

(2007) 11 BOM CK 0041

In the Bombay High Court

Case No : First Appeal No's. 272 and 299 of 2006

Vasantrao Mane and Others

APPELLANT

Vs

Apparao Sidore and Others
 Apparao Shidore and
Others Vs Vasantrao Mane and Others

RESPONDENT

Date of Decision : 19-11-2007

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(10), 40, 41, 41D, 47
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, Order 41 Rule 27

Citation : (2008) 2 ALLMR 95 : (2008) 2 BomCR 662 : (2007) 109 BOMLR
2787 : (2008) 3 MhLj 242

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.S. Jadhavar and R.N. Dhorde, for the Appellant; V.D. Gunale, for
respondent Nos. 1, 3 to 5, 9, 11, A.V. Patil and 13 and S.S. Jadhavar, for
respondent Nos. 1, 2, 5, for the Respondent

Judgement

V.R. Kingaonkar, J.—By this common Judgment both the abovementioned appeals are being disposed of together inasmuch as they arise out of same Judgment rendered by learned 1st Ad-hoc Additional District Judge, Osmanabad in proceedings u/s 72(2) of the Bombay Public Trusts Act, 1950 (For short, the B.P.T.Act), bearing Misc.C.A. No. 102 of 2005. Though the appeals were registered as First Appeals, yet they are treated as Second Appeals in view of Shivprasad Shankarlal Pardeshi since deceased by heirs Shrikant Shivprasad and Ors. v. Leelabai Badrinarayan Kalwar since deceased by her heirs and Ors. 1998 (1) M.L.J.444.

2. Ashta Shikshan Sanstha, Ashta (Kasar), is a registered society and Trust. Somewhere in 1965, few founder members formed the educational trust. A scheme was settled for administration of the trust at the time of registration of the trust. The said scheme settled on 29.8.1965 was operative until framing of impugned scheme by the Assistant Charity Commissioner as per his order dated 18.1.2000. There were seven Trustees, who were appointed as first Board of

Trustees/Managing Committee. They comprised of a group headed by President Narsing Apparao Balsure and Shivmurtiappa Mahadappa Phundipalle as Vice President and Dattatraya Narayanrao Chaudhari as Secretary. The Managing Committee was empowered to admit new members. It appears that before framing of the new scheme, as per impugned order rendered by the Assistant Charity Commissioner, there were approximately 150 members of the educational trust.

3. An application (Enquiry Appl.No. 118/1992) was filed by three applicants seeking framing of a new scheme u/s 50A(1) of the B.P.T.Act. for proper management and administration of the trust. The learned Assistant Charity Commissioner held that there was no necessity to frame a new scheme for proper administration and management of the trust. The learned Assistant Charity Commissioner further held that the original applicants in the said proceedings were not entitled to file the application inasmuch as they were not members of the trust. They were held ineligible to move an application for framing of a new scheme. The application was dismissed. The decision became final as the District Court also confirmed the dismissal in an appeal.

4. There were proceedings held before the Joint Charity Commissioner, Aurangabad in an application (Misc.Appl.No. 2/1992) seeking removal of all the trustees from Managing Committee. The Joint Charity Commissioner held that one of the Managing Trustee, viz. Dattatraya Chaudhari alienated a piece of agricultural land owned by the trust without prior permission of the Joint Commissioner and entered into compromise in a Civil Suit (RCS No. 288/1993) with a view to cause wrongful loss to the Trust property. The Joint Charity Commissioner held that all the managing trustees mismanaged the administration of the trust and were guilty of committing misfeasance or malfeasance. So, they were removed in the exercise of powers u/s 41(d) of the B.P.T.Act. The order was challenged by the concerned trustees in proceedings u/s 72 of the B.P.T.Act (Misc.Appl.No. 103/2005). The learned Ist Ad-hoc Additional District Judge dismissed the application appeal by order dated 6.2.2006. A Second Appeal (S.A.No. 191/2007) is filed against the said Judgment and Order, which is pending in this Court.

