

(2009) 12 BOM CK 0056

In the Bombay High Court

Case No : Second Appeal No. 116 of 1998 and Writ Petition No. 3749 of 2008

Shyamabai Joshi and Others

APPELLANT

Vs

Madan Mohan Mandir Sanstha a Public Trust by Trustee Bhaji
Kanj Ganatra
 Shri Raimalbua Sanstha -Trust Vs
Sumanbai Wankhade and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(13), 2(20)
Bombay Public Trusts Rules, 1951 — Rule 8
Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 129, 19(1)
Constitution of India, 1950 — Article 141
Societies Registration Act, 1860 — Section 6
Trusts Act, 1882 — Section 1, 19, 20, 47, 48

Citation : AIR 2010 Bom 88 : (2010) 1 ALLMR 648 : (2010) 1 BomCR 294 : (2011) 2 CHN 473 : (2011) 1 CTC 771 : (2010) 2 MhLj 476

Hon'ble Judges : Swatanter Kumar, C.J;P.B. Varale, J;D.D. Sinha, J

Bench : Full Bench

Advocate : J.T. Gilda and A.M. Gordey, for the Appellant; B.N. Mohta and S.D. Chopde, for the Respondent

Judgement

D.D. Sinha, J.—Heard Shri Gilda, learned Counsel for the appellants, and Shri Mohta, learned Counsel for the respondent in Second Appeal No. 116/1998, as well as Shri Gordey, learned Counsel for the petitioner and Shri Chopde, learned Counsel for the respondents in Writ Petition No. 3749/2008.

2. Justice A.B. Chaudhari in view of conflicting decisions of the learned Single Judges of this Court in the writ petitions thought it appropriate to refer the controversy in issue to the larger Bench and, therefore, vide order dated 6.8.2009 passed in Second Appeal No. 116/1998 referred the following questions for determination to the Full Bench:

(i) Whether Sections 47 and 48 of the Indian Trusts Act, 1882 are applicable to a

Public Trust and consequently, whether all the Trustees of such Public Trust are required to be joined as party to the suit for eviction of a tenant ?

(ii) Whether in the absence of registration of a public trust, in addition, under the Societies Registration Act, the provisions of Societies Act and Section 6 thereof, would apply to such a public trust on the strength of definition of Public Trust u/s 2(13) of the Bombay Public Trusts Act, 1950 ?

Similarly, Justice C.L. Pangarkar, in view of conflicting decisions, also referred following issues to the larger Bench for determination:

(1) Whether Section 47 of the Indian Trusts Act is applicable to a public trust and thus, limits the powers of the Board of Trustees to delegate their powers in regard to institution of suit for recovery of the trust property to one of their colleagues ?

(2) Whether therefore a suit instituted by one of the trustees for possession would be maintainable ?

(3) Whether by virtue of public trust being a society, a suit for recovery of property at the instance of the Chairman, President, Secretary of the public trust alone is maintainable u/s 6 of the Societies Registration Act ?

3. So far as reference made by Justice A.B. Chaudhari in second appeal as well as Justice C.L. Pangarkar in writ petition is concerned, the Trusts in question are the Public Trusts registered under the Bombay Public Trusts Act, 1950 and are not the Societies formed either for religious or charitable purpose or for both and are not registered under the Societies Registration Act, 1860.

4. The issues involved in both these references are related to questions of law and, therefore, Shri Gilda and Shri Gordey, learned Counsel for the appellants and petitioner, and Shri Mohta and Shri Chopde, learned Counsel for the respondents, advanced arguments on the legal aspects of the matters, which are, in nutshell, as follows:

The learned Counsel for the appellants and petitioner contended that in view of decision of the Apex Court in *Thayarammal (Dead) by Lr. Vs. Kanakammal and Others*, and decision of the Division Bench of this Court in *Controller of Estate Duty v. Mangala* 1982 Mh.L.J. 686 as well as another decision of this Court in *Sarda Education Trust Vs. Mukund Rambhau Pinjarkar, Prakash Sitaram Lokhe and The Maharashtra Revenue Tribunal*, , the provisions of the Indian Trusts Act, 1882 in general and Sections 47 and 48 in particular are not applicable to the public trusts. It was submitted by the learned Counsel for the appellants and petitioner that so far as question whether public trust being a society, a suit for recovery of property at the instance of Chairman, President or Secretary of the public trust alone is maintainable u/s 6 of the Societies Registration Act, 1860 is concerned, the trusts in question are the public trusts registered under the Bombay Public Trusts Act, 1950 and are not the societies registered under the Societies Registration , 1860 and, therefore, question of applicability of Section 6

of the Societies Registration Act, 1860 does not arise.

