

(2017) 06 GUJ CK 0004
In the Gujarat High Court
Case No : 6405 of 2001

RT. REV. VM MALAVIYA & 4

APPELLANT

Vs

GY DEWAJI & 5

RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

[Bombay Public Trusts Act, 1950](#), [Section 21](#), [Section 32](#), [Section 41](#), [Section 80](#), [Section 22](#), [Section 17](#), [Section 41A](#) - Entries in Register - Maintenance of accounts — Order of surcharge - Bar of jurisdiction - Change - Books, indices and registers - Power of Charity Commissioner to issue directions to trustees and other persons

Citation : (2017) 06 GUJ CK 0004

Hon'ble Judges : C.L. Soni

Bench : Single Bench

Advocate : PERCY KAVINA, ?KIRIT J MACWAN, ?RASHESH SANJANWALA, ?VIMAL M PATEL, ?YH VYAS

Judgement

1. The respondent No.1 and one Mr. A.O. Denials preferred application, which was registered as Application No.6313 of 1997 before Assistant Charity Commissioner, Mumbai, under Section 41A of the Bombay (now Gujarat) Public Trusts Act, 1950 ("the Act" for short) for following prayers:-

(a) Application be allowed;

(b) The present Opponents be directed to maintain the Church property in proper condition and be further directed to allow the applicants to enter the church premises and of or their prayers;

(c) The present Opponents be directed to provide all religious services to the Applicants according to the tradition and custom and be further directed to continue the Priest appointed by the Opponent No.1 and allow the said Priest to provide all religious services to the beneficiaries at large;

(d) The present Opponents be directed to take all measures to prevent the property belonging to the Trust from any damage and/or waste;

(e) Cost of this Application be allowed;

(f) For such other just and proper orders in the interest of the Trust and justice.

2. The respondent No.2, the petitioner Nos.1,3,5 and respondent No.3 herein are the original opponents in the application preferred under Section 41A of the Act. In the application preferred under Section 41A of the Act, if briefly stated, the applicants came out with a case that the opponent No.1 - respondent No.2 herein, which is a registered public charitable trust, came into existence as a company and registered under the Companies Act ; that Indian Church Trustees, a registered public charitable trust, has no trustees; that the Indian Church Trustees, Calcutta had never vested the management in respect of the Anglican Church properties mentioned in 2nd Schedule of the Indian Church Act, 1927 ("Indian Church Act") and situate in the territorial jurisdiction of the Anglican Diocese of Bombay in the respondent No.2 and therefore, the present Board of Indian Church Trustees has no power whatsoever to divest the respondent No.2 of their management, possession and control in respect of the said church properties registered as trust properties under the Act; that under the Indian Church Act, General Council of Church of India, Pakistan, Burma and Ceylon (CIPBC) of Anglican communion were vested with absolute legal rights to constitute and appoint the Managing Trustees in respect of the church properties subject to the Indian Church Act and in exercise of these legal rights, General Council of CIPBC constituted and appointed the respondent No.2 as Managing Trustee of certain church properties situated within the territorial jurisdiction of the Anglican Bombay Diocese; that the Christianity was brought to India by missionaries from western countries and each country established its own church in India and they were known by their own denomination, e.g. churches established by Church of England. England churches were known as ANGLICANS. Anglican communion in India were following the order of worship as of church of England, and by Indian Church Act, separate church of England in India was established and known as church of India, Burma, Ceylon and after 1947, is known as church of India, Pakistan, Burma, Ceylon (CIPBC). This reconstituted CIPBC was an amalgamation of Anglican Church only. Thus, from 1927, Anglican church in India severed its relationship with church of England. In 1930, Anglican church in India adopted and constituted the canons and rules of Church of India. Said canons and rules provide that such properties in each Diocese (geographic area of churches) shall be held by a body called "Diocesan Trust Association". Thus, all the properties of Anglican churches are administered by respondent No.2 which was registered under the provisions of the Act in 1954 and its registration number in PTR is E-923 and D-185 and the property of St. James Church, Baroda, its premises and personage (Priest's House) is under the control and at the disposal of respondent No.2; that on 29.11.1970, five churches, i.e. (i) the Council of Baptist Church in Northern India, (ii) the Church

of Brethren in India, (iii) the Disciples of Christ, (iv) the Methodist Church (British and Australian Conferences) and (v) the Church of India (Anglican, then known as CIPBC) joined together to form the church of Northern India (CNI); that this Union of churches was for the purpose of spiritual life only but, they continued to follow their own church worship and the properties belonging to these churches were being administered by their registered Trusts and did not merge with CNI; that from 1825, Anglican Parish have been worshipping in St. James Church according to Anglican rights and rituals and even after the Church Union was formed in 1970, worship continued as per Anglican rights and rituals; that at St. James Church, Baroda, the congregation of Anglicans faith continued to worship with their CNI counterpart from 1970 to 1992, however from 1992 onwards, CNI Bishop of Gujarat Diocese began passing a series of orders, directives and dictates which were repugnant to teaching of Holy Bibles; that since the property of St. James Church is under control of respondent No.2, the applicants sought permission from respondent No.2 to worship in the church separately from CNI and the respondent No.2 considered the request of Anglican congregation and from 5.10.1997, Anglican Parish implemented their decision and separated from the Church Union with CNI and started worshipping as a separate Parish with their own Anglican Pastor; that the applicants are beneficiaries of the trust and are entitled to the facilities provided by respondent No.2 and are also entitled to cater the church premises and offer their prayers and also receive all religious services from the church authorities under the management and control of respondent No.2; that the opponent Nos.2,3 and 4-the petitioner Nos.1,3 and 5 are obstructing the lawful rights of the applicants; that in view of the factual position narrated, the property belonging to the trust is in danger of being vested and/or damaged and that if no preventive measures are adopted, there is likelihood of clashes between two groups which will lead to threst of damage and waste trust fund and its properties.

3. The petitioner Nos.1, 3 and 5 jointly filed their written statement. Respondent No.3- Indian Church Trustees also filed its written statement. While refuting the allegations made in the application, they raised objections as regards maintainability of the application under Section 41A of the Act and as regards the jurisdiction of the Assistant Charity Commissioner, Mumbai to entertain and decide the application.

4. The Assistant Charity Commissioner partly allowed the application by order dated 4.7.2001 and issued following directions:-

"The Opponents are hereby directed to allow the applicants to enter the Church premises and offer their prayers. They are further directed to continue the Priest to be appointed by the opponent No.1 and allow him to provide all religious services to the beneficiaries at large."

5. The petitioners have challenged the above order/ directions by the present petition filed under Article 226 of the Constitution of India.

6. Since the original applicants died, their heirs are joined as respondent Nos.5 and 6 as per the order dated 11.2.2015 passed in Civil Application No.13680 of 2014.

7. Learned senior advocate Mr. P.C. Kavina appearing with learned advocate Mr. Macwan for the petitioners submitted that for and in connection with the church property in the State of Gujarat, the Assistant Charity Commissioner at Mumbai has no jurisdiction to exercise any power under any of the provisions of the Act. Mr. Kavina submitted that the directions issued by the impugned order would not fall within the ambit of powers under Section 41A of the Act and therefore also, the impugned order passed by the Assistant Charity Commissioner, Mumbai is without jurisdiction. Mr. Kavina submitted that after the Indian Church Act came into force, the respondent No.3 was the sole trustee of the churches in diocese of Bombay and St. James Church was part of it but after Re-organization Act, 1960, St. James Church came under the dioceses of Gujarat. Mr. Kavina submitted that by unification of the churches, the CNI was formed and became successor of all the properties of CIPBC and other churches of Northern India and common worship directed to God alone was and is being followed and Bishop of dioceses has sole authority to take all decisions for public worship. Mr. Kavina submitted that after Indian Church Act and especially after Church Union, the Anglican practice and Anglican form of worship ceased to exist. Mr. Kavina submitted that every body is welcomed in the church to worship the God and the petitioners are not opposed to offer prayers by respondent Nos.5 and 6 in the St. James Church, however they cannot insist as a matter of right that they should be allowed to have religious services only by their Priest. Mr. Kavina submitted that the respondent No.1- original applicant No.1 belonged to Methodist church and was stranger to St. James Church but just to grab the control over the properties of the church, he claimed to be beneficiary of the trust and mischievously preferred application under Section 41A of the Act. Mr. Kavina thus urged to allow the petition and quash the impugned order. In support of his arguments, Mr. Kavina has relied on following judgments:- (1) In the case of Nautam Prakash D.G.S.V.C. Vadtal Vs. K.K. Thakkar, reported in (2006)5 SCC 330 ;

(2) In the case of Syedna Mohamed Burhanuddin Vs. Charity Commissioner, Gujarat State, reported in 1992(1) GLH 331;

(3) In the case of Navinchandra Jasani & Ors Vs. Pravinchandra Jasani & Ors. reported in 2003(1) GLR 392.