5. By filing an application, u/s 50A(1) of the B.P.T.Act, one Apparao Saibanna Shidore and Virsangappa Sharnappa Alange again sought framing of scheme for the educational trust in question. Their application (Enq.Appl.No. 140/1999) was founded on allegation that the existing scheme of the trust was insufficient for proper management of the trust. They asserted that the erstwhile trustees did not make efforts to amend the Constitution and the scheme of the trust so as to make it viable for effective administration of the trust. The trustees had mismanaged the affairs of the trust and, therefore, respondent -Kantrao Vitthalrao Somwanshi was appointed as Administrator for management of the trust as per order dated 20.6.1996 rendered by the High Court. They contended that amendments were necessary in the existing scheme. They also filed a draft

scheme. They asserted that they were members of the trust. They further urged to appoint first Board of Trustees under the proposed scheme and also filed consent letters alongwith Bio-data of persons willing to be appointed as such.

6. A group of the trustees (Original opponent Nos. 2 to 8) resisted the application. They contended that the applicants had no locus standi to file the application inasmuch as they were not members of the trust and have no legal right to seek framing of a new scheme. They asserted that when similar request in the previous proceedings of Enquiry Application No. 118 of 1992 was rejected, it would not be open to reconsider identical application. They further submitted that the proposed scheme was not at all needed and there was no exigency shown to change the existing scheme.

7. The learned Assistant Charity Commissioner held that original applicants Apparao and Virsangappa were members of the trust and were entitled to ask for framing of a new scheme. He held that it was just and necessary to frame a new scheme for better and efficient management of the trust. He approved the amended scheme as shown vide Annexure "A" appended to his Judgment. He further held that appointment of managing committee of Trustees was required to be made. Accordingly, he approved the scheme and appointed managing trustees under the scheme with direction that the management, movable and immovable properties and the affairs of the trust shall be handed over to the first Board of Trustees appointed under the new scheme.

8. Original opponent Nos. 2 to 8 preferred an application (Misc.A.No. 102/2005) against abovementioned order rendered by the Assistant Charity Commissioner. They contended that original applicants were not members of the trust and had no locus to file the application. They asserted that the scheme was not necessary and was wrongly framed by the learned Assistant Charity Commissioner without any substantial reason. They contended that since 1965, the existing scheme was being usefully operated and there was nothing seriously wrong with it. They contended that a new scheme could not have been framed without joining the trust in the said proceedings before the Assistant Charity Commissioner.

9. The learned 1st Ad-hoc Additional District Judge partly allowed the application/appeal and was pleased to set aside the new scheme framed by the Assistant Charity Commissioner. The learned 1st Ad-hoc Additional District Judge remanded the matter to the Assistant Charity Commissioner for afresh hearing with direction to hear all members, beneficiaries and interested parties prior to preparation of a fresh scheme. The learned 1st Ad-hoc Additional District Judge held that certain more additions, including various duties of the trustees and other ancillary suggestions, need to be incorporated in the new scheme, for better management of the trust. The learned 1st Ad-hoc Additional District Judge directed that the committee of trustees, who were in charge of the management, shall continue to hold the reins until a new scheme would be prepared.

10. The original applicants alongwith some members of the newly appointed

trustees preferred appeal bearing F.A.No. 272 of 2006. Whereas, original opponent Nos. 2 to 8 have preferred an appeal bearing F.A.No. 299 of 2006 being aggrieved by the order to continue the appointed Board of trustees and again to conduct exercise of framing afresh scheme in accordance with additions recommended by the learned 1st Ad-hoc Additional District Judge. They impugn both the Judgments i.e. of Assistant Charity Commissioner and 1st Ad-hoc Additional District Judge whereby, new scheme is directed to be framed in the exercise of powers u/s 50A(1) of the B.P.T.Act. According to original applicants and other appellants in F.A.No. 272 of 2006, there was no need to remand the matter because the scheme framed by the Assistant Charity Commissioner was workable and proper.

11. An application is filed by third parties (C.A.No. 8246 of 2007) allowing their impleadment as intervenors in both the appeals. They desired to participate in the hearing of the appeal in order to clarify the direction No. 4 of the learned first Ad-hoc Additional District Judge regarding continuation of the first Board of Trustees appointed under the proposed new scheme. They were not impleaded in these appeals. However, their Advocate Mr.Deo was heard.