Shri Mohta and Shri Chopde, learned Counsel for the respondents, contended that decision of the Apex Court in the case of *Thayarammal* (cited supra) is not the law laid down by the Apex Court under Article 141 of the Constitution and it is only the solitary observation made by the Apex Court in the judgment, which does not have the binding effect and, therefore, law laid down by the Division Bench of this Court in the case of *Sarda Education Trust* (cited supra) on the basis of decision of the Apex Court in the case of *Thayarammal* (cited supra) by ignoring the law laid down by the Full Bench of Gujarat High Court in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, is also not a good law on the subject and the law laid down by the Full Bench of Gujarat High Court on the subject is holding the field as on today and needs to be followed.

5. The issues under reference to be determined by the Full Bench are purely legal in nature and need to be decided in view of law laid down by the Apex Court and High Courts and, therefore, it is not necessary to state the facts involved in the matters, which are pending before learned Single Judges. Similarly, apart from the above referred contentions canvassed by the respective Counsel for the parties, other aspects, which were placed before us by them will be dealt with at the appropriate stage of the judgment.

The learned Counsel for the appellants and petitioner are claiming that so far as applicability of provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 to the public trusts is concerned, it is no more *res integra* and is already concluded by the decisions of the Apex Court and Division Bench of this Court whereas the learned Counsel for the respondents are claiming otherwise and, therefore, it would be appropriate to scrutinise the judgment of Division Bench of this Court as well as Apex Court in *Sarda Education Trust* (cited supra) and *Thayarammal* (cited supra) respectively.

6. The Division Bench of this Court in the case of *Sarda Education Trust* while hearing the letters patent appeal against the order of the learned Single Judge of this Court was faced with the factual and legal aspect, which was similar to the issues under reference. The facts, which had given rise for filing of letters patent appeal were as follows:

The appellant *Sarda Education Sanstha* owned field Survey No. 19 of village *Wadali*, Tahsil *Daryapur*, District *Amravati*. 12.20 acres of land out of the said survey number was in the possession of tenant *Sitaram*, who surrendered 8.20 acres in favour of appellant Trust by executing Deed of Relinquishment on 17.7.1970 and retained 4 acres of land for himself as tenant. According to the appellant Trust, in the year 1997-98, he inducted respondent No. 1 *Mukund* (original respondent No. 1) as sub-tenant. *Sitaram* expired and, therefore, his legal representative was brought on record. The appellant Trust, which was granted exemption u/s 129 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, filed an application u/s 19(1)(d) of the said Act for

recovery of possession of 4 acres of land, which was with Mukund on the ground that original tenant Sitaram sublet the said land to him, which was not permissible and also failed to cultivate the same personally. The said application was filed on 1.10.1983. The Tahsildar held in favour of appellant vide order dated 31.1.1986. The tenant filed an appeal, which was rejected by the Sub-Divisional Officer vide order dated 20.2.1986. The revision was also dismissed by the Maharashtra Revenue Tribunal on 30.9.1988. The review, which was sought by tenant Mukund also came to be dismissed vide order dated 20.7.1989. Aggrieved by the orders passed by the Revenue Authorities, Mukund filed writ petition before this Court. The learned Single Judge of this Court relying on the decision in the case of Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, held that provisions of Sections 47 and 48 of Indian Trusts Act, 1882 and the principle embodied in those Sections must apply to the public, religious and charitable Trusts under the Bombay Public Trusts Act and, therefore, finally concluded that it was necessary to go into the question whether the delegation in favour of the Secretary of the Trust to initiate proceedings was legal, proper and covered by the provisions of Section 47 of the Indian Trusts Act or not. The learned Single Judge set aside the orders impugned in the writ petition and remanded the matter back to the Tahsildar, Anjangaon to decide the application afresh in accordance with law.

The Division Bench of this Court after taking into consideration the pros and cons as well as preamble and Section 1 of the Indian Trusts Act, 1882 as well as decision of the Apex Court in the case of Thayarammal (cited supra) held that provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 are not attracted and resolution passed even after the action of eviction was initiated by all the Trustees authorizing one of them to recover the possession of land from the tenant has been held to be a sustainable action in law.

