
(1965) 10 BOM CK 0011
In the Bombay High Court
Case No : F. A. No. 384 of 1963

Vithoba Babaji Ghodke

APPELLANT

Vs

Balkrishna Ganesh Bhalerao

RESPONDENT

Date of Decision : 20-10-1965

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 18, 19, 2, 22, 39
Provincial Small Cause Courts Act, 1887 — Section 17

Citation : (1967) MhLj 224

Hon'ble Judges : H.R. Gokhale, J

Bench : Single Bench

Advocate : M.V. Paranjape and S.M. Mhamane, for the Appellant; Raghavendra A. Jahagirdar and Raja S Bhonsle, Asst. Govt. Pleader for Charity Commissioner, for the Respondent

Judgement

H.R. Gokhale, J.—This is an appeal against the order of the learned 2nd Extra Assistant Judge, Poona, dismissing an application u/s 72 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act) made by the appellants. The application u/s 72 was filed against the decision of the Charity Commissioner dated February 6, 1960. The circumstances in which these decisions came to be made are these: One Trimbak Balkrishna Joshi Bhalerao made an application on May 10, 1952, purporting to be an application u/s 19 of the Act. This application was in respect of S. No. 790 in village Belhe and was filed by Joshi Bhalerao under protest. It appears that there are deities of Shri Ram, Sitamai, Laxman and Hanuman in this village. Trimbak Joshi Bhalerao's case before the Assistant Charity Commissioner was that the property S. No. 790 was his private property and Was not the property of a temple or a house in which these deities were installed in the village. On March 7, 1955, the Assistant Charity Commissioner made an order that there was no public trust and it was not necessary to register S. No. 790 as the property of any public trust. The brief order made by the Assistant Charity Commissioner is as follows:

There is no evidence in this case to show that there is any temple as such, much

less a temple in which the public can be said to have any interest. Even the property shown in the application, namely, S. No. 700 of Belhe, is not entered in the Record of Rights in the name of the deity.

I therefore hold that no trust exists in this case. The assessors agree.

I order that there being no trust registrable in this case the registration fee paid may be refunded.

2. On October 10, 1957, Trimbak Joshi Bhalerao sold S. No. 790 to respondents Nos. 1, 2 and 3 in this appeal for a consideration of Rs. 3,000. On January 19, 1959, respondents Nos. 1, 2 and 3 sold this land to respondent No. 4 in this appeal for a sum of Rs. 7,000. Till the year 1959 nothing was done by anybody to challenge the decision of the Assistant Charity Commissioner of March 7, 1955. The appellants, who claim to be the devotees of the deity, applied for a certified copy of the order of the Assistant Charity Commissioner on February 26, 1959, and the copy was supplied to them on March 13, 1959. On November 12, 1959, the appellants made an application purporting to be u/s 22 of the Act to the Assistant Charity Commissioner for a fresh inquiry into the question as to whether this property was the property of the trust. This application was dismissed on November 14, 1959, and the decision was communicated to the appellants on November 16, 1959. On January 13, 1960, the appellants filed an appeal, being Appeal No. 6 of 1960, to the Charity Commissioner against the decision of the Assistant Charity Commissioner of March 7, 1955. The Charity Commissioner summarily dismissed this appeal. He held that the appeal was barred by limitation. Sub-section (2) of section 70 of the Act provides that no appeal shall be maintainable after the expiry of sixty days from the recording of the finding or the passing of the order, as the case may be. The findings or orders appealable are those mentioned in sub-section (1) of section 70. The Charity Commissioner was of the view that neither good nor sufficient ground for condoning the delay in filing the appeal had been made out by the appellants. It is not necessary for me to discuss the reasons given by the Charity Commissioner for taking this view because Mr. Paranjape, appearing for the appellants, does not take objection to that view of the Charity Commissioner. It appears that the appellants gave a separate application to the Charity Commissioner for condonation of delay in filing the appeal, and in that application it was prayed that the Charity Commissioner should exercise his powers of revision, if necessary. Before the Charity Commissioner it was contended by the appellants that the Charity Commissioner should invoke the provisions of section 70-A of the Act and even if the appeal was time-barred the Charity Commissioner should, if necessary, call for and examine the record and proceedings before the Assistant Charity Commissioner and reopen the inquiry u/s 19 which had been terminated by the previous order of the Assistant Charity Commissioner of March 7, 1955. The learned Charity Commissioner has dealt with this contention in his order. The contention of the appellants was that in the inquiry u/s 19 of the Act held in the year 1955 they were not heard and they had