12. Mr.Jadhavar, learned Advocate appearing for the original opponent Nos. 2 to 8/appellants in F.A.No. 299 of 2006, strenuously argued that the application could not have been entertained because the original applicants were not members of the trust. He pointed out that the first appellate Court came to the conclusion that the original applicants were not members of the trust. He contended that provisions of Section 2(10)(d) of the B.P.T. Act are not properly considered by both the Courts below. Mr.Jadhavar would submit that a third party cannot move an application for framing of scheme only on the ground that he is an interested person and none else than Member of the trust is entitled to file such application. He would further submit that the dismissal of previous application (Enq.Appl.No. 118 of 1992) should have been considered as res judicata. He contended that those applicants of the previous application (Enq.Appl.No. 118 of 1992) are now so-called intervenors and they managed to file the subsequent application for the very same purpose, which was earlier frustrated by the competent authority. He argued that the subsequent second application is yet another attempt made by the new members to take over management of the trust unlawfully. He would submit that though the previous managing trustees were removed in separate proceedings u/s 41D of the B.P.T.Act, yet there were other 140 members available from whom the Managing Committee could have been elected by holding elections. He contended that the Assistant Charity Commissioner had no legal authority and power to appoint members of the first Board of Trustees. He argued that without real and substantial need for framing of a scheme, the impugned orders ought not to have been rendered by the learned Assistant Charity Commissioner and learned 1st Ad-hoc Additional District Judge. He would submit that the impugned scheme framed by the learned Assistant Charity Commissioner would show that there are small and insignificant changes suggested in the old scheme. He argued that the

learned Assistant Charity Commissioner failed to consider the fact that vague averments were made in the application and no case was made out, in fact, which necessitated framing of a new scheme. He urged, therefore, to set aside the impugned Judgment of the learned 1st Ad-hoc Additional District Judge and that of the Assistant Charity Commissioner and direct dismissal of the original application. Per contra, Mr.Dhorde, learned Advocate appearing for the appellants in F.A.No. 272 of 2006, would submit that there was no need to remand the matter for afresh hearing and the scheme framed by the learned Assistant Charity Commissioner was quite sustainable. He would submit that the learned 1st Ad-hoc Additional District Judge made unnecessary recommendations for additions of various appendages to the scheme without any substantial reason. He argued that the 1st Ad-hoc Additional District Judge, being appellate authority, should not have remanded the matter only for the reason that some Sections of the B.P.T. Act and provision regarding arbitration clause was thought to be necessary as part of the scheme. He would submit that the original opponent Nos. 2 to 8 cannot challenge the scheme because they did not object to frame a new scheme.

13. Mr.Gunale, learned Advocate appearing for the respondents in F.A.No. 299 of 2006 supported argument of Mr.Dhorde. He pointed out that seven Managing trustees were suspended in 1988 and were removed in 1991 and, therefore, he contended that the old scheme had become outdated. He contended that the original applicants were admitted as members in 1992 and were, therefore, legally entitled to file application for framing of a new scheme. He would submit that when the previous trustees had failed to hold elections and mismanaged the affairs of the trust, then it was necessary to prepare a new scheme to make it functional.

14. Mr.Deo, learned Advocate for the intervenors, would submit that the Assistant Charity Commissioner is empowered to appoint first Board of Trustees while framing a new scheme inasmuch as Section 50A is additional provision other than Section 50 and it commences with non obstante clause. He would submit that direction given by the learned 1st Ad-hoc Additional District Judge is quite legal and proper. He contended that the appointed trustees have held elections and the management by them needs to be continued. He would submit that powers available u/s 47 of the B.P.T. Act must be read in Section 50A, since such power is ancillary to the power of framing a new scheme.

15. Upon hearing learned Advocates for the parties, following substantial questions of law are formulated for determination:

(i) Whether in the facts and circumstances of the present case, the learned Assistant Charity Commissioner and the 1st Ad-hoc Additional District Judge rendered perverse finding that new scheme u/s 50A(1) of the B.P.T. Act was necessary for proper management of the Trust though no substantial grounds were made out in the application filed by original applicants?