8. Learned senior advocate Mr. Rashesh Sanjanwala appearing with learned advocate Mr. Dhaval Shah for the applicants (now, respondent Nos.5 and 6) submitted that for the church in India, Anglican practice continued to be followed after its severance from church of England. Mr. Sanjanwala submitted that St. James Church is the trust property and since the CNI is not successor of the trust property, it has no authority to make any change in the religious practice followed at the church, especially in the matter of providing religious services and appointment of the Priest. Mr. Sanjanwala submitted that the respondent

No.2, is the registered trust and is the only authority appointed to manage the trust properties and therefore, CNI has no authority to make any change in the appointment of the Priest made by respondent No.2 and to prevent the applicants and other persons following Anglican practice from receiving religious services from such Priest. Mr. Sanjanwala submitted that the questions whether the CNI is successor of church properties and whether it has authority to manage the trust property are no longer *res integra* but stood decided against the CNI and even unification of the churches is held to be illegal in the case of *Church of North India Vs. Lavajibhai Ratanjibhai and others* reported in (2005)¹⁰ SCC 760 and in the case of *Vinodkumar M. Malavia Etc. Vs. Maganlal Mangaldas Gameti & Ors.* reported in (2013)¹² Scale 259. Mr. Sanjanwala submitted that when anything which is not being legally done in connection with the trust property, the Act would come into play and since the directions are sought for proper administration of the trust and to prevent the church property from being wasted and damaged, the Assistant Charity Commissioner at Mumbai has not only the jurisdiction to issue direction under Section 41A of the Act but the directions issued by the impugned order do fall within the ambit of Section 41A of the Act. Mr. Sanjanwala submitted that everybody connected with the church are bound to follow the canons and the rules for the religious practices at the church and after the Indian Church Act, 1927, since the respondent No.2 has been authorized to perform all functions concerning the church property, intervention by the CNI to prevent the applicants and the persons following the Anglicans practice from entering the church and to receive the religious services from their own Priest has caused hindrance in proper management and maintenance of the trust property and therefore, the Assistant Charity Commissioner has committed no error in issuing the directions in exercise of the powers under Section 41A of the Act. Mr. Sanjanwala submitted that the directions sought in the application are concerning the administration of the trust, and since the trust is registered at Mumbai, the Assistant Charity Commissioner has the jurisdiction to pass directions under Section 41A of the Act. Mr. Sanjanwala submitted that under Bombay Charity Commissioner (Regional Reorganization) Order, 1960 ("the Order"), the additional jurisdiction was conferred upon the Charity Commissioner in the State of Gujarat in connection with the trust property in the State of Gujarat but jurisdiction for the administration of the trust and to give direction in this regard could well be exercised by Charity Commissioner, Mumbai. Mr. Sanjanwala submitted that considering the nature of the directions sought in the application, the Assistant Charity Commissioner, Mumbai has jurisdiction to issue directions under Section 41A of the Act and thus, it cannot be said that the impugned order is passed without jurisdiction. Mr. Sanjanwala thus urged to dismiss the petition.

9. Learned advocate appearing for respondent No.2 submitted that the respondent No.2 has no say in the appointment of the Priest as it is the Bishop who has final authority in the matter of appointment of the Priest. He submitted that the dispute as regards maintenance of the trust property and authority to

appoint the Priest could at the best be between the petitioners and the respondent No.2 but third party, like the applicants, has no say in the matter.

10. Learned advocate Mr. Y.H. Vyas appearing for respondent No.3 submitted that the respondent No.3 is a registered trust, which appointed the respondent No.2 as Manager to manage the trust property which in no way concerned with the religious practices being followed at the church. Mr. Vyas submitted that the dispute as regards appointment of the Priest and concerning the religious services at the church cannot be decided in exercise of the powers under Section 41A of the Act. Mr. Vyas has relied on the decisions in the case of Sahebghoda (dead) by L.Rs. and others, Vs. Ogeppa and others, reported in AIR 2003 SC 2743 and in the case of Vinayaka Dev Idagunji and others, Vs. Shivaram and others, reported in AIR 2005 SC 3081.

11. The Court having heard learned advocates for the parties finds that the applicants in their application have asserted that the respondent No.2 has been duly and lawfully constituted and appointed by the General Council after the Indian Church Act and the respondent No.2 alone is competent and recognized body in law to deal with the church and its property in accordance with the canons and the rules made for the church of India.

12. The church of England in India had its legal union with the church of England. As per the Oxford Dictionary, the church of England is the English branch of the Western or Latin church which has rejected the pope's supremacy since Reformation but retained the episcopacy. "The Episcopacy" is defined in Websters Comprehensive Dictionary as "the Government of a Church by Bishops". To provide for a dissolution of legal union, between the Church of England and Church of England in India and to make provisions consequential thereon, the Indian Church Measures, 1927 were adopted and following the Indian Church Measures, the Indian Church Act was enacted. From the date as provided for severance of Church of England in India from Church of England, the church of England in India came to be known as Indian Church. The General Council was defined to mean the body recognized as such by Bishop of Calcutta and as per Section 6 of the Indian Church Act, the General Council was authorized to appoint such number of persons as they see it fit to represent the Indian Church Trustees and to hold the property for any uses or purposes thereof. The Indian Church Trustees were authorized to vest any property held by them in any diocesan society or body of the trustees either registered under the Societies Registration Act or the Indian Companies Act . As per the affidavit of respondent No.3, St. James Church is the property of respondent No.3 and the respondent No.2 is the Manager appointed by the respondent No.3 to manage various properties of respondent No.3 including St. James Church.

13. As stated in the application preferred under Section 41A of the Act, the Church of India and other five churches joined together to form the church of North India (CNI) and for unification of the churches, the resolution was passed in the month of November, 1970. However, it is further averred in the application

that the Union of the churches was for the purpose of spiritual life only and the properties belonging to other churches were being administered by their own registered trusts and did not merge with CNI and those churches continued to follow their own formation of church worship. It is further stated in the application that even after the Church Union took place in 1970, worship at St. James Church continued according to the Anglican rights and rituals but CNI though did not find anything prejudice to their beliefs, started dictating their own beliefs and prevented the applicants from receiving the religious services as per the Anglican practices.

14. At this stage, reference is required to be made to the decisions of the Hon''ble Supreme Court in the case of Lavajibhai Ratanjibhai (supra) and in the case of Vinodkumar M. Malavia (supra).

15. In the first judgment, Hon''ble Supreme Court considered the question as regards the extent of bar of jurisdiction of the Civil Court under Section 80 of the Act. In the said case, civil suit was filed seeking following declaration:-

"(a) It may please be declared that the former First District Church of Brethren has ceased to exist.

(b) It may please be declared that the Church of North India is the legal continuation and successor of the said First District Church of Brethren together with the right, title, claim, interest in or over its properties and the constitution, decisions and resolutions of the Church of North India, its Synod and Gujarat Diocesan Council are binding on all the Pastorates on Gujarat which were functioning as local Churches or congregations under the First District Church of Brethren.

(c) The defendant Nos. 1 to 4 and their associates may be restrained by a perpetual injunction from acting in any manner contrary to the constitution, decisions and resolutions of the church of North India, its Synod and Gujarat Diocesan Council and from obstructing in any manner the plaintiffs and other members/ office-bearers of these pastorates under the Church of North India, in acting in accordance with the said constitution, decisions and resolutions and in their use, enjoyment and possession of the Churches and their properties.

(d) The defendant Nos. 1 to 4 and their associates may be restrained from acting in the name of the First District Church of Brethren and from collecting funds, donations, etc. in that name.

(e) The defendant Nos. 1 to 4 may be directed to pay to the plaintiffs the costs of this suit."

The Charity Commissioner in his written statement took up the plea that the jurisdiction of the Civil Court was barred in terms of Section 80 of the Act. In para 59 to 64 and 73, the Hon''ble Supreme Court has observed as under:

59. The plaint nowhere suggests that the society and the trust had ever been

treated as two different entities. No case has been made in the plaint to the effect that the society as registered under the Societies Registration Act plays any role or discharges any function which is not done by the trustees of the trust. It also does not appear from a perusal of the plaint that the society and the trust comprises of different persons or for different functions to perform. In fact in paragraph 2 of the plaint it is accepted that the Church which was registered as a society under the Societies Registration Act was a public trust as defined under Section 2(13) of the BPT Act. The ownership of movable and immovable properties at the places mentioned in the plaint is referable to the congregations under the Brethren Church. It is not alleged that whereas the properties belong to the trust it was managed by the society. The plaint furthermore does not disclose that the decision as regard dissolution of the churches and congregation of Brethren Church had been taken by anybody other than the trustees. The Committees constituted for the aforementioned purpose, viz., 10. Having heard the rival contentions and after considering the written submissions, we are of the opinion that the primary issue which needs to be answered is : whether the alleged unification of the First District Church of Brethren with the Church of North India is correct or not, and the same answers all the ancillary issues raised before us. Continuation Committee and Negotiating Committee, evidently were represented by the authorities of the congregations and not of any society. A decision, as would appear from the averments made in paragraph 6 of the plaint, to dissolve six uniting Churches and merge the same into one, viz., the Church of Northern India (C.N.I.) so as to make the latter a legal continuation and successor of the United Churches and all the properties, assets, obligations, etc. of these uniting churches would vest in or dissolve on C.N.I. The very fact that a decision having been taken as regard the properties, assets, obligations of the United Churches, the same would mean that they would vest in the trust to be created for the said purpose and not for the benefit of any society.

60. We are not oblivious of the fact that the Resolution adopted in the meeting held on 17th February, 1968 allegedly fulfilled all the requirements for such resolution as provided in the Societies Registration Act but it is now beyond any controversy that the society having not owned any property, their transfer in favour of a new society was impermissible in law. In terms of Section 5 of the Societies Registration Act, all properties would vest in the trustees and only in case in absence of vesting of such properties in trustees the same would be deemed to have been vested for the time being in the governing body of such property. In this case, it is clear that the properties have vested in the trustees and not in the governing body of the society.

61. There is nothing on record to show that the concerned churches were being managed by the societies registered under the Societies Registration Act . In any event, it stands accepted that the dispute as regard dissolution of societies and adjustment of their affairs should have been referred to the principal court of original civil jurisdiction.

62. The suit in question also does not conform to the provisions of Section 13 of the Societies Registration Act.

63. Section 20 of the Act provides that the societies enumerated therein can only be registered under the said Act.

64. Unless a suit is filed in terms of Section 13 of the Act, the Society is not dissolved. Even assuming that the society stands dissolved in terms of its Memorandum of Association and Articles of Association, the same would not ipso facto mean that the properties could be adjusted amongst the members of the society in terms of the provisions of the said Act. Concededly, the properties of the trust being properties of the religious trust had vested in such trust. Such a provision, we have noticed hereinbefore, also exist in the BPT Act. Thus, only because the society has been dissolved, ipso facto the properties belonging to the trust cannot be said to have been adjusted. The Appellants, thus, we have noticed hereinbefore, have averred in the plaint that the suit relates to the property of the trust and their administration. If the properties of the churches did not belong to the society, the Appellant herein cannot claim the same as their successor. The plaint has to be read meaningfully. So done, it leads to the only conclusion that the dispute was in relation to the management of the churches as religious trust and not as a society. Even if it is contended that the administration of the property would mean the properties of the Brethren Church both as a trust and as a society, still then having regard to the legal position, as discussed supra, the property belonging exclusively to the trust, the suit will not be maintainable.