no notice of the proceedings and, therefore, the order which was made by the Assistant Charity Commissioner was an ex parte order and there was, therefore, grave irregularity in those proceedings, and on that ground the order of March 7, 1955, should be set aside and the inquiry u/s 19 should be reopened. In support of this contention reliance was placed on the provisions of the Act and the rules framed thereunder. Section 18 provides for registration of public trusts and section 19 provides for inquiry for registration. Section 19 requires that on the receipt of an application u/s 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining inter alia whether a trust exists and whether such, trust is a public trust and whether any property is the property of such trust. The power to frame rules u/s 84 of the Act is vested in the State Government. Clause (g) of sub-section (2) of section 84 empowers the State Government to frame rules with regard to the manner in which an inquiry has to be made by the Deputy or Assistant Charity Commissioner u/s 19 and section 39. In exercise of this power the Government of Maharashtra have framed rules called the Bombay Public Trusts Rules, 1961, and rule 7 provides for the manner of inquiries. Rule 7 is in the following terms:

Manner of inquiries.-Except as expressly provided in these rules inquiries under the Act shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and elsewhere under the Provincial Small Cause Courts Act, 1887. In any inquiry a party may appear in person or by his recognised agent or by a pleader duly appointed to act on his behalf:

Provided any such appearance shall, if the Deputy or Assistant Charity Commissioner so directs, may be made by the party in person.

3. The contention is that the inquiry which was held by the Assistant Charity Commissioner, which resulted in the order of March 7, 1955, was not conducted in compliance with this rule inasmuch as the procedure prescribed for the trial of suits under the Provincial Small Cause Courts Act, 1887, was not followed as far as possible. It is common ground that if this rule was applicable, the procedure which would be required to be followed would be the procedure under the Provincial Small Cause Courts Act, 1887, inasmuch as the property in dispute is outside Greater Bombay Region. Section 17 of the Provincial Small Cause Courts Act, to the extent relevant, is as follows:

The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits.

4. Mr. Paranjape, therefore, contends that the procedure applicable to inquiries u/s 19 is that which is prescribed in the CPC since nothing otherwise is provided in

the Code or the "Provincial Small Cause Courts Act. Reliance was placed in this connection on Order I, rule 8 of the Code. Order I provides for parties to suits and rule 8 provides that under the circumstances mentioned in that rule one person may sue or defend on behalf of all having the same interest. The contention of the appellants before the learned Charity Commissioner was that Order I, rule 8 being applicable to enquiries under the Act, all the members of the Hindu community of that village who had a right of worship in the temple had the same interest in contending that the property was the property of a public trust and as such were necessary parties to the application made by Trimbak Joshi and it was, therefore, necessary that Trimbak Joshi should have made all the members of the Hindu community of that village, who had a right of worship in the temple, parties to that application. The contention further was that Trimbak Joshi should have made an application to the Assistant Charity Commissioner for leave to join some members of the Hindu community, who were worshippers, as opponents to the application in a representative capacity and notice should have been issued to the members of the community in the manner provided in Order I, rule 8. This procedure not having been followed, the appellants contended that the members of the community were not at all informed of the application made by Trimbak Joshi, who was setting up a title adverse to the trust and was claiming the property to be his private property and who obtained a decision from the Assistant Charity Commissioner etc parte in his favour behind the back of persons interested in saying that the property was the property of a public trust. It was on this ground that the appellants contended that the enquiry made by the Assistant Charity Commissioner resulting in his order of March 7, 1955, resulted in a grave miscarriage of justice and suffered from material irregularity and it was, therefore, necessary for the Charity Commissioner to set aside that order in exercise of his power u/s 70A of the Act. The learned Charity Commissioner principally gave two reasons for rejecting this contention. The first reason was that rule 7 was inconsistent with the other provisions of the Act and could not override those provisions. Under clause (4) of section 2 of the Act, "Court" means in Greater Bombay, the City Civil Court and elsewhere, the District Court. Section 76 provides that the CPC shall apply to all proceedings before the Court under the Act. Since the learned Charity Commissioner has relied on the provisions of section 76 for coming to the conclusion that rule 7 is inconsistent with the provisions of the Act, it would be relevant to reproduce section 76. Section 76 is in the following terms:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act.