(ii) Whether in the facts and circumstances of the present case, the learned Assistant Charity Commissioner exceeded jurisdiction by making appointment of new trustees or Board of Trustees and that he ought to have directed election of the members of Managing Committee from amongst the existing members of the educational trust

16. Before I proceed to consider merits in the rival contentions, let it be noted that previous application filed by three applicants, viz., Mahadappa Shivmurti Fundipalle, Dagadojirao Gahininath Patil and Subhash Karabasappa Tadkale in Enq.Appln.No. 118/1992 was dismissed by the learned Assistant Charity Commissioner for the reason that framing of a new scheme was not required and necessary and those applicants were not entitled to file the application for such purpose. The said order attained finality. One of the said applicants, Subhash Karabasappa Tadkale is Advocate. He appears to have master minded the subsequent application preferred by original applicants, Apparao Shidore and Virsangappa Alange in Inq.Appln.No. 140 of 1999. Not only that he represented the said applicants as an Advocate before the Assistant Charity commissioner but he suggested first committee of trustees, wherein name of his wife conspicuously appears. A copy of the minutes of the subsequently appointed Managing Trustees, in the meeting dated 30.3.2003 reveals that Shri S.K.Tadkale Advocate became President of the trust. There are various documents to show that some of the persons, including Shri S.K.Tadkale Advocate, who were not original members of the educational trust, desired to enter the trust and take over the management. Their first attempt failed when Inquiry Application No. 118 of 1992 came to be dismissed. Undaunted by such dismissal, they continued their efforts to take over management of the trust. It is important to note that the original applicants - Apparao and another filed draft scheme alongwith the application and filed consent letters with Bio-data of persons desirous to be appointed as first trustees under the amended scheme (accompanied at Exh.22 (4 to 10) with application). Thus all preparatory work was made while filing the said application to take over management of the trust by seeking appointment of new Committee of Trustees. In other words, filing of the application (Inq.Appln.No. 140 of 1999) was result of scheming, which was master minded by Shri S.K.Tadkale Advocate. He himself could not have filed the application because his previous application was dismissed. The original two applicants were, therefore, made to file such application. Though the learned Assistant Charity Commissioner held that both the original applicants were members of the trust, yet the first appellate Court clearly held that they were not the members of the trust.

Even though negative finding was recorded on the above point, yet the learned 1st Ad-hoc Additional District Judge held that they were interested persons within the meaning of Section 2(10)(d) of the B.P.T. Act and, therefore, had locus to file the application.

17. Original applicants filed application for framing of a new scheme on the ground that the erstwhile scheme/Constitution of the trust was insufficient and

there were some lacunas in the same. They did not pin-point, however, which deficiencies were to be remedied by framing a new scheme. They vaguely asserted that the erstwhile trustees had not made efforts to amend the Constitution of the trust. The Inspector of the office of Assistant Charity Commissioner had observed in inspection reports that the scheme was outdated and certain changes were required to be introduced.

18. Clinching question is whether real and substantial reasons existed for framing of a new scheme. A comparative reading of the erstwhile scheme and the new scheme would show that trivial changes are made in proposed new scheme. If a total overhauling of the erstwhile scheme was needed then the learned Assistant Charity Commissioner ought to have recorded reasons, which could support the exercise of framing a new scheme. A new scheme cannot be framed only because the erstwhile trustees did not conduct elections in time or that some of them committed act of malfeasance or misfeasance. Those members of the Managing Committee were suspended and subsequently removed when the allegations of mismanagement were held as proved. The matter is subjudiced before this Court in S.A.No. 191 of 2007 and hence, it would not be proper to express any opinion about such conduct of those trustees. The fact remains, however, that their removal from the trusteeship is acted upon and they are no longer in the zone of consideration for appointment to the Managing Committee. The so-called changes as per the new scheme are of trivial nature and are not of such magnitude and significance that a totally new scheme could be framed u/s 50A(1) of the B.P.T. Act.