73. Furthermore, the purported resolutions of the churches affiliated to the Brethren Church and merger thereof with the Appellant, having regard to the provisions of the Act was required to be done in consonance with the provisions thereof. It is not necessary for us to consider as to whether such dissolution of the churches and merger thereof in the Appellant would amount to alienation of immovable property but we only intend to point out that even such alienation is prohibited in law. The control and management of the religious trusts vests in the Charity Commissioner. The trustees of the Trust are statutorily enjoined with a duty to render all co-operation to the Charity Commissioner. The directions issued by the Charity Commissioner to the trustees are binding. Dissolution of a trust, it is not disputed, is a matter which falls within the exclusive jurisdiction of the Charity Commissioner.

Following the above observations, Hon''ble Supreme Court finally held in para 74 to 77 as under:-

74. Prayer (a) in the plaint is for a declaration. Such declaration cannot be granted by a civil court as regard succession of the District Church of Brethren as the same was a religious trust registered under the BPT Act.

75. Prayer (b) of the plaint also could not have been granted, as the question as to whether the applicant is the legal continuation and successor of the First

District Church of Brethren is a matter which would fall for exclusive determination of Charity Commissioner keeping in view the provisions of the deed of trust as regard its succession. It would necessarily follow that whether the First Appellant became a legal successor of the properties held by the First District Church of Brethren could not also have been granted. The decision and resolution purported to have been adopted by the Synod and Gujarat Diocesan Council are binding on all churches or not would again be a question which could have been gone into by the Charity Commissioner as the same had direct bearing not only with the administration and management of the Church registered with it but also related to the properties held by it. Such a decision of the Charity Commissioner is again final and conclusive subject to the decision of the appellate authority, viz., Bombay Revenue Tribunal.

76. Grant of prayer (c) for perpetual injunction would also give rise to adjudication on the question as to whether the Appellant herein had the legal right to own the properties of the First District Church of Brethren and administer or manage the same although at the relevant time it was not registered trust and although no amendment had been effected in the registers and books maintained by the Charity Commissioner in terms of Section 17 read with Sections 21 and 22 of the Act. The plaintiffs with a view to obtain an order of injunction furthermore were required to establish that they could file a suit for enforcement of right of the Appellant as a religious trust and such a legal right vests either in the plaintiff or in the Appellant herein indirectly. Such a prayer, related to the possession of the property, comes squarely within the purview of the BPT Act. If the question as regard recovery of possession of the property belonging to a public trust squarely falls within the purview of Section 50 of the Act, had such application been filed before the Charity Commissioner he was required to go into the question as to whether the plaintiffs are persons having interest in the trust and whether a consent should be given to them to maintain a suit. Only when, inter alia, such consent is granted, a suit could have been filed in terms of Section 51 of the Act. In the event of refusal to give consent, the persons interested could have preferred an appeal.

77. Yet again the question as regard existence of a trust is a matter which squarely falls within the purview of Section 79 of the Act.

Thus, considering the averments and the prayer made in the plaint of the Civil Suit, Hon''ble Supreme Court decided the question as regards the extent of bar of jurisdiction of the Civil Court.

16. In the case of Vinodkumar M. Malavia (supra), change reports were filed by First District Church of Brethren (FDCB) to give effect to the unification of six churches which included FDCB. The Charity Commissioner held that the change was legal and allowed the properties of FDCB to vest in CNI. The Civil Court set aside such order of the Charity Commissioner by holding that FDCB had not been dissolved and that merging trust continued to exist unless specifically dissolved under the Statutes of the Societies Act and the Trusts Act . It also held that

without following Section 50A of the Act, FDCB 's properties cannot be vested with CNI. First Appeal preferred against the decision of the Civil Court was dismissed by learned Single Judge of this Court. Being aggrieved by such decision in the First Appeal, the petitioner No.1 herein with other parties took the matter before Hon"ble Supreme Court. Hon"ble Supreme Court after focusing on the prime issues in para 10, has proceeded to observe and hold in para 12 to 17, 23 and 26 as under:-

10. Having heard the rival contentions and after considering the written submissions, we are of the opinion that the primary issue which needs to be answered is : whether the alleged unification of the First District Church of Brethren with the Church of North India is correct or not, and the same answers all the ancillary issues raised before us.

12. It has been alleged by the appellants that under Articles 25 and 26 of the Constitution, they are entitled to manage their affairs and the question of unification of churches is a religious decision over which the courts have no jurisdiction. We are of the opinion that the unification has no legal foundation whatsoever. The FDCB is a religious society registered under the Societies Registration Act and its property vests with a Trust regulated by the BPTA. As per the BPTA, a public trust being religious in nature, may also be a society under the Societies Registration Act . It is a well accepted principle that a body created by a statute must conform to the provisions of the regulating statute. In the present case, the procedure for dissolution of FDCB has not conformed to the requirements set out in Section 13 of the SR Act and the procedure as laid down in the BPT Act as noted in Church of North India v. Lavajibhai Ratanjibhai and Ors . (supra). Furthermore, the case of the appellants is based on the resolutions and deliberations which it has put on record in support of its claim of dissolution and subsequent unification. However, as per the finding of the lower courts, no such resolution or minutes of such deliberations comply with the procedure as laid down in the statutes. All the material on record as per the lower court only talks about amalgamation and there is no reference to

dissolution of FDCB as required under the Societies Registration Act . Therefore, the High Court has rightly opined that :

"..... However, the fact remains that there is no basis or foundation or the legal or other frame work, which could be said to be binding and which could be relied upon by the appellant."

Resolution 70/08 on which the case of the appellants is built whether complying with or not with the requirements under the SR Act, does not dissolve the FDCB Trust. Therefore, it would be improper if the religious society being FDCB stands dissolved on the basis of the material produced before the lower court. Therefore, in light of the afore-mentioned judgment of this Court, the High Court and the lower court are correct in holding the same.

13. The property of a Society under Section 5 of the SR Act, if not vested in

trustees, then only shall vest for the time being with the governing body of such society. The properties of FDCB vested with public trust, being No.E-643/Bharuch. It was also recognized by this Court in *Church of North India v. Lavajibhai Ratanjibhai and Ors* . (supra) wherein it was observed thus :

"60. We are not oblivious of the fact that the resolution adopted in the meeting held on 17-2-1970 allegedly fulfilled all the requirements for such resolution as provided in the Societies Registration Act, but it is now beyond any controversy that the society having not owned any property, their transfer in favour of a new society was impermissible in law. In terms of Section 5 of the Societies Registration Act, all properties would vest in the trustees and only in case in the absence of vesting of such properties in the trustees would the same be deemed to have been vested for the time being in the governing body of such property. In this case, it is clear that the properties have vested in the trustees and not in the governing body of the society."

The resolutions produced and the deliberations made in the internal meetings of FDCB only talk about amalgamation of FDCB with the other churches and the intent to dissolve the society and the registered trust is not conveyed and cannot be read into the same. On the basis of these resolutions and deliberations, the claim of the appellants that CNI is the successor of the property of the FDCB, which vests with the registered trust, does not hold good.

14. As observed by this Court in the afore-mentioned judgment, while analyzing various provisions of the BPTA, the alienation of movable property of the trust without previous sanction of the Charity Commissioner is barred under Section 36 . This Court in its judgments in *Church of North India v. Lavajibhai Ratanjibhai and Ors* . (supra) and *Vinod Kumar Mathurseva Malvia and Anr. v. Maganlal Mangaldas Gameti and Ors* . (supra) has clearly stated that the BPTA is a complete code. Furthermore, in *Church of North India* (supra), this Court has observed thus :

"69. We have noticed hereinbefore that the BPT Act provides for finality and conclusiveness of the order passed by the Charity Commissioner in Sections 21(2), 22(3), 26, 36, 41(2), 51(4) and 79(2) ."

The statute provides for a proper procedure for the claimants to adopt for the transfer of the property and the same has not been observed. The case of the appellants is that the dissolution of the society automatically dissolves the trust and vests the property of trust with CNI, designated as the successor of the same which is based on the resolutions etc. placed on record. However, the procedure for the amalgamation of a trust scheme stemming out from Section 50A BPTA, which is a complete Code, has been disregarded. Therefore, the High Court while referring to the judgment of the Civil Court has correctly observed that:

"..it has been clearly observed with regard to merger that such society being a Trust registered under the Bombay Public Trust Act is required to follow the

procedure for amalgamation or merger as contemplated under the Section 50A(2) of the Bombay Public Trust Act. Further, since the Society and the Trust being the creation of the Statute, they have to comply with the modes provided in the Statute for amalgamation and necessary procedure including the approval of the Charity Commissioner has to be there before such merger takes place. A useful reference can be made to Section 50A(2) of the Bombay Public Trust Act. It is required to be mentioned that mere expression or desire to merger by passing Resolution by the Brethren Church would result into merger unless it is approved with the procedure followed under the Bombay Public Trust Act. Further, the properties, which are vested in the committee of such Church, which is registered as FDCB, would be managing the affairs of the Trust and the corpus of the Trust cannot be transferred along with the property without following procedure or approval of the Charity Commissioner under the Bombay Public Trust Act ." (Emphasis supplied)

Furthermore, as the statute has only provided for Section 50A, persons governed by the same must act within the four corners of the legislation and should not question the legislative wisdom on the grounds that as certain aspects have not been provided in a statute so they have no bearing on them.

15. In addition to the above, there are evident lapses in the formation of CNI which have been observed by the High Court in paragraph 17 of its judgment and we also concur with the view of the High Court wherein: Firstly, it is alleged that CNI was formed on November 26, 1970 post Resolution 70/08 dated February 17, 1970, however the same was sought to be registered in 1980 and given registration with effect from 1971. The same is contrary to the requirements as laid down in Section 18 of the BPTA which requires registration of a public trust within three months of a creation as per clause (b) of sub-section (4). The Act is also silent about the registration with retrospective effect. But the dispute is not regarding the interpretation of the procedure of registration under the BPTA, therefore, we refrain from going further into the details of the same. The second lapse which exists is that in 1976, the Church of North India Trust Association (CNITA) was formed under the Indian Companies Act, 1956 and appointed as the trustee of CNI; a trust allegedly existing since 1971 which succeeded FDCB in 1970 which was allegedly dissolved and its annual meetings discontinued since 1971. A suit for declaration of CNI as the successor of FDCB was filed in 1979 (held not to be maintainable in *Church of North India* (supra)). During the pendency of the 1979 suit, Change Report Nos. 44 of 1981 and 665 of 1981 were filed in 1980. This situation created a scenario where FDCB simply vanished after the 1970 resolutions and who managed its properties till CNITA is an unresolved question, identified by this Court in *Church of North India* (supra) which stated that "?.Furthermore, there is nothing on record to show the mode and manner of the management and control of the trust property." Subsequently this Court in the above-mentioned case discussed the procedure under the BPTA which is reproduced as under:

"70....The BPT Act provides for express exclusion of the jurisdiction of the civil court. In various provisions contained in Chapter IV, a power of inquiry and consequently a power of adjudication as regards the list of movable and immovable trust property, the description and particulars thereof for the purpose of its identification have been conferred. In fact, the trustee of a public trust is enjoined with a statutory duty to make an application for registration wherein all necessary descriptions of movable and immovable property belonging to the trust including their description and particulars for the purpose of identification are required to be furnished. Section 19 provides for an inquiry for registration with a view to ascertaining inter alia the mode of succession to the office of the trustee as also whether any property is the property of such trust. It is only when the statutory authority satisfies itself as regard the genuineness of the trust and the properties held by it, is an entry made in the registers and books, etc. maintained in terms of Section 17 of the Act in consonance with the provisions of Section 21 thereof. Such an entry, it will bear repetition to state, is final and conclusive. Changes can be brought about only in terms of Section 22 thereof."