7. At the outset we would like to express that when the judgment of the Division Bench of this Court in the case of Sarda Education Trust (cited supra) was holding field and was in force, there was no occasion for making a reference to the larger Bench for determining the issue about applicability of the provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 in respect of action initiated by one of the Trustees of the Public Trust for eviction since decision of the Division Bench is binding on the learned Single Judge. It is pertinent to note that the judgment of the Division Bench of this Court was based on the decision of the Apex Court in case of Thayarammal (cited supra). It is not in dispute that there was no other Division Bench decision in conflict with the Division Bench decision rendered in the case of Sarda Education Trust and in absence thereof, there was no occasion for the learned Single Judges for making reference to the larger Bench in respect of issues on which there was no difference of opinion expressed by the other Division Benches of this Court.

8. There is another aspect, which we cannot lose sight of. The decision of the Division Bench in the case of Sarda Education Trust is based on the Supreme

Courts decision in the case of *Thayarammal* (cited *supra*). The Supreme Court in para (15) of the said decision has observed thus:

15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as Dharamchatra meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict sense is neither a gift as understood in the Transfer of Property Act, which requires an acceptance by the donee of the property donated nor is it a trust. The Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or charitable purposes is neither a gift nor a trust in the strict legal sense. (See B.K. Mukherjea on Hindu Law of Religious and Charitable Trusts, 5th Edn. By A.C. Sen, pp. 102-103).

The above referred observations of the Apex Court clearly demonstrate that the Apex Court has considered the preamble and contents of the Indian Public Trusts Act and since the language of the preamble and provisions of Indian Public Trust Act being straightforward and unambiguous and is capable of conveying the intention of Legislature, concluded that the provisions of Indian Trusts Act are applicable only to private Trusts and not the public Trusts. The preamble of the Indian Trusts Act clearly shows that the Indian Trusts Act was enacted by the Parliament to define and amend the law relating to private Trusts and Trustees and the provisions of this Act have no application so far as public trust is concerned.

9. It is well settled that when language of the substantive provisions of the enactment is unambiguous and capable of conveying real and factual intention of the Legislature and the preamble as well as statement of objects and reasons of the statute make it implicitly clear the intention of the Legislature on the face of it, in that event, it is necessary to interpret the statute by giving the natural meaning reflected therein. In the instant case, provision of Section 1 of the Indian Trusts Act stipulates that though the provisions of the Act are extended to the whole of India except State of Jammu and Kashmir and Andaman and Nicobar islands, however, it is made clear that no provision of the Act will affect the rules of Muhammadan law as to Wakf or the mutual relations of the members of an undivided family as determined by any customary or personal law or to the public or private religious and charitable endowments. Section 1, therefore, in no uncertain terms excludes applicability of the provisions of Indian Trusts Act to the public trusts. It is no doubt true that Bombay Public Trusts Act, 1950 came into force at later in point of time. However, that does not mean that the provisions of the earlier Act can be picked up as and when it is convenient to do so. It is well settled that provisions of the earlier Act can be read in subsequent Act only when the Legislature comes up with proper legislation, i.e. legislation by adoption, legislation by reference or legislation by incorporation or by amending the Acts. It is not the job of the Court to read the provisions of one Act into another by adopting one of these methods since it is for the Parliament or the State

Legislature to undertake this exercise and come up with appropriate legislation. The Courts interpret laws and do not legislate any. It is from this perspective also, applying the provisions of Sections 47 and 48 of the Indian Trusts Act to the public Trusts without there being any legislation to that effect evolved by the Parliament or State Legislature, in our view, would be impermissible and more so because the Supreme Court also endorsed its seal of approval by holding that provisions of the Indian Trusts Act are applicable only to the private Trusts and not to the public Trusts in the case of *Thayarammal* (cited supra).

10. It is no doubt true that Full Bench of Gujarat High Court in the case of *Atmaram Ranchhodbhai* (cited supra) after placing reliance on the decision of the Supreme Court in *Sheikh Abdul Kayum Vs. Mulla Alibhai*, , in para 8, has observed thus:

8. It is, therefore, clear that one co-trustee cannot give notice to quit determining the tenancy. The decision to determine the tenancy by giving notice to quit must be taken by all co-trustees unless, of course, the instrument of trust otherwise provides, or the beneficiaries being competent to contract consent, or in any particular case it is established that on the peculiar facts obtaining in that case, the delegation of the power to determine the tenancy was necessary. But when we say that the tenancy must be determined by all co-trustees, we must make it clear that what we mean is that the decision to terminate the tenancy must be taken by all the co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees.