19. This Court in *Shri Mallikarjun Basvanappa Masute and Anr. v. Shri Dattatraya Krushnath Wadane and Ors.* 2005 (4) ALL MR 296, held that ordinarily, powers u/s 50A cannot be exercised to frame a new scheme and substitute the same for the existing one. The learned Single Judge (Dabholkar, J.) observed:

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If there is a scheme in existence, Charity Commissioner would be justified in exercising the power to alter or amend on finding that provisions of scheme (in spite of being observed) are inadequate to protect the Charity. Likewise he would be justified in altogether substituting the scheme, in spite of being followed scrupulously. But he may not be able to claim that it is necessary and expedient to settle a new scheme, merely because existing scheme is being observed in breach by trustees, thereby acting against the interest of trust.

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When there is no scheme at all, it would be easier and faster for the Charity Commissioner to arrive at a conclusion that it is necessary or expedient to settle a scheme for proper management of the trust, but if there is an instrument of trust or a scheme in existence, he will have to be slower and cautious before arriving at such a conclusion. The distinction must be remembered between inadequacy of the scheme and non execution of the scheme or behaviour of the trustees in disregard of the Scheme, Act and Rules. If there is no provision in the scheme, which is required for beneficial operation of the trust, the same is inadequacy of the scheme. But, if there is a provision that succession should be by election after every five years and there is no election held, the same is an instance of omission on the part of Board of Trustees to execute the scheme and certainly not an instance of inadequacy or insufficiency in the scheme. The Charity Commissioner must be further slow in exercising the powers u/s 50A either for modifying the existing scheme or for substituting the existing scheme by a totally new scheme if the complaints are only regarding non execution/ disobedience of existing scheme."

It may be mentioned that Mr.Gunale and Mr.Deo referred to Bipinchandra Purshottamdas Patel and Others Vs. Jashwant Lalbhai Naik and Another, . A single Bench of Gujarat High Court held that the Charity Commissioner has power to appoint additional trustees and frame a scheme even when instrument of the trust makes complete provision. The view expressed in "Binchandra Purshottamdas Patel and Ors." (supra) is, however, not approved by learned Single Judge of this Court (Dabholkar, J.) in the above referred case (Shri Mallikarjun Basvanappa Masute and Anr. v. Shri Dattatraya Krushnath Wadane and Ors.) (supra).

20. On going through the impugned Judgment rendered by the learned Assistant Charity Commissioner, one can hardly see any specific reasons for framing of a new scheme. He vaguely observed:

I have perused the copy of the memorandum of Association and Rules & Regulations of this trust filed by the applicant in this proceeding and found that the provisions made in the Rules & Regulations are insufficient and not match with the present needs of the society. The some of the provisions have outdated considering the present needs of the society. I have perused the record of this trust maintained in this office and found that the trustees are the members of this trust have not made any efforts to modify the said Rules and Regulations of this trust in order to match with the present needs of the society. Moreover it is to be noted here that, the then trustees have taken disadvantage of the said insufficient constitution and mismanaged the affairs of the trust.

This part of the reasoning is enumerated in paragraph 10 of the impugned order of the learned Assistant Charity Commissioner. It does not show which provisions he considered to be outdated, and which of present needs of the society are not taken care of by the existing scheme. Which were the inadequacies that did not match with the present needs of the society - No particulars are stated by the

Assistant Charity Commissioner in the said order. There is no discussion of reasons to justify framing of a new scheme. The mere fact that some of the trustees took disadvantage of their position as members of the managing committee cannot be regarded as a substantial reason to prepare a new scheme. Indeed, the learned Assistant Charity Commissioner did not discuss the inadequacies, changed needs in present times, and necessity of amended scheme. The entire exercise appears to be superfluous and undertaken to cater needs of those, who desired to take over management of the trust though they were outside realm of the group of valid members of the trust. The changes suggested in the new scheme were of cosmetic nature, including trivialities and indicative of colourable exercise of the powers available u/s 50A of the B.P.T. Act.