5. The learned Charity Commissioner held that the provisions of the CPC are made applicable u/s 76 only to proceedings before the Court, i.e., the District Court, in the present case, and if the Legislature intended that the CPC should be applicable to other enquiries under the Act it would have specifically so provided. The view of the learned Charity Commissioner was that the Assistant or Deputy

Charity Commissioner and the Charity Commissioner are the other Courts constituted under the Act, and since the Code is made applicable only to the District Court the Legislature did not intend that the Code should apply to enquiries before the Assistant or Deputy Charity Commissioner or the Charity Commissioner. The second reason given by the learned Charity Commissioner was not based strictly on interpretation of the provisions of the Act or the rules but was, with respect, based on convenience or expediency. The learned Charity Commissioner thought that if the argument that notice should be given to all persons interested was accepted, it would have to be carried to its logical conclusion, namely, that in every enquiry under the Act where the public is concerned a public notice must be issued. He incidentally referred to the fact that in enactments passed by Legislatures of other States in this country specific provisions have been made for issuing public notice and since no specific provision was made by the Maharashtra Legislature it was never intended that such public notice was contemplated in enquiries under the Act. Principally on these two grounds the Charity Commissioner came to the conclusion that there was no irregularity or there was no miscarriage of justice when the Assistant Charity Commissioner passed his order on March 7, 1955, and since there was no miscarriage of justice or material irregularity he had no power u/s 70A of the Act to call for and examine the record and proceedings before the Assistant Charity Commissioner and consequently to reopen the enquiry u/s 19 with regard to whether or not the property in dispute is the property of a public trust. The appellants challenged this decision, as I have already stated, by way of an application u/s 72 of the Act before the District Court at Poona and the learned 2nd Extra Assistant Judge who dealt with the application rejected it, confirming the view of the Charity Commissioner more or less for the same reasons given by the Charity Commissioner. The only additional reason, which the learned Assistant Judge has given, is that the appellants had an alternative remedy of filing a suit in a civil Court, and if the appellants thought that the order of the Assistant Charity Commissioner of March 7, 1955, was obtained by practising fraud, section 80 of the Act would not be a bar and a suit would be maintainable. The appellants in this appeal now challenge the validity of the order made by the learned Extra Assistant Judge and of the learned Charity Commissioner and assail the grounds on which those orders are made by them.

6. Mr. Paranjape, learned counsel appearing for the appellants, contends that both the Charity Commissioner as well as the learned Extra Assistant Judge misconceived the scope and ambit of the powers of the Charity Commissioner u/s 70-A of the Act. He also contended that even on the limited scope of section 70-A, as construed by the authorities below, their view that there was no material irregularity or grave injustice was incorrect. Mr. Paranjape further contended that assuming there was no specific provision in the Act or the rules to hear the appellants or other members of the Hindu community, the inquiry contemplated by section 19 of the Act is quasi-judicial in character, and if the appellants and other members of the Hindu community were interested in the lis which existed

any order made by a quasi-judicial authority without hearing the parties, who are affected or likely to be affected, was liable to be set aside. Mr. Paranjape says that the learned Charity Commissioner should have, on that ground, exercised the wide powers u/s 70A of the Act and should have directed a fresh enquiry u/s 19. It would be convenient to deal with these arguments separately.