The above facts clearly show non-compliance with the procedure under BPTA. The argument that as per Article 254 of the Constitution, the Societies Registration Act overrides the BPTA or that the Societies Registration Act and BPTA are in conflict, does not stand either, since both the statutes are not in conflict with each other. On the contrary, they are in consonance with each other regarding the administration and regulation of public and religious trusts.

16. Therefore, we are of the opinion that the claim of the appellants that following unification of FDCB with CNI after the purported resolution resulted in the dissolution of FDCB making CNI its legal successor and controller of its properties, does not hold good and cannot be accepted. The High Court has rightly observed that :

".. The trust which has been created as public trust for a specific object and the charitable or the religious nature or for the bona fide of the Society or any such institution managed by such trusts for charitable and religious purpose shall continue to exist in perpetuity and it would not cease to exist by any such process of thinking or deliberation or the Resolution, which does not have any force of law."

17. Since the FDCB trust never stood dissolved, the properties of the same will not vest with CNI. Earlier also, this Court in *Church of North India* (AIR 2005 SC 2544 : 2005 AIR SCW 2738) (supra) has observed the same and stated that :

"....the purported resolutions of the churches affiliated to the Brethren Church and merger thereof with the appellant, having regard to the provisions of the Act was required to be done in consonance with the provisions thereof. It is not necessary for us to consider as to whether such dissolution of the churches and merger thereof in the appellant would amount to alienation of immovable

property but we only intend to point out that even such alienation is prohibited in law."

23. The question regarding the admissibility of evidence adduced before the Charity Commissioner has been adequately addressed by the High Court and we do not find any reason to interfere with the same. The observations of the High Court in this regard are as under :

"21...It is well accepted that though the Charity Commissioner is not the Court, the procedure is to be followed like the Civil Court. The procedure as provided in the Civil Procedure Code would mutatis mutandis apply. In other words, though the Charity Commissioner has discretion to have evolved his own procedure, normal procedure under the Civil Procedure Code is followed in such matter. It is required to be mentioned that even though strictly Civil Procedure Court (sic) may not be applicable, still the procedure is required to be followed in order to provide fair opportunity to other side to contest on every issue including the documents, which are sought to be produced and also to decide the probative value after it is exhibited as per the Evidence Act . Therefore, it is necessary that all such Resolutions etc. ought to have been placed on record, which has not been done. Therefore, what was not forming the part of the record in the original proceedings cannot be permitted to be supplemented by way of explanation in appeal."

The appellants in this regard cited this Court's decision in *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr.* [2003 (8) SCC 752 : (AIR 2003 SC 4548 : 2003 AIR SCW 5316)], wherein this Court held that the High Court was incorrect in rejecting the photocopies of documents as they were not originals. In this light, since the Charity Commissioner is not required to strictly adhere to the procedure under the Code of Civil Procedure, 1908 and the Evidence Act, 1872, the evidence submitted before the Charity Commissioner may be admissible unless they are against the basic principles of Evidence Law.

26. Having analysed the facts and the law in the matter, we are of the opinion that the High Court and the City Civil Court have rightly adjudicated on the matter in question and correctly set aside the order passed by the Charity Commissioner.

The Court finds that in the context of the averments and prayers made in the application filed under Section 41A of the Act by the respondent No.1 herein with Mr. A.O. Denials, the decision in the above-said two cases rendered by Hon"ble Supreme Court would not cover the issues/ the questions to be decided in the present petition.

17. It is required to note that no declaration is sought in the application that the opponents in the application are not the legal successors of the rights in the property of the church or have no authority to manage the church property. In fact, the prayers made are to direct the opponents to maintain the church property in proper condition with further prayers to allow the applicants to enter

the church premises and to continue the Priest appointed by respondent No.2 and to allow him to provide religious services to all beneficiaries. If the application preferred under Section 41A of the Act is read thoroughly, it would give clear idea that the applicants want adjudication of the rights asserted by them that the Anglican Parish have been worshiping in the church according to Anglican rights and rituals and are entitled to cater the church premises to offer their prayers and to receive all religious services from the church and they disputed the authority of petitioner Nos.1,3 and 5 to obstruct the applicants to have their own Priest to provide them religious services and to obstruct the applicants in enjoyment of their lawful rights to receive religious services at the church. It is in context of such assertion and disputing the authority of the petitioners, to obstruct the applicants to have religious services from their own Priest, the applicants have stated in the application that the Union of churches was for the purpose of spiritual life only and different uniting churches continued to follow their form of church worship and properties of these churches were administered by their own registered trust and did not merge with CNI. With such assertion and further averments made in the application, it is alleged in para 29 and 30 of the application that the property of trust is in danger of being damaged and wasted and there is likelihood of clashes between two groups which will lead to threst of damage and waste of trust funds and properties. It needs to be mentioned that the allegations that the church properties were not merged with CNI, that they were administered by the registered trust and that the respondent No.3 has no authority to transfer the management of the trust to CNI are not from either the trust or even by respondent No.2.

18. There are no allegations in the application that the church property at Vadodara is not being properly maintained. Even the Assistant Charity Commissioner has recorded the finding in his impugned order that there is no material on record to show that the property of the trust is being wasted or damaged and on such finding, the applicants are denied the relief as regards the prayer to maintain the church property.

19. In view of the above, the Court finds that the questions need to be answered in the present petition are; (i) whether the directions issued by the impugned order fall within the ambit of Section 41A of the Act and (ii) whether the Assistant Charity Commissioner, Mumbai has jurisdiction to issue directions under Section 41A of the Act concerning the property of St. James Church at Baroda (Vadodara).

20. The extent of powers under Section 41A of the Act was subject matter of scrutiny in different decisions.

21. In the case of Syedna Mohamed Burhanuddin (supra), Division Bench of this Court while examining the impugned directions issued by the Charity Commissioner also examined the challenge to vires of Section 41A of the Act. The Division Bench has held and observed in para 35,36,41 and 51 as under:-

35. Three matters which the impugned section provides for are, in our opinion, purely secular matters and they have got to be disengaged from the religious practice of making the offerings and religious belief of seeking intercession with God. They relate to the field of administration of property, acquired and owned by a religious denomination. Therefore, the impugned section seeks to regulate matters which clearly and distinctly fall under clause (d) of Article 26. It merely evolves a system of checking and controlling public funds by the State does not denigrate any individual, however high and great he may be. We have already seen that Article 26 (d) can be violated only if a denomination is deprived of the administration of the property altogether. Therefore, complete deprivation for sometime to be followed by restoration thereof does not violate to be Article 26 (d). Partial deprivation for all time by devising system of regulation and control also does not violate Article 26 (d). In this case, the second proposition holds good and the Legislature is competent to legislate upon it. We are, therefore, of the opinion that the impugned section neither violates Article 25 (1) nor clauses (b) and (c) of Article 26. It is protected by clause (d) of Article 26.

36. In *Ratilal Panachand Gandhi's* case (supra) the Supreme Court has upheld the constitutional validity of Sections 18, 31 to 37 and 58 of the said Act. Sections 32 to 36 in Chapter V thereof provide for accounts and audit. Section 32 enjoins upon a trustee the duty to maintain regular accounts in such form as the Charity Commissioner may approve and containing such particulars as may be prescribed by rules. Section 33 requires a trustee to balance them at the end of each financial year or at the end of such period as the Charity Commissioner may fix and such accounts are required to be audited annually in such manner as may be prescribed by rules by a chartered accountant or by a person authorised by the State

Government. For this purpose the auditor has been given a statutory right to have access to all books, vouchers, records and other documents which may be in possession and control of a trustee. In addition thereto, the Charity Commissioner has been empowered under sub-Section (4) thereof to order a special audit of the accounts in such cases as he thinks necessary. Section 34 casts a statutory obligation upon the auditor to report to the Charity Commissioner all irregular, illegal or improper expenditure by a trustee and also report to him failure or omission to recover the moneys or other property of a public trust or loss or waste of money or other property thereof. Section 35 requires a trustee to invest in approved securities all moneys of a public trust which are not required immediately or at an early date for application to the purposes of a public trust. Section 36 prohibits alienation of immovable property of a public trust by a trustee without the previous sanction of the Charity Commissioner. Sections 37 to 41 which fall under Chapter VI provide for control. Section 37 which has been upheld by the Supreme Court as intra vires the Constitution empowers the Charity Commissioner (i) to enter upon and inspect or cause to be entered on and inspected any property of a public trust, (ii) to call for and inspect the proceedings of the trustees and books and accounts in their

possession and under their control and (iii) to call for any return, statement, account or report from a trustee or any person connected with a public trust. Sections 38 to 40 empower him to call for the explanation of a trustee or any other person concerned in regard to the matters which the auditor's report discloses and to determine the loss which may have been caused to a public trust on account of breach of trust, misapplication or misconduct on his part. Section 41 empowers him to charge such amount of loss on such a defaulter. Section 58 which has also been upheld by the Supreme Court as intra vires the Constitution directs the contribution by a public trust to Public Trusts Administration Fund. Section 69 (a) casts upon the Charity Commissioner a statutory duty of exercising general superintendence of the administration of the Act and requires him to carry out the purposes of the said Act. A quick glance at these provisions to which all religious trusts are subject makes it clear beyond any doubt that the three matters which Section 41A provides for - (a) proper administration of a public trust, (b) proper accounting of its income, and (c) due appropriation and application of the income to the objects and for the purposes of the trust - are abbreviated expressions of those very matters which Sections 32 to 41 provide for. The only purpose which, therefore, Section 41A serves is to empower the Charity Commissioner to issue directions in respect of matters falling under Sections 32 to 41. It is, therefore, merely an enabling and ancillary provision intended to make the implementation and enforcement of the provisions of Sections 32 to 41 more effective. In our opinion, therefore, by enacting Section 41, the Legislature has not introduced any new principle which is not there elsewhere but has merely filled in a lacuna in the effective implementation of the provisions of the said Act. We are, therefore, unable to countenance an argument that though Sections 32 to 41 are valid, Section 41 is not. Even though Section 41A is intended to confer upon the Charity Commissioner only such an ancillary power, the Legislature has been careful enough to circumscribe the power of the Charity Commissioner by subjecting it to the provisions of the said Act. The impugned section, therefore, opens with the expression "Subject to the provisions of this Act". In our opinion, therefore, it does not impinge upon any fundamental right of a person or a religious denomination and it does not suffer from any constitutional infirmity. In that view of the matter, it is not necessary for us to read it down so as to exclude its application to religious trusts. The first contention, raised by Mr. Sen, therefore, fails and we reject it.