21. The learned Assistant Charity Commissioner appointed managing body of the trustees under the new scheme. The learned 1st Ad-hoc Additional District Judge, while passing order of remand, gave direction to continue the same managing committee until a new scheme was drawn. The learned 1st Ad-hoc Additional District Judge expressed opinion that more additions were required in the scheme. Those comprised of duties of the trustees and several things, which are of plenary nature. The appointment of first Board of Trustees u/s 50A can be made by the Assistant Charity Commissioner when the scheme contains a clause empowering the Charity Commissioner to appoint trustees. There is no clause in the existing scheme, which did empower the Assistant Charity Commissioner to appoint the managing committee. He could not have appointed a totally new managing committee and hand over the entire management, properties and affairs of the trust to them. For, such unbridled exercise of powers will make the otherwise democratic set up of the scheme under the B.P.T. Act as nugatory. The Charity Commissioner has supervisory power to oversee proper management of the trust. He has no superior power to manage the trust in the way he likes and through the persons he would nominate. He cannot usurp powers, which are not expressly available under provisions of Section 50A of the B.P.T. Act.

22. For sake of argument, even assuming that Section 47 and Section 50A are to be read conjointly, then also it is difficult to hold that the Charity Commissioner can appoint altogether new trustees in the exercise of powers u/s 50A and, particularly, when some insignificant amendments to the existing scheme are required to be introduced. This Court, in "Asaram Bhimrao Shinde and Ors. v. State of Maharashtra and Ors. 2001 (4) M.L.J.548, held that Charity Commissioner in exercise of powers u/s 41A can only issue direction for proper administration of trust but he cannot appoint committee for administration of the trust.

23. Though Section 50A of the B.P.T. Act commences with non obstante clause yet it only means that the provision is applicable in addition to the provisions contained in Section 50 of the B.P.T. Act.

Obviously, when Section 50 of the B.P.T. Act does not contain any specific power available for appointment of new trustees and managing body, by the Charity

Commissioner, simultaneously while framing a new scheme so as to replace the existing one, then no such power can be read in the provisions of Section 50A.

24. A conjoint reading of Section 50 and 50A would show that the Charity Commissioner is empowered to allow institution of suit by two or more persons having interest in the trust for framing of scheme or he himself may institute such suit as provided u/s 51. He may seek decree for any relief enumerated under Sub-clauses (a) to (q), which includes relief regarding appointment of a new trustee or a Manager. The second provision of Section 50 is material. It reads as follows:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled;

Needless to say, if at all alterations and modifications in the scheme were thought fit by the learned Assistant Charity Commissioner, then it was legal and proper to make an application to the Court for such alteration in the scheme, which was already settled. The alterations in the settled scheme could be achieved through such application. This choice was available to the Assistant Charity Commissioner. He ought to have been very slow in framing of a new scheme when there were no substantial reasons to effect the changes, and particularly, in the absence of major loopholes in the existing scheme.

25. In "Charity Commissioner, Maharashtra State, Bombay v. Hirjibhoy Mancherji Kavarana and Ors. AIR 1972 BOM 229, a Single Bench of this Court held that Section 50A gives an alternative independent power of framing of the scheme to the Charity Commissioner. The power to appoint managing trustees may be exercised by the Charity Commissioner if instrument of the trust so empowers him to make such appointment. He may exercise the power to make initial appointment of managing trustees from amongst the trustees but in any case he cannot have power to appoint the persons, who are strangers to the trust. The observations of the learned Single Judge in the given case are:

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This power has been continued in the Courts u/s 50 of the Act and has been, by the Section 50A Added in 1960, vested in and/or delegated to the Charity Commissioner. It would be surprising, therefore, to come to the conclusion that the Legislature whilst delegating u/s 50A power of Courts to the Charity Commissioner had not intended that he should have power to make initial appointment of the trustees of the scheme framed by him. The language of Section 50A itself provides that the Charity Commissioner should proceed to frame a scheme under that section after giving an opportunity to be heard to the trustees of the trust concerned. It is patent that the power to frame a scheme for

the management or administration of a trust must include power altogether to amend and nullify the previously existing scheme of appointment, removal etc. of the trustees. The power must be sufficiently large to enact that the persons in management of the trust as at the date of the framing of the scheme will not continue in the management and cease to be managers and/or trustees. This wider construction is, however, not necessary for the purposes of the present case, because the Charity Commissioner has not sought to remove the respondent No. 1 from continuing in the office of trustee of the trust in question.

