominated by the Municipal Council. In this dispensation the "Tungars", "Purohits" as well as the "Pujaris" would get representation and at the same time even if all of them were to come together to resolve against the interest of the devotees or that of the Trust, it would make no difference to the final decision which will have to be carried through by majority. In other words if the cause espoused by them is not just, it will not be acceptable to the other four members of the Board who would constitute the majority and their view would prevail. By this dispensation there will be balancing of interest of all sections of the persons interested in the trust and also observe participation in and management of the trust on democratic values or principles.

20. In the present case, so far as two trustees to be appointed from amongst the general public and preferably the residents of Trimbakeshwar is concerned, there is no difficulty to that dispensation. The controversy is, however, with regard to the appointment of the representative of the Tungars public trust. The argument proceeds on the premise that the "Tungars" take away the entire offerings made before the idol or on the floor of the Garbhagriha. I have already dealt with this aspect earlier. To my mind, if that argument was to be accepted that would apply to all the Tungars and they would stand disqualified for being considered even in the category of the devotees or residents of Trimbakeshwar. That cannot be countenanced. On the other hand, as observed earlier, by inclusion of one representative of "Tungars" on the Board who will be nominated by the Tungars Public Trust, their right recognised by the scheme to take away the cash offering made before the idol or on the floor of Grabhagriha, notwithstanding - that would make no difference, whereas it will promote the interest of the trust. No doubt it is possible to contend that the rights enjoyed by the "Tungars" in a way tantamount to having direct financial interest in the cash offerings made before the idol. However, that right is enjoyed under the scheme and is a customary recognised right. If this be so, with the inclusion of the representative of "Tungars", who are otherwise responsible for the security and cleanliness of the temple would not affect the affairs of the trust but only further the interest of the trust. In fact, participation of the representative of "Tungars" in the administration and management of the trust would create wholesome environment for the efficient and proper management of the trust. Here I may advert to one of the serious objection taken by Mr. Dani to buttress his point that "Tungars" have direct interest muchless in conflict with the interest of the Trust. He contends that the Appellant No. 6 in the First Appeal No. 142 of 1997 was instrumental in resisting the decision of the Trust to install a Cash Box in the temple because such a step would affect the earning of "Tungars". Inasmuch as, the cash offering will then not be made on the threshold of the Garbhagriha in a plate or near the idol. This Court is really not concerned with the said episode. Assuming that the Applicant No. 6 must have misbehaved as alleged, that would

render him unfit and unsuitable. However, that cannot be the basis, in law, to exclude the claim of representation of "Tungars", a class as a whole. It is relevant to note that the representative will be one nominated by the Tungars public trust, which is also under the control of the Charity Commissioner; and in case it is found that such nominated person has direct pecuniary interest in the affairs of the trust or is acting against the interest of the trust, in that case he would be declared unsuitable and unfit to remain as trustee. It is too much to suggest that all Tungars have conflict of interest with the affairs of the trust. In any case, inclusion of one representative of "Tungars" would only balance the interest of all section of public who have interest in the trust. Insofar as the "Purohits" are concerned, the objection proceeds on the premise that they collect amount from the devotees for services rendered by them. That cannot be the basis of disqualifying all the "Purohits" on the premise that they have conflict of interest with the affairs of the trust. As observed earlier, the composition of the Board should provide representation to all sections of the public who have interest in the trust. Applying the abovesaid principles, there can be no reason to exclude the "Purohits", who are otherwise concerned about the convenience of the visiting devotees who are their Yajmans. If one representative of "Purohit Sangh" which is a registered Society, is appointed on the Board that would not affect the affairs of the trust but will promote the interest of the trust. Insofar as the "Pujaris" are concerned, no doubt the learned Counsel for the Trust contended that they had never appeared before the Charity Commissioner nor made any grievance before the District Court about the fact that they were not considered at all. However, as the existing scheme needs to be modified, it would be appropriate that even their claim is considered. To my mind, there is no just reason to exclude the "Pujaris" from participating in the affairs of the trust, though they have interest in the trust. No doubt it is rightly contended that no person can claim a right to be appointed as a trustee. But in the present case, we are really concerned with the issue as to what is the ideal dispensation for the proper governance and administration of the Devasthan. Understood thus, there can be no reason to exclude the claim of "Pujaris" recognised under the Scheme i.e. Dashaputre, Telangi and Shukla, as they have come before this Court with specific plea in the appeal, which is undoubtedly continuation of the suo motu proceedings initiated u/s 50A(3) of the Act, for the purpose of modification of the existing scheme. It is seen that when suo motu proceedings were initiated, notice was given selectively to the trustees because that is the requirement of sub-section (3) of section 50A. Accordingly, when the scheme is to be modified, and when particular section of persons having interest in the trust and more particularly the "Pujaris" being directly concerned with the official puja performed in the temple have come forward, then, surely, their claim ought to be considered. However, if the objection is to the appointment of any particular person as the representative of "Pujaris" on the ground that he has conflict of interest with the trust, that objection can be considered in the appropriate proceedings.