7. The first argument is that the procedure for conducting these enquiries has not been complied with. Mr. Jahagirdar, who appears for the respondents, contended that the enquiry u/s 19 is not analogous to a suit and, therefore, the CPC will not apply. There is no doubt that the CPC is not as such made applicable to enquiries under the Act. Section 19 provides that inquiries shall be made in the manner prescribed and since the manner is prescribed only in rule 7, the enquiries have to be made in that manner, and rule 7, which I have quoted in full, says that the procedure prescribed for the trial of suits under the Provincial Small Cause Courts Act will apply to enquiries under the Act "as far as possible". Section 17 of the Provincial Small Cause Courts Act makes the CPC applicable to Courts constituted under that Act and that is why the CPC indirectly becomes applicable to enquiries under the Act; the Code is made applicable as far as possible. In effect the provision of the rule is that the provisions of the Code will apply mutatis mutandis, to the extent possible, to all enquiries under the Act. Therefore, while the argument of Mr. Jahagirdar is correct that these proceedings are strictly not suits under the Code of Civil Procedure, the procedure to be followed in these enquiries is, to the extent possible, the procedure applicable to suits under the Provincial Small Cause Courts Act, as provided for in section 17 of that Act, and that procedure undoubtedly is the procedure prescribed in the Code. Mr. Jahagirdar contends that the learned Charity Commissioner and the learned Extra Assistant Judge were right in their view that if the Legislature wanted to make the Code applicable they would have done so, as they did when it was made applicable to the District Court in proceedings u/s 76. This argument fails to recognise the true meaning and effect of section 76. Section 76 makes the Code applicable to all proceedings before the Court. To proceedings before the Court, which is defined as the District Court, the Code is applicable as such and there is no question of making it applicable as far as possible. Moreover, section 76 is a provision only dealing with the procedure before the Court and there is no scope for any doubt that for the purposes of the Act the Court is only the one defined in clause (4) of section 2 of the Act. The learned Charity Commissioner has held that there are other Courts under the Act, namely, the Assistant Charity Commissioner, the Deputy Charity Commissioner and the Charity Commissioner, and if the Legislature wanted to make the Code applicable to the other Courts it would have expressly done so. With respect, it is an error to say that the Assistant Charity Commissioner or the Deputy Charity Commissioner or the Charity Commissioner, when they function in inquiries under the Act, are Courts. They are no doubt authorities constituted under the Act and have to perform functions of a quasi-judicial nature, but they are not Courts because Court is only the one defined in clause (4) of section 2 of the

Act, and since the Assistant Charity Commissioner or the Deputy Charity Commissioner or the Charity Commissioner is not included in the definition, they are certainly not Courts for the purpose of the Act. Section 76 does not provide for procedure for all enquiries under the Act but provides for procedure for proceedings before the Court and that provision must, therefore, be construed as being made for that specific purpose. It is difficult to agree with the view of the Assistant Charity Commissioner and the learned Extra Assistant Judge that since section 76 does not provide for the application of the CPC to other Courts, the Legislature never intended to make the Code applicable to the other Courts. As against this, section 19 of the Act itself provides that the procedure to be followed in enquiries under the Act must be in the manner prescribed and that manner can be prescribed by rules framed by the State Government under their rule-making power. That procedure happens to be the procedure applicable under the Provincial Small Cause Courts Act to Courts constituted under that Act. It is, therefore, the rules that one has to look to for finding out as to what procedure is applicable to enquiries under the Act and not to section 76.

8. On the other hand, the contention that the provisions of Order I, rule 8, of the CPC should have been made applicable as far as possible has considerable force. That the persons who would be arrayed on the other side in opposition to the contention of Trimbak Joshi who claimed that the property was his private property would be numerous cannot be doubted inasmuch as a large number of persons of the Hindu community who had a right of worship in the temple would be interested in making such an opposition. In such a contingency the procedure of making some members of the Hindu community as defendants in a representative capacity to defend the whole body of worshippers would be the procedure available under Order I, rule 8. Mr. Jahagirdar says that there were no two parties in the enquiry. According to him, even Trimbak Joshi who made the application was not a party to the proceeding because he could not have invoked the powers of the Deputy or Assistant Charity Commissioner u/s 19 of the Act, which says that the Deputy or Assistant Charity Commissioner shall make an enquiry u/s 19 only on receipt of an application u/s 18 or upon an application made by any person having interest in a public trust or on his own motion. Section 18 requires an application to be made by a trustee of a public trust. Mr. Jahagirdar says that Trimbak Joshi claimed that he was not a trustee and, therefore, could not apply u/s 18. Trimbak Joshi, says Mr. Jahagirdar, was not a person interested in a public trust because he was contending that no public trust existed and, therefore, he could not have applied u/s 19 of the Act. Mr. Jahagirdar's argument is that his application only invited the attention of the Assistant Charity Commissioner to a possible controversy which may arise on the question whether the property was of the trust or not and any action which the Assistant Charity Commissioner took must be taken to be suo motu or on his own motion and, therefore, neither Trimbak Joshi nor any other person or persons were parties to those proceedings. It is true that a person who is not interested in a public trust may not be liable to make an application u/s 19. It is