However, it is important and relevant to consider what Apex Court has observed in para (17) of its judgment in the case of *Sheikh Abdul Kayum and Ors.* (cited supra), which reads thus:

(17) It is true that Section 1 of the Indian Trusts Act makes provisions of the Act inapplicable to public or private religious or charitable endowments and so, these sections may not in terms apply to the trust now in question. These sections, however, embody nothing more or less than the principles which have been applied to all trusts in all countries. The principle of the rule against delegation with which we are concerned in the present case is clear : a fiduciary relationship having been created, it is against the interests of society in general that such relationship should be allowed to be terminated unilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from delegation in the regular course of business, that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs.

The above referred observations of the Apex Court in no uncertain terms convey

that provisions of the Indian Trusts Act, 1882 do not apply to the public trusts. The Full Bench of Gujarat High Court in the case of Atmaram Ranchhodbhai (cited supra) relied on the decision of the Apex Court in the case of Sheikh Abdul Kayum and Ors. (cited supra) wherein the Apex Court has observed that Section 1 of the Indian Trusts Act makes provisions of the Act inapplicable to the public or private religious or charitable endowments and so these Sections may not in terms apply to the trust in question, which is consistent with the law laid down by the Apex Court in the case of Thayarammal (cited supra) on the subject. It is also not in dispute that neither the Parliament nor State Legislature has evolved any legislation either by incorporation, reference or adoption whereby any specific provision of either Act can be read in other Act. So far as Section 2(20) of the Bombay Public Trusts Act, 1950 is concerned, it reads thus:

(20) Words and expressions used, but not defined in this Act and defined in Indian Trusts Act, 1882 shall have the meanings assigned to them in that Act.

In order to attract the provisions of this Section, it is necessary that:

(a) there must be a word or expression used in the Bombay Public Trusts Act, 1950, but not defined by it, and

(b) such word or expression has been defined by the Indian Trusts Act, 1882.

When the Act defines a word and that word is used in the rule framed under the powers conferred by that Act, then that word must carry the same meaning, which is assigned to it in the definition unless the subject or context necessarily implies otherwise. The provisions of Section 2(20) do not imply that the provisions of Indian Trusts Act, 1882 relating to creation of trust, appointment of trustees, their powers, duties, responsibilities, etc. will apply to the Bombay Public Trusts Act, 1950. The provision of Section 2(20) of the Bombay Public Trusts Act, 1950, which stipulates that words and expressions used, but not defined in this Act and defined in Indian Trusts Act, 1882 shall have the meanings assigned to them in that Act, is a legislative device generally adopted for the sake of brevity. However, so far as applicability of the provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 to the public trusts is concerned, there is no such legislation evolved by the Legislature in particular or in general and incorporated in the Bombay Public Trusts Act, 1950 so that the provisions of the Indian Trusts Act, 1882 can be read in Bombay Public Trusts Act, 1950. On the other hand, the Preamble and provision of Section 1 of Indian Trusts Act, 1882 are otherwise. Even otherwise, the Apex Court in the case of Thayarammal (cited supra) has specifically held that the provisions of Indian Trusts Act, 1882 are not applicable to the public trusts and are applicable to the private trusts only. This being the law declared by the Apex Court under Article 141 of the Constitution, is law of land.

11. The legislation by incorporation is a common legislative device where Legislature for the sake of convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of verbatim reproducing