41. So far as the nature of directions, contemplated by Section 41A, is concerned, on analysing its contents and comparing them with the provisions of Sections 32 to 41 of the said Act, we have little doubt in our mind that they are administrative in character. They are intended to be issued for better and more efficient administration of a public trust. No question of adjudication of any controversy, dispute or lis arises thereunder. The object of Section 41A, as discussed earlier, is to streamline the administration of public trusts and to ensure more effective implementation and enforcement of the provisions of the said Act. Under these circumstances, since they are not quasi-judicial directions,

the question of complying with principles of Natural Justice does not arise. We, therefore, cannot infer compulsion to hear a trustee before directions are issued to him under Section 41A as in the cases of quasi-judicial matters.

51. Bearing these principles in mind, let us approach Section 41A again. It enables the Charity Commissioner *inter alia* to issue direction for the proper administration of a trust. When, therefore, the Charity Commissioner decides to issue directions to a trustee, it presupposes that there is no proper administration of the trust. Next, Section 41 does not confer upon the Charity Commissioner the power to issue directions "if in his opinion" there is no proper administration of a trust, etc. Absence of such an expression - "if in his opinion" - indicates that the issuance of directions under Section 41A has not been left to the unfettered discretion and to his subjective satisfaction. In addition to what the said Act and rules made thereunder prescribe, if any further obligations are to be imposed upon a trustee, he must reach the decision on objective facts. Next, any directions which he may issue must be subject to the provisions of the said Act. Their ambit is fettered by the provisions of the said Act and by the matters specified in the impugned section. Lastly, any directions which he may issue have got to be complied with on the pain of penal consequences (*vide* Sec. 67). Though the directions which the Charity Commissioner may issue under Section 41A constitute an administrative act on his part, in view of the attendant factors which we have set out above, the Charity Commissioner ought to afford to the concerned party an opportunity of being heard unless there is some imminent danger to the trust. Directions which he may issue may cast a reflection upon the management of the trust by a trustee or they may cast an aspersion or shadow of suspicion on him. No trustee, without being heard in his defence, should be dogged even by a silhouette of suspicion. Such a situation is likely to damage his public character. We are, therefore, of the opinion that the Charity Commissioner ought to hear a trustee or any other concerned person before issuing directions to him under Section 41A unless there is an apprehension of an imminent danger to the public trust.

22. In the case of Navinchandra Jasani (*supra*), learned Single Judge has observed in para 6 as under:- 6. Keeping in view the aforesaid observations made by the Division Bench, it is clear that the Jt. Charity Commissioner will be entitled to exercise the power under Section 41A of the Act in respect to the items which are specified under Section 32 to 41 of the Act. If the averments made in the application are considered then it appears that the basis of the application was that the applicants therein before the Jt. Charity Commissioner were ascertaining that they have a right to be admitted as the members of the Trust since they are natives of Veraval and because of the conservative interpretation given by the Trustees of the Trust, they are not being admitted as the members. Therefore, if while administering the Trust, the question arises regarding the interpretation of making any expenses or running day-to-day affairs of the Trust, it might fall under the scope of Section 41A of the Act. However, the question of right to be admitted as the members of the Trust is an

independent right which a person may be claiming upon the terms and conditions of the Trust against the Trustees of the Trust. In assertion of such right an inquiry is required to be held for the purpose of establishing the case as to whether the applicants who are ascertaining the right, are covered by the eligibility criteria of becoming the members or not. Such process in my view would require adjudication of the facts and, therefore, in view of the ratio of the Division Bench in case of "Syedna Mohamed B. v. Charity Commissioner, Gujarat State, and Others" (Supra) the adjudication process is not envisaged under Section 41A of the Act.

23. In the recent decision of this Court, in the case of Pavankumar Jain Vs. Priyavadan Ambalal Patel reported in 2016(2) GLH 360, the Division Bench of this Court has held and observed in para 8 and 9 as under:-

8. It cannot be disputed that the administration and management of the Trust can always be as per the provisions contained in the Trust Deed and in accordance with provisions of the Act and Rules. Therefore, considering the provision of Section 41 A of the Trust Act whenever it is found by the Charity Commissioner that the Trust and / or its Trustees are not managing the affairs of the Trust as per the provision contained in Trust Deed and / or as per the provisions of the Act and Rules, the Charity Commissioner can in exercise of powers under Section 41 A of the Act issue direction for appropriate administration and management of the Trust. However, it is the case of the appellants relying upon the decision of the Division Bench of this Court in the case of Syedna Mohamed Burhanuddin (supra) that even while exercising the powers under Section 41 A of the Trust Act, the Charity Commissioner can issue direction only in respect of the matter falling under Sections 32 to 41 of the Trust Act. However, considering the aforesaid decision of the Division Bench in detail and the observations made by the Division Bench with respect to question posed before the Division Bench in the case of Syedna Mohamed Burhanuddin (supra), we are of the opinion that as such there is no absolute proposition of law laid down by the Division Bench in the said decision that in exercise of powers conferred under Section 41 A of the Trust Act, the Charity Commissioner can issue the direction in respect of the matters falling under Sections 32 to 41 of the Trust Act only.

In the case before the Division Bench while challenging the certain directions issued by the Charity Commissioner, Gujarat State, under Section 41 A of the Trust Act, vires of Section 41 A of the Trust Act also were challenged on the ground that it violates Articles 25 and 26 of the Constitution of India. Before the Division Bench the petitioner challenged the constitutional validity of Section 41 A of the Trust Act mainly on the following grounds / contentions:-

- (1). Section 41 A of the Bombay Trusts Act, 1950, in so far as it applies to trusts of religious denominations, is ultra vires 25 and 26 of the Constitution.
- (2). Section 41 A is not ultra vires Arts. 25 and 26, the impugned directions are

wholly beyond the purview of Section 41A and are in conflict with Arts. 25 and 26.

(3). Such directions cannot be issued without hearing the party affected thereby either on the ground of principles of Natural Justice if they are quasi- judicial or on the ground of principles of Fair Play if they are purely executive or administrative in character.

While dealing with the aforesaid contentions, the this Court also noted / considered sub-section (1) of Section 41 A of the Trust Act and firstly observed that sub-section (1) of Section 41 A of the Trust Act empowers the Charity Commissioner to issue direction only for the following purpose and no others.

(A) Proper administration of a public trust (B) Proper accounting of its income (C) Due appropriation and application of the income to the objects and for the purpose of trust.

While dealing with the contention on behalf of the petitioners that Section 41 A of the Trust Act impinge upon any fundamental right of a person or religious denomination and is suffers from constitutional infirmity, the Court observed that Section 41 A of the Trust Act is merely enabling and ancillary provision intended to make implementation and enforcement of provisions of Sections 32 to 41 more effective. It is to be noted that There was no controversy before the Division Bench that whether the powers of the Charity Commissioner to issue direction shall confine in respect of matters falling under Sections 32 to 41 only. It will be misreading of decision of the Division Bench if it is read like that. On the contrary, in the aforesaid decision, it is further observed that by enacting Section 41 A, the Legislature has not introduced any new principle which is not there elsewhere but has merely filled in the lacuna for effective implementation of the provision of Act.

8.1. Even it could not have been the intention of the Legislature to restrict the powers of the Charity Commissioner while issuing the direction under Section 41 A of the Trust Act in respect of matters under Sections 32 to 41 of the Act only. If the legislature had intended to restrict the exercise of the Charity Commissioners powers under Section 41A to only matters contained in Sections 32-41, there was absolutely no reason for the Legislature to have provided under Section 41A the categories of situations under which the powers can be exercised. The fact that Section 41 A enumerates the situations in which powers can be exercised i.e. to ensure that such Trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the Trust, itself shows that Section 41A is a provision that stands by itself and that directions can be given under Section 41A as long the same are given for the matters specified in the said provision i.e in Section 41A . If such a restrictive meaning as sought to be contended on behalf of the appellants is accepted, it will negate that part of the Section 41 A which confers power upon Charity Commissioner to issue direction from time to time, to ensure that such

trust is properly administered, however subject to provision of the Trust Act . The presence of the words Subject to other provisions of this Act, the Charity Commissioner may issue& can only mean that the Charity Commissioner cannot issue directions that may violate or run contrary to some other provision of the Act and can never mean that Section 41A is restricted to the matters contained in Sections 32-41 only.

8.2. As observed herein above, there was no controversy before the Division Bench in the aforesaid decision that whether the powers of the Charity Commissioner to issue direction under Section 41 A of the Trust Act, shall be restricted to matters in respect of Sections 32 to 41 only. Therefore, if the judgment of the Division Bench in the case of Syedna Mohamed Burhanuddin (supra) if read as a whole and its true prospective, as such it does not hold that Section 41 A is restricted to Sections 32 to 41 only. As such, in the aforesaid decision, the Division Bench has not restricted the powers under Section 41 A of the Trust Act to the matters contained in Sections 32 to 41 of the Trust Act only. As per the catena of decision of the Hon"ble Supreme Court, more particularly in the case of Zee Telefilms Limited v. Union of India reported in AIR 2005 SC 2677 ((para 275-278)); in the case of Natural Resources Allocation, In Re Special Reference No. 1 of 2012, reported in (2012) 10 SCC 1 (para 73) and in the case of Mehboob Dawood Shaikh v. State of Maharashtra reported in (2004) 2 SCC 362 (para 12), a judgment is to be read as a whole and that it is not a precedent for a question that was not before the Court.