true that a person who is not a trustee may not be able to make an application u/s 18. Therefore, in any of these capacities Trimbak Joshi could not have maintained an application u/s 19. It is well-known that when the Act first came into force, trustees of public trusts were required to make an application within a specified time for registration of the trust and in order to avoid commission of an illegality a number of persons made applications under protest. These were applications of persons who were not interested in the trust but who, in fact, disputed the existence of the trust. Their applications served one practical purpose, namely, of drawing the attention of the Assistant Charity Commissioner to a possible contention being raised that certain properties were properties of a trust and on such applications filed under protest the Assistant Charity Commissioner or the Deputy Charity Commissioner made enquiries which, in my view, would have to be treated as enquiries made by him on his own motion or suo motu. Mr. Jahagirdar, therefore, contends that it was not for Trimbak Joshi to apply for leave to sue the members of the Hindu community in a representative capacity. In order to deal with this contention it would be necessary to examine the procedure which was actually followed in the present enquiry and was being followed in other enquiries of this type.

9. In the application which was made by Trimbak Joshi he stated that the temple was not a trust and the public had no connection with it. He stated that S. No. 790 along with the house in which the deities are situate was his private property. It would be relevant to reproduce the following statements made by Trimbak in his application:

This is not a trust but is a temple of the private ownership of the Bhalerao family. This temple is in a residential house. Nobody comes as of right for worshipping in that temple. The entire expenses of the temple are incurred from the private income of the applicant. This application is made without prejudice to the applicant's above statements.

10. This application discloses that there was a temple and there was some property of the temple and makes a statement that members of the public had no right to worship or to "darshan" in the temple. In support of his application four statements were recorded. Notices were served on four persons including Trimbak, the other three being his nephews. Notices were accepted on behalf of all only by one of them, namely, Trimbak. On the statements so recorded the enquiry was concluded. Mr. Bhonsale, the learned Assistant Government Pleader, pointed out that the practice which was usually followed in these enquiries was to depute an Inspector to the village where the property of the trust was situate and the Inspector recorded the statements of persons likely to be interested. But he fairly conceded that in the present enquiry the usual procedure of recording the statements of interested persons was not followed. Thus the only evidence on which the enquiry was held was the statement of Trimbak himself and the statements of his nephews. The statements of other persons in the village were not recorded. Thus, although Trimbak was not technically a party to the

proceedings u/s 19, the enquiry was conducted at his instance and for all practical purposes Trimbak was a party to the application which he made invoking the powers of the Assistant Charity Commissioner for an enquiry u/s 19. It was, therefore, up to him to make an application for leave of the Court to sue the members of the Hindu community, who had a right of worship, in a representative capacity by showing some of the members as opponents to the application. I am unable to accept the contention made by Mr. Jahagirdar that because the CPC is not applicable as such the provisions of Order I, rule 8, were not applicable. Rule 7, quoted earlier, in terms provides that as far as possible the provisions of the CPC will apply to these enquiries and there was no difficulty in invoking the provisions of Order I, rule 8 to the extent possible, particularly when the application set up a claim which was on the face of it adverse to the interests of the members of the Hindu community who had a right of worship in the temple. Mr. Jahagirdar then contends that Trimbak could not be compelled to make an application under Order I, rule 8. It is true that the plaintiff in a suit must take the consequences of not joining necessary parties to the suit. He cannot be compelled to join parties to the suit. Therefore, while it is true that Trimbak could not have been compelled to make an application for leave to sue the members of the Hindu community in a representative capacity, he must take the consequences of his failure to do so. Any order obtained in the absence of necessary parties cannot bind them and to that extent any order which Trimbak might have obtained u/s 19 of the Act from the Assistant Charity Commissioner cannot bind the members of the public who had no notice of those proceedings. In *Taraben Baldevdas Parikh Vs. Charity Commissioner, Greater Bombay Region and Others*, , the question whether the decision of the Deputy or Assistant Charity Commissioner was final and binding upon a person who has had no opportunity of appearing before that officer was posed but was not thought necessary to be answered. In *Adinath etc. Mandir v. Shantappa* (1964) 67 Bom. L R 49, it was observed that persons who were not parties to the proceedings under the Act were not precluded from filing a suit u/s 50 of the Act. It would, therefore, seem that in an application of this nature the members of the public belonging to the Hindu community who claimed a right of worship in the temple were necessary parties to the application filed by Trimbak, and Trimbak not having taken steps to join them as opponents in the application by invoking the procedure analogous to that provided in Order I, rule 8, the enquiry conducted by the Assistant Charity Commissioner resulting in his order of March 7, 1955, was an enquiry behind the back of the appellants and the members of the community to which they belonged and it led to a miscarriage of justice or suffered from a grave irregularity. These two reasons, in my view, sufficiently enabled the learned Charity Commissioner to invoke his powers u/s 70A of the Act.