26. The question for consideration before the learned Single Judge in the above cited case was altogether different from what appears to be involved in the present case. Moreover, the above quoted observations would show that these are mere obiter dictums. The provisions of the relevant part of Clause (7) of the scheme was to the effect that the first trustees by name Shri Hirjibhoy M.Kavaranna and two others were to be appointed by the Charity Commissioner out of the panel of the trustees. If no panels were submitted within three months, then the Charity Commissioner could appoint the remaining two trustees suo motu. It was in the wake of such provision in the instrument of the trust that the question regarding initial appointment of the trustees was considered by the learned Single Judge. In the present case, the real issue is whether the Charity Commissioner can appoint anyone, who is not even member of the trust and allow to fill up the gaps from amongst those, who are desirous to take over management of the trust through back door entry. I am of the opinion that if the initially settled scheme does not include such a clause to allow appointment by the Charity Commissioner, then he cannot make such appointment on his own. He cannot accelerate, assist and encourage denting process by depriving members of the trust, from their right to elect their own panel of managing committee, and make appointment of a completely new managing committee as per his sweet will.

27. So far as fact situation in the present case is concerned, the Assistant Charity Commissioner failed to ascribe adequate reasons in support of his finding that it was just and necessary to frame and settle a new scheme for better and efficient management of the trust. Though he raised such issue, yet the reasoning does not reflect proper consideration of the grounds. The only material point, which weighed with the Assistant Charity Commissioner, is that in proceedings u/s 41(d) of the B.P.T. Act in Enquiry Application No. 2/1992, the Joint Charity Commissioner, Aurangabad, found that the trustees had mismanaged affairs of the trust. The members of the Managing Committee were removed is a fact situation but that itself cannot be sufficient ground to frame a new scheme. The Assistant Charity Commissioner failed to see that previous attempt of the same group in proceedings of similar Enquiry Application No. 118 of 1992 was unsuccessful. The Assistant Charity Commissioner did not discuss as to what are changes in the circumstances after the dismissal of similar application (Enq.Appl.No. 118 of 1992). The Assistant Charity Commissioner should have made endeavour to hold elections for the nomination to Managing Committee

instead of making appointment by himself. He could make appointments u/s 47 in the vacancies, which occurred due to removal of the trustees of the Managing Committee. The learned first Ad-hoc Additional District Judge also did not consider that there was no tangible reason except mismanagement committed by the erstwhile committee of the Managing trustees. The loopholes and deficiencies in the existing scheme are not highlighted. Nor, pragmatic amendments necessitated in the changed circumstances are discussed by the learned 1st Ad-hoc Additional District Judge in support of the conclusion that framing of new scheme is necessary.

28. There cannot be duality of opinion that the Charity Commissioner may exercise power available u/s 50A in appropriate case where, he is of opinion that in the interest of proper management or administration of a public trust, such scheme should be settled. He may act suo motu or may act upon application filed by two or more persons, who have interest in the public trust. A plain reading of Section 50A(1) reveals that after giving the trustees due opportunity to be heard, the Charity Commissioner must be satisfied that it is necessary or expedient to frame a scheme for the management or administration of such trust. Thus, the criteria, which is required to be complied with, before a new scheme is framed, may be stated thus:

(a) That, there must be some material available, which if considered objectively, would furnish the Charity Commissioner to reach conclusion that there exists reason to believe that in the interest of the proper management or administration of a public trust, a scheme should be settled ;

(b) That, the Charity Commissioner is required to give the trustees of such trust due opportunity to be heard;

(c) That, he ought to record his satisfaction, on strength of material available before him, that it is necessary or expedient to frame a scheme for the proper management or administration of such a trust; and

(d) That, his opinion regarding necessity of the scheme ought to be supported by written reasons.

29. Obviously, the discretionary power conferred under the B.P.T. Act is required to be exercised in a special contingency. The words "necessary" and "expedient" would mean existence of a situation occasioned, which makes it necessary or indispensable to frame a new scheme, if already there exists a scheme, to ensure proper administration of such a trust. In *Dr. R.P. Kapoor v. Charity Commissioner* AIR 1989 SC 274 , the expression "expedient" and "necessary" is succinctly made clear. It is held that recourse cannot be had to Section 50A for the mere purpose of filling any of the vacancies of trustees. In such a case, resort can be had to Section 41D and 47 rather than Section 50A. Therefore, a new scheme cannot be framed only on the ground that the trustees were not managing the trust properly. This is what appears to have occurred in the instant case. The members of the Managing Committee of the trust were removed.