Under the circumstances and for the reasons stated above, we are of the opinion that the Division Bench in the case of Syedna Mohamed Burhanuddin (supra) does not hold that powers conferred under Section 41 A of the Trust Act to issue direction by the Charity Commissioner is restricted to Sections 32 to 41 of the Trust Act only.

9. On the contrary, in the case of Navsari Taluka Halpati Shikshan Prachar Sangh (supra) after considering the aforesaid decision of the Division Bench in the case of Syedna Mohamed Burhanuddin (supra), more particularly, the observations made in para 41 and 42 in decision of Syedna Mohamed Burhanuddin (supra), it is held that the Charity Commissioner can exercise the powers under Section 41 A of the Act in connection with the matters falling under Act for proper Administration of the Trust and are not restricted to the matters the falling under Sections 32 to 41 of the Act only. It is further observed and held by the Division Bench in the said decision the power of the Charity Commissioner to issue directions to ensure that the Trust is properly administered is by itself very nature a wide power. It is further observed that Administration of Trust would mean administration by a body which under the Trust Deed is required to be administered the same. It is further observed that in absence of proper elected body as required under the Trust Deed, a proper Administration of the Trust cannot be ensured. It is further observed that the Administration of the Trust would include various aspects, which would fall under the provisions of the Act

and in absence of a properly constituted administrative body, the affairs of the Trust can hardly be conducted in furtherance of its objects. Thereafter, it is held that the direction to hold election of the trustee in consonance with the terms of the Trust Deed would clearly fall within the ambit of Section 41- A of the Act. It is required to be noted that after the aforesaid decision of the Division Bench in the case of Navsari Taluka Halpati Shikshan Prachar Sangh (supra), in the following decisions, the learned Single Judges of this Court have categorically observed and held that in exercise of powers under Section 41 A of the Act, the Charity Commissioner can issue direction for better administration of trust.

(a) Acharyashree M. R. B. Mandir Trust v. C. R. Chandulal, 1997 (1) GLH 16 (Single Judge) (para 5, 8, 11, 12 and 13)

(b) Devkrushnadasji Guru Dharmadasji v. State of Gujarat, 2008 (1) GLH 427 (Single Judge) (para 13-16, 18-24)

(c) Balvantbhai Jinabhai Dhami v. Shantilal Kantibhai Ratanpara, SCA No. 9819 of 2009 and other cognate matters (Single Judge) (para 18.1, 18.2, 23, 23.1, 29-31)

(d) Ratilal Hansraj Gajjar v. Kamleshbhai Narsibhai Kharechha, 2011 (0) GLHEL-HC 224834 (Single Judge) (pg. 9-11)

(e) Shree Laxminarayan Dev Temple Board v. Jasubhai Bhailalbhai Patel, SCA no. 4069 of 2012 (Single Judge) (para 14-15)

(f) Gopinath Dev Mandir Trust v. State of Gujarat, SCA No. 11706 of 2012 (pg. 31-35). It may be noted that this judgment has been confirmed by the Division Bench in LPA No. 479 of 2013 (para 9-11).

24. Thus, as held above, the Charity Commissioner can exercise powers under Section 41A in respect of the matters falling under the Act for proper administration of the trust and such powers are wide and not restricted to the matters falling under Sections 32 to 41 of the Act only.

25. Keeping in view the above principles of law laid down by this Court on interpretation of the provisions of Section 41A of the Act, if the directions issued by the impugned order are considered in the context of the averments made in the application, they cannot be said to have been issued for administration of the trust. Whether the applicants are entitled to receive religious services as per the

Anglican practices and by their own Priest from the church, are the questions not only need adjudication but have nothing to do with the administration of the trust. Such rights asserted by the applicants are of civil nature. The application was preferred by only two applicants. They claimed to be beneficiaries of the trust. They claimed that they are entitled to receive religious services as per the Anglican practice by appointment of their own Priest. As per the stand taken by the respondent No.3, while opposing the application, it is the Bishop of Gujarat Diocese who has authority to appoint Priest and common practice of worship

towards God is adopted. Thus, it will be a dispute concerning the alleged rights claimed by the applicants to receive the religious services at the Church from their own Priest to be adjudicated upon. The administration of the trust has many facets covered under the provisions of the Act and it may be guided even as per the constitution of the trust. The grievance as regards infringement of the private rights concerning religious belief and practice cannot be subject matter for decision under Section 41A of the Act. By the impugned order, the Assistant Charity Commissioner has issued two different directions. The first out of two is to allow the applicants to enter the church premises and to offer their prayers. Learned senior advocate Mr. Kavina fairly stated that everybody is welcomed for worship of the God and there is no question of restricting entry of the applicants (now, respondent Nos.5 and 6) in the church to worship the God, but the objection is to the second direction to continue the Priest, alleged to have been appointed by respondent No.2, to allow such Priest to provide religious services to the beneficiaries. To appoint or to continue any Priest is part of the internal management of the religious denomination. It is not to be confused with wide range of superintending powers of the Charity Commissioner, including exercise of powers for administration of the trust.

26. In the case of Most Rev. P.M.A. Metropolitan and others Vs.

Moran Mar Marthoma and Another reported in 1995 Supp (4) SCC 286, while dealing with the question about maintainability of the civil suit under Section 9 of the Code of Civil Procedure as regards the religious rights, Hon'ble Supreme Court has held and observed in para 30 to 38, 42 and 43 as under:-

30. Are religious rights, for instance right to worship in a religious place, entry in a temple, administration of religious shrines for instance a temple, mosque or a church are rights of civil nature? Is the suit filed by the respondent bad as the declaration, injunction and prohibition sought are in respect of matters which are not civil in nature? The answer is given by Explanation I. The Civil Procedure Code was enacted during British period. The legislature enacting the law was aware that there were no ecclesiastical courts either in ancient or Medieval India as in England.

`The term "ecclesiastical law" may be used both in a general and in a technical sense. In its general sense it means the law relating to any matter concerning the Church of England administered and enforced in any court; in its technical sense it means the law administered by ecclesiastical courts and persons" [Halsbury's Laws of England Vol. 14 para 301].

`The ecclesiastical law of England is as much the law of the land as any other part of the law" [Halsbury's Laws of England Vol.14 para 304].

There was no such law in our country. The ecclesiastical courts are peculiar to England. The Parliament was aware of it. That is why it added Explanation I to Section 9 of the Civil Procedure Code. It obviates any ambiguity by making it clear that where even right to an office is contested then it would be a suit of a

civil nature even though that right may entirely depend on the decision of a question as to religious rites or ceremonies. Explanation II widens it further to even those offices to which no fees are attached. Therefore, it was visualised from the inception that a suit in which the right to property or religious office was involved it would be a suit of civil nature. Reason for this is both historical and legal. In England ecclesiastical law was accepted as a part of the common law binding on all. But, 'the introduction of English Law into a colony does not carry with it English ecclesiastical law'. (Halsbury Laws of England Vol. 14 para 315). In ancient or medieval India the courts were established by King which heard all disputes. No religious institution was so strong and powerful as church in England. The Indian outlook was always secular. Therefore, no parallel can be drawn between the administration of the churches by ecclesiastical courts in England. Religion in India has always been ritualistic. The Muslim rulers were by and large tolerant and understanding.

They made India their home. They invaded, ruled and became Indian. But Britishers made it a colony. However, that did not interfere with religion. Disputes pertaining to religious office including performance of rituals were always decided by the courts established by law. As far back as 1885 Justice Mehmood in Queen Empress vs. Ramzan repelled the argument that the courts were precluded from considering Muslim Ecclesiastical Law and observed at page 468 as under:-

"I am unable to accept this view, because, if it is conceded that the decision of this case depends (as I shall presently endeavour to show it does depend) upon the interpretation of the Muhammadan Ecclesiastical Law, it is to my mind the duty of this Court, and of all Courts subordinate to it, to take judicial notice of such law".

There are numerous authorities where dispute about entry in the temple, right to worship, performing certain rituals have been taken cognizance of and decided by civil courts. In *Narasimma Chariar & Ors. vs. Sri Kristna Tata Chariar* 6 Mad. H.C. Reports 449 it was claimed by the plaintiff that they had the exclusive rights to Adhyapaka Mirass of reciting certain texts or chants in a temple. In that suit it was held: "The claim is for a specific pecuniary benefit to which plaintiffs declare themselves entitled on condition of reciting certain hymns.

There can exist no doubt that the right to such benefits is a question which the Courts are bound to entertain, and cannot cease to be such a question, because claimed on account of some service connected with religion.

If, to determine the right to such pecuniary benefit, it becomes necessary to determine incidentally the right to perform certain religious services, we know of no principle which would exonerate the Court from considering and deciding the point".

It was approved by the Privy Council in *Krishname & Ors. vs. Krishnasamy & Ors.* and the passage extracted above was approved by observing that it was "perfectly correct". This was a decision when Explanation II was not there. The

dispute had two rounds of litigation. In the second round after remand the High Court observed.

"It is certainly not the duty of the Civil Court to pronounce on the truth of religious tenets nor to regulate religious ceremony; but, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights

interse."

31. The Law Commission in its 27th Report in Civil Procedure Code, December 1964 at page 91 while considering the addition of Explanation II to Section 9 observed as under: "It may be added, that the decision of the Privy Council to the effect that a suit for pecuniary benefits is a civil suit, even if it becomes necessary to determine a right to perform religious services, does not imply that other suits relating to religious offices cannot be entertained."

32. In *Srinivasalu Naidu v. Kavalmaru Munnuswami Naidu* AIR 1967 Madras 451 it was observed,

"The explanation certainly does not confine the limits of the nature of suits contemplated by the main section. What the Explanation states is only that though religious rites and ceremonies may form the basis of a right that is claimed, such right being a right to property or to office, a suit to establish such right would be a suit of a civil nature. The Section takes within its broad sweep all questions where one person claims any privilege in himself as against others. There is no doubt that such a question would be one of a civil nature."