the provisions which it desires to adopt in another statute. Once incorporation is made, the provisions incorporated become an integral part of the statute in which it is transposed and thereafter there is no need to refer the statute from which incorporation is made and any subsequent amendment made in it or even if it is totally repealed has no effect on the incorporating statute. On the contrary, in case of mere reference or citation, a modification/repeal or amendment of statute that is referred, will also have an effect on the statute in which it is referred. Unless different intention clearly appears, the reference would be construed as reference to the provisions as may be in force from time to time in the former statute. Since we are not required to deal with the issue about which legislation the appropriate Government would have evolved, we do not propose to express any opinion in this regard. We would only like to express that as per the principles of statutory interpretation, if the language of the substantive provisions of the Act is completely unambiguous and is capable of conveying intention of the Legislature, the Court will have to give the said natural meaning to such provisions while interpreting such statute. Even otherwise, if language of the statute is ambiguous, while construing such statute, regard must be had to the preamble and other provisions of the statute. Hence, when we look at the issue in question from any angle, the irresistible conclusion is that provisions of Sections 47 and 48 of the Indian Trusts Act cannot be made applicable to the public trusts. The observations made by the Apex Court in para (31) of its judgment in Nagpur Improvement Trust v. Vasantrao and Ors. 2002 (4) ALL MR 905 (SC) read thus:

31. We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the Land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

By the above referred observations, the Apex Court once again made it clear that incorporation of the earlier Act into later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into later Act. However, it is the job of the Legislature and it is only after such exercise is undertaken by the Legislature, it will be possible to read the provisions of one Act into another. At the cost of repetition, we want to express that preamble of the Indian Trust Act, 1882 is crystal clear and in no uncertain terms conveys that the said Act came into force to define and amend the law relating to private trusts and trustees only. The definition clause excludes public and private religious and charitable endowments from its application and, therefore, the Apex Court in para (15) of its judgment in the case of *Thayarammal* (cited *supra*) has observed that the Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts.

12. The Division Bench of this Court in case of *Sarda Education Trust* (cited *supra*) considered preamble and Section 1 of the Indian Trusts Act, 1882 as well as law laid down by the Apex Court in the case of *Thayarammal* and observed that provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 were/are not applicable to the public trusts. The Apex Court in para (17) of its judgment in the case of *Sheikh Abdul Kayum and Ors.* (cited *supra*) has observed that Section 1 of the Indian Trusts Act, 1882 makes provisions of the Act inapplicable to the public or private religious or charitable endowments and so these Sections may not in terms apply to the trust in question. It is in the backdrop of this legal position, there was no occasion for the learned Single Judges to refer the question about applicability of provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 to the Full Bench. The relevant observations of the Apex Court in para (15) of its judgment in *Chandramohan Pandurang Kajbaje v. State of Maharashtra and Ors.* 2008 (2) AIR Bom R 126 read thus:

It appears that both the *Makasis* case and *Kajbajes* case (*supra*) were brought to the notice of the Division Bench of the High Court, but we notice with dismay that the High Court has brushed aside the judgment of the Supreme Court on the ground that the said observations of the Supreme Court are only an obiter dicta and they cannot be treated as ratio decidendi. It is most unfortunate. The High Court has failed to take note of the fact that a direction was issued by this Court. A direction issued by this Court cannot be treated as `obiter dicta. It appears that the High Court did not care to read the judgment of this Court in between the lines in *Makasis* case followed by *Kajbajes* case. This is where the High Court went wrong creating multiplicity of litigation instead of giving a quietus to the litigation.

13. The Apex Court after taking into consideration the preamble as well as provisions of Section 1 of the Indian Trusts Act has specifically observed in its judgment in the case of *Thayarammal* (cited *supra*) that the provisions of the Indian Trusts Act, 1882 are applicable only to the private trusts and not to the

public trusts. The Division Bench of this Court in view of this legal position decided the letters patent appeal by declaring similar law on the subject as declared by the Apex Court. The law declared by the Apex Court for the reasons stated hereinabove, is the law under Article 141 of the Constitution and, therefore, is the law of the land and binding on everybody including all the Courts and, therefore, Full Bench of Gujarat High Court is no exception. Even otherwise, the Full Bench of Gujarat High Court declared the law on the subject based on the decision of the Apex Court in Sheikh Abdul Kayum and Ors. (cited supra) and the Apex Court in para (17) of the said judgment has in fact observed that Section 1 of the Indian Trusts Act, 1882 makes provisions of the said Act inapplicable to the public or private religious or charitable endowments and so these Sections may not in terms apply to the Trust in question. Similarly, we want to observe that the decision of the Division Bench of this Court in the case of Sarda Education Trust (cited supra) is on the point of issue in question, which is based on the decision of the Apex Court in the case of Thayarammal (cited supra).