11. It was not contended by Mr. Jahagirdar that in conducting enquiries under the Act the Deputy or Assistant Charity Commissioner or for that matter the Charity Commissioner himself was not discharging judicial or quasi-judicial

functions. The decision of the Charity Commissioner on any question whether or not a trust exists and whether such trust is a public trust or whether a particular property is the property of such trust is final and conclusive unless set aside by the decision of a Court u/s 72 of the Act. The Charity Commissioner thus decides questions affecting private rights of parties relating to property claimed to be the property of the trust. In such a situation a lis no doubt exists between those who propose that the property is of the trust and those who oppose such a proposition. Determination of such a question is no doubt a judicial or quasi-judicial function. To determine a question which requires to be decided in a judicial or quasi-judicial manner all the parties who are or are likely to be arrayed against each other should be heard. In the present case, it was quite clear that Trimbak was setting up a title of his own which was adverse to the members of the Hindu community having a right of worship in the temple. Such members of the Hindu community were therefore necessary parties in an application of this nature. If the applicant, who moved the Assistant Charity Commissioner to take a decision in his favour that it was not the property of a trust but was his private property, did not take steps to join the necessary parties, a decision arrived at in their absence cannot obviously be binding on them. For this reason also the learned Charity Commissioner as well as the learned Extra Assistant Judge were in error in taking the view that the order of the Assistant Charity Commissioner of March 7, 1955, had become final and could not be reopened by the appellants. This was also a good ground for the learned Charity Commissioner to exercise his powers u/s 70A of the Act to call for the record to examine the correctness of the Assistant Charity Commissioner's order.

12. The last argument of Mr. Paranjape is that section 70A enables the Charity Commissioner to call for and examine the record and proceedings of any of the cases mentioned in section 70 for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Assistant Charity Commissioner and he can either annul, reverse, modify or confirm that finding or order or may direct the Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence. The contention of Mr. Paranjape was that in the village Belhe there is a House No. 360 in Bazar Lane and in this house are installed the deities. Survey No. 790 is the property of those deities in House No. 360, because one Laxmibai widow of Hari Jadhav by her will of December 13, 1887, endowed this property on the deities. Mr. Paranjape points out that in the present appeal which was filed by the appellants and in which a prayer was made that the Charity Commissioner should exercise his powers u/s 70A, an extract from village register in Form 6K. for the years 1914 to 1925 was produced. The entry at Serial No. 3086 pertains to this S. No. 790. Trimbak has been shown to be the occupant of this land and in one of the columns referring to the nature of the occupancy rights there is an endorsement that Trimbak is a Vahivatdar. The endorsement also refers to the fact that the original owner was Laxmibai widow of Hari Jadhav and that she at the time of her death gave this S. No. for the