21. Insofar as the appointments made by the Charity Commissioner of three persons viz. Damodar P. Adasare, Ramratan Punamchand Sarda and Murlidhar P. Pawar, serious objection was taken with regard to the appointment of Shri Damodar P. Adasare before the District Court by the sole Trustee Shri P.R. Gokhale, but he is stated to have expired. In the circumstances, it will not be necessary to go into that aspect of the matter. It is also not in dispute that another trustee Shri Murlidhar P. Pawar has expired and that post is vacant. Admittedly, there is no objection to the appointment of Shri Ramratan P. Sarda from any quarters. In the circumstances, Shri Ramratan P. Sarda can be allowed to continue as the trustee subject, however, to any other objection if raised before the Charity Commissioner in accordance with law. The Charity Commissioner shall take steps to fill in the vacancy caused on account of the death of Shri Murlidhar P. Pawar at the earliest in accordance with law, for that is the prerogative of the Charity Commissioner.

22. The next grievance is with regard to the life term provided under the scheme to the trustees. This has been seriously opposed atleast by the Purohit Sangh and the Tungar Sangh and persons who have intervened as interested persons. The objection, to my mind, seems to be appropriate. As observed earlier having regard to the enormity of the activities of the Devasthan, it will be undesirable to provide for the life term trusteeship to any person. That would not be in the interest of the public at large and the Devasthan. The Counsel appearing for the parties have placed reliance on the scheme framed by this Court in respect of another Devasthan viz. Shree Vyankatesh Balaji Sansthan, Nashik. In that scheme the term of office of trustees is fixed as five years. On similar lines the present scheme can be modulated and the term of office of the trustees can be fixed as five years. Here it may be appropriate to deal with the objection raised by Mr. Dani that if this court was to accept the plea of "Tungars", "Purohits" and "Pujaris" to provide their representative on the Board of Trustees it may be worst than the life term trusteeship. There is no substance in this objection. There is marked difference in providing life term trusteeship to an individual or hereditary trusteeship to one family and allowing a representative of one section of public having interest in the trust. It goes without saying that the representative to be nominated by the "Tungars", "Purohits" or for that matter the "Pujaris", will abide by the stipulation of limited term of "five years". Accordingly, the modified scheme shall provide that person shall be appointed as trustee only for a period of five years.

23. In the circumstances, the scheme as modified by the Charity Commissioner and which has been further modified by the District Judge, Nashik, shall stand modified only with regard to the clauses relating to the strength or composition and tenure of the Board of Trustees. Insofar as the strength of the Board of Trustees is concerned, the same be fixed as maximum seven trustees and minimum as three trustees. Modification is also necessary with regard to the composition by including the representative of "Tungars Public Trust" and "Purohit Sangh" which is a registered society, and one representative of the three

"Pujari" families i.e. Deshputre, Telangi and Shukla. In the circumstances, the modified composition will be of maximum seven members viz.

1) Nominee of the District Judge who would be the Ex Officio Trustee and Chairman of the Board.

2) Chief Executive Officer of the Trimbakeshwar Municipal Council who would be the Ex Officio Trustee and in his absence or his inability, his immediate subordinate nominated by the Municipal Council;

3) "One" representative to be nominated by the Tungar Public Trust;

4) "One" representative to be nominated by Purohit Sangh (registered society);

5) "One" person to be nominated from amongst the three Pujari families; and

6) "Two" persons to be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar.

24. The scheme shall provide that all the Trustees, whether Ex Officio or otherwise shall be Hindus as clarified by the District Court in the impugned order.

25. The scheme shall also provide that the Ex Officio Trustee(s) shall not be entitled to any remuneration as provided in the order of the District Court.

26. The scheme shall also be suitably modified by fixing the tenure of the Trustees except the Ex Officio Trustee(s), limiting the tenure to a period of "five years".

27. The Charity Commissioner shall prepare a modified scheme in the above terms after giving notices to the concerned parties incorporating the above position; and also take steps to fill in one vacancy which has arisen on account of the death of the existing trustee. It is clarified that Shri R.P. Sarda shall continue as the trustee for the present term since no objection has been taken to his appointment by any party appearing before this Court. However, it will be open to the Charity Commissioner to examine objection even to his appointment, in accordance with law, if made.

28. The Charity Commissioner shall also suitably modify the scheme to the extent that in case of any casual vacancy arising on account of the death or resignation of any existing trustee, the same shall be filled in by the Charity Commissioner, not later than six months from the occurrence of such vacancy, failing which the Board of Trustees may nominate a suitable and fit person against the said vacancy for the remainder period only.

29. Accordingly, the existing scheme as modified by the Charity Commissioner and the District Court would stand substituted in the above terms. The Charity Commissioner to prepare the final modified scheme on the above terms by giving notice to the concerned authorities within a period of three months from the receipt of writ of this Court. The Charity Commissioner shall also carry out necessary amendment in the scheme which are of clerical nature -for example as

pointed out in respect of clause 4 instead of "Sole Trustee" it should read as "Board of Trustee", etc.

30. Accordingly, these appeals are partly allowed in the above terms. The Civil Applications are also disposed of. No order as to costs.