14. So far as decision of the Apex Court in the case of State of U.P. Vs. Bansi Dhar and Others, is concerned, in para (18), the Apex Court has observed thus:

18. The principles relevant for our case may now be considered. Was the contribution of Rs. 30,000/-for a charitable purpose ? Lord Sterndale, M.R. said in the Court of Appeal in *In re Tetley*, (1923) 1 Ch 258 at p. 266:

I ... am unable to find any principle which will guide one easily, and safely, through the tangle of the cases as to what is and what is not a charitable gift. If it is possible I hope sincerely that at some time or other a principle will be laid down. The whole subject is in an artificial atmosphere altogether.

While in India we shall not be hide-bound by English decisions on this point, luckily both sides agree here and that accords with the sense of the law that a hospital for women is a charitable object, being for medical relief. Moreover, the beneficiaries are a section of the public, women that still silent, suffering half of Indian humanity. Therefore, this element connotes a public trust. The next question is whether the Indian Trusts Act, 1882, applies to the present case. The Courts below have argued themselves into an application of Section 83 of the Trusts Act. Sri Dixit rightly objects to this course because that Act relates only to private trusts, public charitable trusts having been expressly excluded from its ambit. But while these provisions *proprio vigore* do not apply, certainly there is a common area of legal principles which covers all trusts, private and public, and merely because they find a place in the Trusts Act, they cannot become 'untouchable' where public trusts are involved. Care must certainly be exercised not to import by analogy what is not germane to the general law of trusts, but we need have no inhibitions in administering the law by invoking the universal rules of equity and good conscience upheld by the English Judges, though also sanctified by the statute relating to private trusts. The Courts below have drawn inspiration from Section 83 of the Trusts Act and we are not inclined to find fault

with them on that score because the provision merely reflects a rule of good conscience and of general application. The details of the argument on the basis of this principle will be discussed a little later.

The careful reading of the above observations of the Apex Court shows that it has given a note of caution that care must be taken not to import any analogy, which is not germane to the general law of the trusts and it is in the light of these observations, the recent decision of the Apex Court in the case of *Thayarammal* (cited *supra*) assumes importance, which has been rendered by the Apex Court keeping in view the preamble and provisions of the Indian Trusts Act and held that it is applicable only to the private trusts and not to the public trusts. The Apex Court has rendered decision in the case of *State of Uttar Pradesh* (cited *supra*) in the peculiar facts and circumstances of that case and it does not affect the binding nature of law laid down by the Apex Court in the case of *Thayarammal* since it is the direct decision on the subject. It is in this factual and legal background, we answer the question about applicability of provisions of Sections 47 and 48 of the Indian Trusts Act, 1882 to the public trusts in negative.

15. So far as the second question referred to the Full Bench by Justice A. B. Chaudhari is concerned, we propose to consider the provision of Section 2(13) of the Bombay Public Trusts Act, 1950, which is in two parts. The first part of the provision defines a Public Trust and the second part deals with the Society formed either for religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.

16. The Bombay Public Trusts Act, 1950 is intended to regulate and make better provision for administration of public, religious and charitable trusts in the State of Maharashtra. To carry out effectively its objects, the Bombay Public Trusts Act, 1950 creates for the first time unified and special provisions to deal with the charity matters. It applies to all the public trusts. The definition of Public Trust has been widened so as to include the Societies registered under the Societies Registration Act, 1860 and Dharmada which were not included earlier, however, it does not get the status of public trust being included in the definition of public trust u/s 2(13) of the Bombay Public Trusts Act, 1950.

17. The first part of Section 2(13) deals with definition of public trust which means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment. The first part of the provision which defines a public trust ends here. The first part of the provision only deals with definition of Public Trust. It is completely distinct and different than the second part of provision of Section 2(13) which deals with the Societies formed either for religious or charitable purpose or both and registered under the Societies Registration Act. The first part and the second part of the provision are separated by the word and. Since the first and the second part of the provision though deal with the object relating to religious and charitable purpose, however, each one of

them is a creature of different statute and is governed by the different provisions of laws, though included in the definition of public trust mentioned in Section 2(13) of the Bombay Public Trusts Act, 1950. Therefore, the word and will have to be read with due regard to the provisions of different laws and will have to be read in the context of those statutes having regard to the scheme of the provisions of Section 2(13) of the Bombay Public Trusts Act, 1950 as well as legislative intent. Having considered these aspects, the word and used in Section 2(13) is in disjunctive sense and not in conjunctive sense and, therefore, first part of the provision, which deals with definition of public trust is independent and is governed by the provisions of the Bombay Public Trusts Act, 1950 and has nothing to do with the second part of the provision, which relates to the Societies Registration Act, 1860. In other words, so far as public trust defined in the first part of the provision is concerned, the provisions of Societies Registration Act, 1860 are neither attracted nor have any application. It is, therefore, not the requirement of Section 2(13) of the Bombay Public Trusts Act, 1950 that the public trust should be registered under the provisions of Societies Registration Act, 1860.