worship of Rama by a Vyavasthapatra. This endorsement is of December 13, 1887, which is the year of Laxmibai's death. Mr. Paranjape says that this is an old extract for the years 1914 to 1925 and the appellants had given prima facie evidence before the Charity Commissioner to show that the S. No. belonged to the deity of Rama. Mr. Paranjape also invited my attention to some other document which was not produced before the Assistant Charity Commissioner. That is an extract for the years 1941-42 to 1952-53, in which also there is a reference to Serial No. 3086, which is the number referred to in the extract for the years 1914 to 1926. Mr. Paranjape refers to a statement signed by Trimbak on June 5, 1912, in which he has referred to the existence of the will of Laxmibai. Mr. Paranjape says that all this evidence could have been produced by the appellants if a fresh inquiry had been ordered by the Charity Commissioner. It is true that all these documents were not produced before the Charity Commissioner, except the extract for the years 1914 to 1925. But that extract very positively referred to the will of Laxmibai and stated that S. No. 790 was given by Laxmibai for the worship of Rama. In the application which was made by Trimbak none of these extracts was produced. The will itself has not been produced either in the present proceedings or in the proceedings in which the order of March 7, 1955, was made. Prima facie, the Charity Commissioner had the extract for the years 1914 to 1925, a certified copy of which was produced, from which it was apparent that the property belonged to the deity Rama and was endowed for worship by Laxmibai as far back as in the year 1887. Section 70A of the Act does not restrict the power of the Charity Commissioner to call for and examine the record only when there has been material irregularity or illegality in the previous proceedings. He can call for the record and examine it to ascertain its correctness. He may either reverse or modify or confirm the earlier finding or order and he can even direct additional evidence to be taken for ascertaining whether certain property is the property of the trust or not. When this record was before the Charity Commissioner, I should have thought that the learned Charity Commissioner had good reason for calling for and examining the record of the earlier case, but his order shows that he did not do so because he thought that his power u/s 70A was limited only to cases of irregularity in the previous proceedings. Mr. Jahagirdar says that some of the documents, which are pointed out here and included in the paper book in support of the appeal, were not before the Charity Commissioner. It is true that they were not there and, as I have pointed out, only the extract for the years 1914 to 1925 was there. But even on that extract there was prima facie case for the Charity Commissioner to call for and examine the correctness of the earlier finding. In my view, the order of the Assistant Charity Commissioner of March 7, 1955, ought to be set aside and a fresh inquiry u/s 19 of the Act ought to be held. The appellants had no notice of those proceedings and although they were the persons interested they were not heard. Mr. Bhonsale pointed out that the usual procedure is to depute an Inspector to the village and to record the statements of interested persons, but he fairly conceded that the usual procedure has not been followed in the present case. The record shows that nothing but the statements of Trimbak and

three of his nephews were recorded at the time of the inquiry. Under these circumstances, a good case is made out for reopening the inquiry u/s 19.

13. The appeal will, therefore, be allowed, the orders of the learned Charity Commissioner and of the learned 2nd Extra Assistant Judge will be set aside and the papers will go back to the Charity Commissioner for disposal in accordance with law in the light of the observations made in this judgment. The Charity Commissioner will direct the appropriate authority to hold a proper enquiry u/s 19 of the Bombay Public Trusts Act. Respondent will bear his own costs.

14. Before parting with this case, it is necessary to point out that the Act or the rules do not contain a specific provision for the issue of a public notice when a person makes an application under protest and seeks a decision from the Assistant Charity Commissioner that the property which is the subject-matter of the application is his private property and is not the property of the trust. There does not appear to be any specific provision for issuing a public notice in cases where a decision has to be taken affecting members of the public. In view of the fact that the decision of the Charity Commissioner on the question as to whether a public trust exists and whether certain property is the property of the trust or not is final and a suit is barred, the proceedings before the Charity Commissioner are virtually in substitution of the regular remedy available to citizens by approaching the civil Court. It is undesirable that such decisions having finality should be made without an opportunity being made available to persons who are affected or likely to be affected. The learned Charity Commissioner has himself noted in his order that in some other enactments passed by the Legislatures of other States there are provisions for issuing a public notice. Mr. Bhonsale has invited my attention to a number of enactments and rules made by the Legislatures of other States in corresponding enactments, where provisions are made for a public notice. Provisions for giving public notices of inquiries proposed to be made under the corresponding enactments dealing with registration of public trusts are found in the Bihar Hindu Religious Trusts Act, 1950, the Madhya Pradesh Public Trusts Act, 1951, and the Madras Religious and Charitable Endowments Act. A similar provision also exists in the Endowment Regulations applicable to the Hyderabad areas of the State of Bombay. Mr. Bhonsale tells me that a similar provision is also found in the Rajasthan Public Trusts Act, 1959. This is a matter which, in my view, requires careful consideration by the Legislature of this State and I hope that the Government will take appropriate steps to remedy this lacuna in the Act by making a suitable amendment in the Act itself or by making appropriate provision in the rules framed thereunder.