Therefore, the Assistant Charity Commissioner decided to frame the new scheme without ascribing adequate reasons. It is difficult to see as to how he formed opinion that "it was expedient and necessary" to frame a new scheme for better management of the trust in question. The 1st Ad-hoc Additional District Judge also did not properly appreciate the said requirements of law.

30. The learned 1st Ad-hoc Additional District Judge remanded the matter to the Assistant Charity Commissioner in order to give fresh hearing to the members and beneficiaries of the trust etc. for settlement of a new scheme. The provisions of Section 50A do not contemplate hearing to beneficiaries of the trust. The Charity Commissioner is required to give due opportunity of hearing only to the trustees of the trust. The non members of the trust need not be heard in respect of proposed new scheme. The powers available u/s 72(2) of the B.P.T. Act are specific. The power of the Court is to confirm, revoke or modify the decision of the Assistant Charity Commissioner. The Court is not given specific power of "remand" likewise one available under Order 41, Rules 23 and 27 of the Civil Procedure Code. In the proceedings u/s 72, the powers, which may be exercised by the Court, are circumscribed by Sub-clause (2). The Sub-clause (2) reads as follows:

Section 72. Application from Charity Commissioners decision u/s 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A etc.:

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(2) The Court after taking evidence if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

The District Court can, therefore, confirm, revoke or modify the decision of the Charity Commissioner. The District Court will have power to take evidence, if any, as it may be found necessary. There appears no express power to order remand. It is well settled that the authorities must act in the manner provided by the Statute and in conformity with the provisions and not in any other manner. The specific power available to the Court in sub-clause (2) of Section 72 is inclusive of power to take evidence, if any. Therefore, it is implicit that no special case is required to be made out as per provisions of Order 41, Rule 27 of the CPC in order to adduce additional evidence. This specific inclusion of the power to take

evidence in separate proceedings will show that intention of the Legislature is to avoid remands. In other words, shuttling of the matter from one Court to another Court is to be avoided.

31. The learned first Ad-hoc Additional District Judge did not, in fact, record sufficient reasons to support the order of remand. There were various amendments suggested by learned first Ad-hoc Additional District Judge. They comprise of provisions in respect of duties of the trustees and various Rules. That is not, in fact, necessary and expedient in order to ensure effective and better administration of the trust. The learned Assistant Charity Commissioner may make appointments of new trustees as per the existing scheme, in order to fill up vacancies of the trustees, which have occurred due to removal of the members of the Managing Committee. There is no difficulty in exercising the power available u/s 41D or 47 of the B.P.T. Act. He may apply to the Court u/s 50, if any change in the scheme is found necessary. However, the impugned decision to frame a new scheme and appoint the Managing Committee is unsustainable. Needless to say, the impugned decision rendered by learned 1st Ad-hoc Additional District Judge is also quite unsustainable and liable to be set aside. It would be appropriate to direct the Assistant Charity Commissioner to appoint an Administrator for the present and to arrange for holding of fresh elections after verification of the valid membership as per the existing scheme.

32. In the result, appeal (F.A.No. 299 of 2006) is allowed. The impugned decisions rendered by the first Ad-hoc Additional District Judge as well as the Assistant Charity Commissioner are set aside. The order of appointment of the Managing Committee is also set aside. The matter is transferred to Assistant Charity Commissioner, Solapur. The Assistant Charity Commissioner, Solapur region shall appoint an Administrator to take over management of the trust. He shall prepare voters list after due verification of names of valid members and direct holding of elections as per existing scheme after calling objections to the voters list. He shall prepare election programme within period of two (2) months after publication of the final voters list. The voters list shall be prepared within two (2) months from receipt of this order and objections may be called within further 15 days and shall be decided within three (3) weeks thereafter. The election process be completed, thus, within six (6) months. Thereafter the appointment of the Administrator may be terminated and elected managing committee be given charge of the affairs of the trust. The First Appeal No. 272 of 2006 is dismissed. No costs.