18. In other words, a society formed for religious or charitable purpose or for both and registered under the Societies Registration Act, 1860 mentioned in the latter part of the definition clause of Section 2(13) of the Bombay Public Trusts Act, 1950 by itself will not get the status of public trust within the meaning of Section 2(13) of the Bombay Public Trusts Act, 1950 unless it receives a certificate under Rule 8 of the Bombay Public Trusts Rules, 1951. However, since the word and is used in the disjunctive sense, public trust is not required to be registered under the provisions of Societies Registration Act, 1860. The learned Single Judge of this Court in para (9) of the judgment in the case of Suresh Ramniwar Mantri and Anr. v. Mohd. Iftequarodd in Suresh Mantri and another Vs. Mohd. Iftequaroddin, has observed thus:

9.... It is, therefore, clear that a society registered under the Societies Registration Act will come within the ambit of the term Public Trust only after it has received a certificate of registration under Rule 8 of the Bombay Public Trusts Rules, 1951, on completion of the enquiry u/s 19 and an order is passed u/s 20 of the Trusts Act....

We, therefore, answer the second question referred to us by Justice A.B. Chaudhari in negative.

19. Justice C.L. Pangarkar has referred three questions to the Full Bench for determination, out of which we have already answered question No. 1 by holding that the provisions of Section 47 of the Indian Trusts Act, 1882 are not applicable to the public trust.

20. So far as the second question referred to us by Justice C.L. Pangarkar is concerned, it will be appropriate to reproduce the observations of the Apex Court in para 29 of the judgment in the case of J.P. Srivastava and Sons Pvt. Ltd. and

Others Vs. Gwalior Sugar Co. Ltd. and Others, , which are as follows:

29. Therefore, although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the trust deed allows the trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business, (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly.

The above observations of the Apex Court clearly demonstrate that as a general rule, the trustees must execute duties of their office jointly. However, this general rule is not without exceptions and those exceptions as mentioned by the Apex Court are : where one of the trustees can act upon the decision taken by the majority of the trustees, or by express sanction or approval by the co-trustees, or where the beneficiaries competent to contract consent to the delegation, or where the delegation to a co-trustee is in regular course of business or where the co-trustee merely gives effect to the decision taken by the trustees jointly. It is in the light of the law laid down by the Apex Court, the question No. 2 referred to us by Justice C.L. Pangarkar will have to be decided by the learned Single Judge on the facts and circumstances of the case.

21. So far as the third question referred to the Full Bench by Justice C. L. Pangarkar is concerned, Shri Gordey, learned Counsel for the petitioner, submitted that the petitioner is a public trust and not the society registered under the Societies Registration Act, 1860 and, therefore, question of application of Section 6 of the Societies Registration Act, 1860 does not arise. A Society registered under the Societies Registration Act, 1860 is governed by the provisions of Societies Registration Act, 1860 for all practical purposes. Society formed either for religious or charitable purposes or for both and registered under the Societies Registration Act, 1860 which is included in the definition of public trust u/s 2(13) of the Bombay Public Trusts Act, 1950 will come within the ambit of term public trust only after it has received a certificate of registration under Rule 8 of the Bombay Public Trusts Rules, 1951. Once it receives a Certificate under Rule 8, then such Society gets a status of public trust for all practical purposes. In view of the contentions canvassed by Shri Gordey, learned Counsel for the petitioner, question whether by virtue of public trust being a society, a suit for recovery of property at the instance of Chairman, President or Secretary of the public trust alone is maintainable u/s 6 of the Societies Registration Act, 1860 does not arise for consideration before the learned Single Judge nor there is any conflict of opinion expressed in this regard by other learned Single Judges.

22. We answer the references in the above terms. The record and proceedings be remitted back to the learned Single Judges for disposal of the second appeal and

writ petition accordingly.