33. On the plain phraseology of the Section, therefore, it is clear that a suit filed after coming into force of the Constitution for vindication of rights related to worship of status, office or property is maintainable in civil court and it would be duty of the court to decide even purely religious questions if they have a material bearing on the right alleged in the plaint regarding worship, status or office or property. In *Nagar Chandra Chatterjee & Anr. v. Kailash Chandra Mondal* it was held:

"Where there were no Ecclesiastical Courts, there was nothing to prevent civil courts from holding that Pujari has been removed from his office on valid grounds."

Sir Ashutosh Mookerjee quoted thus:

"There is manifestly nothing wrong in principle that the holder of a spiritual office should be subject to discipline and should be liable to deprivation for what may be called misconduct from an ecclesiastical point of view or for flagrant and continued neglect of duty..... It is plain that although so far as Hindus are concerned, there is now no State Church and no ecclesiastical court, there is

nothing to prevent civil courts from determining questions such as those raised in the present litigation and from holding that the Pujari has been removed from his office on valid grounds."

34. In *U.W. Baya vs. U. Zaw Ta* . AIR 1914 Lower Burma 178 (1) where a question arose as to which was the forum where an action for violation of religious rights could be brought, it was held, "there are, therefore, no ecclesiastical authorities in

Lower Burma. Section 9, Civil P.C. enacts that the courts shall subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which the cognizance is either expressly or impliedly barred. This is a suit of a civil nature. It is a claim of certain lands and manuscripts.

The civil courts, in our opinion, clearly have jurisdiction to decide the suit and should do so".

35. In *Sri Sinha Ramanuja Jeer & Ors. v. Sri Ranga Ramanuja Jeer & Anr* . (1962) 2 SCR 509 this Court observed:

"prima facie suits raising questions of religious rites and ceremonies only are not maintainable in a civil Court, for they do not deal with legal rights of parties. But the explanation to the section accepting the said undoubted position says that a suit in which the right to property or to an office is contested is a suit of civil nature notwithstanding that such right may depend entirely on the decision of a question as to religious rites or ceremonies. It implies two things, namely, (i) a suit for an office is a suit of a civil nature; and (ii) it does not cease to be one even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies."

36. In *Ugamsingh & Mishrimal vs. Kesrimal & Ors* ., 1971 (2) SCR 836, it was held that right to worship is a civil right which can be subject matter of a civil suit. The Court observed :

"It is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature."

That the right to conduct worship is also a civil right has been recognised by the courts in *T.A. Aiyangar Swamigal & Ors. v. L.S. Aiyangar & Ors.* 31 Madras Law Journal 758. In *Devendra Narain Sarkar & Ors. v. Satya Charan Mukerji* it was held that a suit by a person claiming to be entitled to a religious office against an usurper, for a declaration of his right to the office is a suit of a civil nature. Similarly in *S. Ramnuja Jeer* (supra) this Court observed as under:

"From the aforesaid passage it is clear that so long as the holder of a purely religious office is under a legal obligation to discharge duties attached to the said office for the non- observance of which he may be visited with penalties, a civil court could grant a declaration as to who would be or could be the holder of such office."

37. It was vehemently urged that declaration of the character of a church, viz., whether it was autocephalous was solely dependent upon the canonical laws and it necessarily involved an adjudication of what was the applicable canon, what was its interpretation and what are the religious beliefs, practices, customs and usage in the church which pertained to the ecclesiastical jurisdiction and the civil courts could not embark on such an enquiry. This is the farthest or the highest stand that could be taken by the appellant. The answer is twofold, one section 9 of the Civil Procedure Code and other Article 25 of the Constitution. The latter guarantees constitutionally freedom of conscience and the right freely to profess, practice and propagate religion to every person. Its reach has been explained in various decisions. In *His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. vs. The State of Tamil Nadu*. it was held that this Article guarantees freedom to practice rituals and ceremonies which are integral parts of a religion by the followers of a doctrine. In *S.P. Mittal vs. Union of India & Ors* . AIR 1983 SC 1, it was held that freedom or right involving the conscience must naturally receive a wide interpretation. The suit filed was thus maintainable. The injunction and prohibition sought from interfering in administration of Church are certainly matters which pertain to the religious office. Even the declaration that the Church is episcopal is covered in the expansive expression of religion as explained in *Mittal's* case (*supra*). The word "episcopal, means" of or pertaining to bishops, Having a govt. vested in bishop". A suit for declaration of such a right would be maintainable under section 9 . Not only because it is claim to an office but also because there is no other forum where such dispute can be resolved. If a dispute arises whether a particular religious shrine has ceased to be so due to its anti-religion activities then the followers of that religion or belief and faith cannot be denied the right to approach the court. Explanation I is not restrictive of the right or matters pertaining to religion. It only removes the doubt to enable the courts to entertain suits where dispute about religious office is involved. The right to religion having become fundamental right, it would include the right to seek declaration that the Church was Episcopal. But the court may refrain from adjudicating upon purely religious matters as it may be handicapped to enter into the hazardous, hemisphere of religion. Maintainability of the suit should not be confused with exercise of jurisdiction. Nor is there any merit in the submission that Explanation I could not save suits where the right to property or to an office was not contested or where the said right depended on decisions of questions as to religious faith, belief, doctrine or creed. The emphasis on the expression "is contested" used in Explanation I is not of any consequence. It widens the ambit of the Explanation and include in its fold any right which is contested to be a right of civil nature even though such right may depend on decisions of questions relating to religious rights or ceremonies. But from that it cannot be inferred that where the right to office or property is not contested it would cease to be a suit cognisable under Section 9 . The argument is not available on facts but that shall be adverted later. Suffice it to mention that in *Ugamsingh* (*supra*) the plaintiff's claim was that they were entitled to worship without interference of the idol of Adeshwarji in the temple named after him at Paroli according to tenets observed

by the Digambri Sect of the Jain religion. It was held that from the pleadings and the controversy between the parties it was clear that the issue was not one which was confined merely to rites and rituals but one which effected the rights of worship. If the Digambaries have a right to worship at the temple, the attempt of the Swetambaries to put Chakshus or to place Dhawandand or Kalash in accordance with their things and to claim that the idol is a Swetamberi idol was to preclude the Digambaeries from exercising their right to worship at the temple, with respect to which a civil suit is maintainable under Section 9 of the Civil Procedure Code. The scope of the Section was thus expanded to include even right to worship.

38. "Religion is the belief which binds spiritual nature of men to super-natural being". It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it. It is civil in nature. The dispute about the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence. Civil wrong is explained by Salmond as a private wrong. He has extracted Blackstone who has described private wrongs as, "infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries". Any infringement with a right as a member of any religious order is violative of civil wrong. This is the letter and spirit of Explanation I to Section 9 . In American Jurisprudence volume 66, paragraph 45, the law is explained thus.

"The (the) civil courts have steadily asserted their want of jurisdiction to hear and determine any controversy relating thereto. On the other hand, the civil courts have without hesitation exercised their jurisdiction to protect the temporalities of such bodies, for whenever rights of property are invaded, the law must interpose equally in those instances where the dispute is as to church property and in those where it is not".

42. The submissions do not appear to stand the test in light of what has been stated earlier. The relevant passage from Halsbury's Laws of England have already been extracted to demonstrate that the ecclesiastical law of England does not apply to colonies. There is no statute framed even during British regime which had adopted the statutory or common law to the Churches in India. The mere fact that the Churches in England are governed by ecclesiastical law could by no stretch of imagination furnish foundation for the submission that the Churches in India would also be governed by ecclesiastical law. The jurisdiction of courts depends either on statute or on common law. The jurisdiction is always local and in absence of any statutory provision the cognizance of such dispute has to be taken either by a hierarchy of ecclesiastical courts established in the country where the religious institutions are situated or by a statutory law framed by the Parliament. Admittedly no law in respect of Christian Churches has been framed, therefore, there is no statutory law.

Consequently any dispute in respect of religious office in respect of Christians is

also cognisable by the civil court. The submission that the Christians stand on a different footing than Hindus and Budhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Budhs, Jains or Parsee may be different but they are all citizens of one country which provides one and only one forum that is the civil court for adjudication of their rights, civil or of civil nature.

43. In reading Section 9 widely and construing it expansively the jurisdiction to entertain a suit for declaration whether the Church was episcopal or congregational and whether the appellants could have been ordained by the Patriarch when it was contrary to the earlier decision given by this Court that the ordination was required to be approved by Synod, the court is not being asked to adjudicate on faith but whether the exercise of right in respect of faith was valid. The Grace no doubt comes from Patriarch and on that there is no dispute but whether the Grace came in accordance with the Canon or the Constitution is certainly a matter which would fall within Section 9 C.P.C. Status and office are no doubt different but what was challenged is not the status or faith in Patriarch but the exercise of right by Patriarch which interfered with the Office of Cathelico held validly. Apart from it, as stated earlier, after coming into force of the Constitution Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the constitution is incapable of enforcement as there is no court which can take cognisance of it. There is yet another aspect of the matters that Section 9 debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted.

27. In the case of Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of U.P. and others reported in (1997)4 SCC 606, Hon"ble Supreme Court has held and observed in para 28 as under:-

28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Article 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices

and guaran-teed freedom of conscience to commune with his Cosmos/Creator and realise his spiritual: self. Sometimes. practices religious of secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the clock of constitutional protection

guaranteed by Article 25 and 26. One hinges upon constitutional religious model and another diametrically more On traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law: Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history Or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been there. One must get the knowledge just as the legislature gets it from experience and study arid reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be Considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion, It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion. Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral arid essential part of the religion and religious practice protected by Article 25 and 26 is the question? And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

28. In similar line, on the question of bar of civil Court jurisdiction, in the context of Sections 80 and 50 of the Act, learned advocate Mr. Vyas relied on two different judgments of Hon"ble Supreme Court. However, since reference is made to the above referred judgments, the observations made in the judgments relied on by Mr. Vyas are not required to be referred.

29. Thus, the rights claimed in the application are religious rights of civil nature for which process of Section 41A of the Act is not available. Simply because, a

prayer is made for proper maintenance of the property of the church, is not enough to bring the case within four corners of Section 41A of the Act especially when no pleadings are made in this regard. The Court, therefore, finds that the Assistant Charity Commissioner has exceeded his power and jurisdiction available under Section 41A of the Act in giving directions by the impugned order.

30. With the above conclusion, if the matter is further examined on the question as to whether the Assistant Charity Commissioner, Mumbai has jurisdiction to issue the impugned directions under Section 41A of the Act, the Court finds that the rights and the issues agitated by the applicants are in connection with and concerning only the church property at Vadodara. As per deeming fiction provided under Clause 4(b) of the Bombay Charity Commissioner (Regional Reorganization) Order, 1960, the trust shall be deemed to be registered without further inquiry in respect of the property of St. James Church, Vadodara in the State of Gujarat. Thus, for the church property at Vadodara, the trust is deemed to be registered in Gujarat. The application made under Section 41A of the Act was therefore in connection with the property of the trust within the State of Gujarat. To define the extent of jurisdiction of Charity Commissioner in State of Gujarat, amendment came to be made in Section 3 of the Act after

Reorganization Order and Act of 1960. Thus, by virtue of provision made in Section 3 of the Act, the Assistant Charity Commissioner, Mumbai lacked jurisdiction to entertain and decide application under Section 41A concerning the St. James Church property in State of Gujarat.

31. In the case of Nautam Prakash (supra), Hon"ble Supreme Court has held and observed in para 7 to 13, 16, 19, 20, 21,22,24 and 28 as under:-

7. The State of Gujarat was formed with effect from 1st May, 1960. However, immediately prior thereto, an Order known as the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960 was issued which came into force with effect from 28th April, 1960, the relevant provisions whereof are as under:-

"The Bombay Charity Commissioner (Regional Reorganisation) Order, 1960:

On the bifurcation of the former State of Bombay with effect from 1st May, 1960, the State of Gujarat and the State of Maharashtra, have their own Charity Organisations for public trusts within their respective States. In view of the bifurcation of the Bombay State, it was proposed to provide for the reorganization of such statutory corporate bodies into two intra-regional bodies before bifurcation of the State as also for distribution of their assets and liabilities etc., and allocation of their employees. By virtue of the Legal Department Order No. 12921/E, dated the 28th April, 1960, the Charity Commissioner, Bombay, a corporation sole, was reconstituted and reorganized so as to constitute a new corporation for Gujarat Region and to reconstitute the existing corporation to function for Maharashtra Region."

8. Clauses 4 (b) and (c), 5 and 6 (a) and (b) read thus:-

"4. Registration of public trusts where property or office is situate- In the case of a public trust duly registered under the Act before the appointed day, or deemed to be so registered, if, immediately before that day,-

(a)

(b) the trust property is situated partly in the Maharashtra region and partly in the Gujarat region, then in respect of so much of the said property as is situate in the Maharashtra region or the Gujarat region, the trust shall, whether the office for the administration of the trust is or is not situate in that region, be deemed to be so registered in that day without

further inquiry, charge or fee in the Maharashtra region or, as the case may be, the Gujarat region.

(c) The trust property is situate in the Maharashtra region and the office for the administration of the trust is situate in the Gujarat region or vice versa, then the trust shall be deemed to be so registered on that day without further inquiry, charge or fee in each of the two regions."

"5. Payment from Public Trusts Administration Fund of existing Corporation to new Corporation. - From the balance standing to the credit of the Public Trusts Administration Fund of the existing Corporation (including the investment made therefrom), immediately before the appointed day, and struck after taking into account all outstanding liabilities upto that date, there shall be paid to the new Corporation in respect of the Gujarat region an amount in the ratio in which the income from all sources including any sums specified in clauses (a) to (c) of sub-section (2) of Section 57 of the Act, court-fees and miscellaneous receipts other than deposits received in respect of that region during the period between the establishment of the Public Trusts Administration Fund for the first time under the Act and the 30th November, 1959, bears to the total income from those sources credited to that fund during the said period from the Maharashtra as well as Gujarat regions."

"6. Recovery of outstanding contributions and dues.- The right to recover contributions and other dues, payable before the appointed day in respect of any public trust but not recovered, shall belong-

(a) Where the trust under paragraph 4 is deemed to be registered exclusively in the Maharashtra or the Gujarat region, to the Corporation having jurisdiction over that region.

(b) Where the trust is deemed to be registered in both the regions, to the Corporation having jurisdiction over the region within which the Public Trusts Registration Office in which the trust was registered is, on that day, situate."

9. In the year 1961, despite the 1960 Act and 1960 Order, presumably, in view of the fact that one of the temples was situate in the State of Maharashtra, the appellant herein filed an application for registration thereof to the Assistant

Charity Commissioner, Bombay and the same was granted. The appellant indisputably also filed Statements of Accounts in respect of the said trust up to 1973 before the Maharashtra Charity Commissioner's office. It is not in dispute that the office of the trust had been situate in the State of Gujarat. In the meanwhile, having regard to the fact that the office of the trust was situate in the State of Gujarat, an application was filed for modification of the said scheme in the City Civil Court at Ahmedabad. A contention raised in the suit that the Courts of Gujarat had no jurisdiction was negatived. Ultimately, the

said scheme was modified by the Gujarat High Court by a judgment and Order dated 20th June, 1974, clause 30(c) of the Scheme as mentioned is as under:-

"30(c) The Board shall within nine months after the close of every financial year, prepare a balance sheet and the statement of income and expenditure for the said year and forward the same together with the Auditor's report to every person whose name is entered in the Voters' list and also to Acharya."

10. According to the appellant, the Trust had been rendering its accounts to the Assistant Charity Commissioner in Gujarat at Nadiad and had also been filing other documents and changed reports from time to time therein. Respondent No. 1 herein claiming himself to be a member of the trust, filed an application before the Assistant Charity Commissioner of Greater Bombay purportedly under Sections 41-A and 41-B of the Act praying, inter alia, for appointment of proper persons and trustees of the said trust.

11. By an order dated 31-12-2001, the said application was allowed. The Assistant Charity Commissioner in the said order directed:-

"1. The Application No. 5924/2000 is partly allowed.

2. The opponents are hereby directed to submit the audited statement of Account from years 1973 to 2001 within fortnight.

3. The opponents are further directed to submit the change report of changes occurred from time to time in trustees, properties etc. U/s. of the B.P.T. Act, 1950 within fortnight.

4. The opponents are further directed to take the steps for amendment of the scheme framed by Hon'ble High Court of Bombay, in Civil Application No. 690/1937."

12. A writ petition filed there against by the appellant herein was dismissed by the Bombay High Court by reason of the judgment impugned herein opining that as the appellant never challenged the vires of the provisions of the Act or the 1960 Order and having itself filed an application for registration and furthermore having filed the statement of accounts before Assistant Charity Commissioner after 1973, they have disentitled themselves from contending that the provisions of the Act, 1960 or the Order, 1960 are unconstitutional. The appellants are thus before us.

13. The short question which arises for consideration in this appeal is as to whether the Assistant Charity Commissioner, Greater Bombay had jurisdiction to interfere with the administration of the Appellant-trust.

16. The Assistant Charity Commissioner exercised his jurisdiction in terms of Section 41-A and 41-B of the Act.

19. The jurisdiction of the Assistant Commissioners of Greater Bombay and State of Gujarat is required to be determined primarily on a construction of Clauses 4(b) and 4(c) of the 1960 Order.

20. Indisputably, the office for administration of the trust is situate in the State of Gujarat i.e. Gujarat region. Only some properties of the trust are situate in the Maharashtra region. Clause 4(c) creates a legal fiction in terms whereof the trust shall be deemed to be registered in Gujarat region whereafter no other or further inquiry is required to be conducted. The trust was already registered having its office at Baroda. The said registration, therefore, continued to have force.

21. The trust has properties both in Maharashtra and Gujarat regions. In terms of clause 4(b) of the order, only so much of the property which was situate in the Maharashtra region would be deemed to be so registered in Bombay. The jurisdiction of the Assistant Charity Commissioner, Greater Bombay was, therefore, confined to only the property which was situate within the Maharashtra region.

22. The High Court, therefore, in our opinion, committed a manifest error insofar as it proceeded to hold that the appellants in view of their conduct could not question the jurisdiction of the Assistant Charity Commissioner of Bombay.

24. The Legislature of a State while enacting a law is required to maintain the territorial nexus . Only in certain cases, extra- territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Item 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the Legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the Legislature does not intend to exceed its jurisdiction. An Act relating to religious and charitable institutions would be presumed to be applicable only in respect of the properties or any part thereof situate in the State. The 1960 Act, however, makes the provisions explicit, clear and unambiguous. The property of the Trust situate within the Maharashtra region in terms of Clause 4(b) of the 1960 Order is to be deemed to be registered with the Charity Commissioner, Bombay. The said authority could thus have exercised its jurisdiction only in respect of that property. It had no jurisdiction in relation to the administration of the entire trust as the office of the trust is situate within the State of Gujarat. The Assistant Charity Commissioner, therefore, could not have issued any direction as prayed for in the application filed before it by the first respondent herein. A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same.

Any order which is passed by an authority which lacked inherent jurisdiction would be ultra vires . [See Kiran Singh and Ors. v. Chaman Paswan]

28. In the premises above-mentioned, the jurisdiction of the Charity Commissioner, Bombay must be held to be confined only to the management of the property situate within the State of Maharashtra and not in relation to the entire trust.

32. In the case on hand also, the grievance in the application is confined only to the church property at Vadodara. Since, there is no prayer for management of the properties of the trust situated within the State of Maharashtra, the Assistant Charity Commissioner, Mumbai has no jurisdiction to issue the impugned directions. As per the decision in Nautam Prakash (supra), only the Charity Commissioner in State of Gujarat will have jurisdiction to issue direction under Section 41A of the Act in connection with the Church property in State of Gujarat. Thus, the directions issued under Section 41A of the Act by the impugned order are without jurisdiction.

33. In view of the above, the impugned order passed by the Assistant Charity Commissioner is required to be quashed and set aside.

34. For the reasons stated above, the petition is allowed. Impugned order 4.7.2001 passed by the Assistant Charity Commissioner in Application No.6313 of 1997 is quashed and set aside. Rule is made absolute.

35. Since the main petition is disposed of, the Civil Applications do not survive. They are, therefore, disposed of.