

(2017) 06 BOM CK 0046

BOMBAY HIGH COURT

Case No: 1327 of 2015 WITH CIVIL APPLICATION NO 4159 of 2015 WITH CIVIL APPLICATION NO 2848 of 2016

The Bombay Diocesan Trust
Association Pvt. Ltd. & Ors.

APPELLANT

Vs

Rev. Dr. P. B. Amolik & Ors.

RESPONDENT

Date of Decision: June 14, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 100 - Second appeal
- Bombay Public Trusts Act, 1950, Section 3, Section 72(4), Section 72(2)

Hon'ble Judges: M. S. Sonak

Bench: SINGLE BENCH

Advocate: A. A. Kumbhakoni, Shardul Singh, Ivor Peter D'Cruz, G. S. Godbole, Mehul Shah, Swapnali Desai, Vishvajit Sawant, Daljeet Singh Bhatia, Salim M. Sayeed, Yogesh Dabke, P. A. Tatake, V. V. Thorat, S. V. Pimple, Sameer Vaidya, Robin Thomas, Sachin Bhujbal

Judgement

1. Heard learned counsel for the parties. At their request and with their consent these matters are disposed of by common judgment and order.

2. Even otherwise, the challenge in each of the appeals is to the judgment and order dated 30 October 2015 made by the City Civil Court, Mumbai in appeals under section 41D (5) of the Maharashtra Public Trusts Act, 1950 (MPT Act), which is a common order disposing of the two appeals which were numbered as Charity Application Nos.1 and 2 of 2013. Writ Petition No. 12089 of 2015 is instituted by James Baker and another, who were respondents in the appeals before the Civil Court, Mumbai and who claimed to be aggrieved by certain observations in the impugned judgment and order dated 30 October 2015, even though, they have no

grievance as regards the final outcome, i.e., dismissal of the two appeals by the Civil Court, Mumbai. In such circumstances, it is only appropriate that the appeals and the writ petition are considered and disposed of by common judgment and order.

3. First Appeal Nos.1327 of 2015 and 1328 of 2015 have been instituted by the following appellants:

1] The Bombay Diocesan Trust Association Pvt. Ltd.;

2] Vipul Rawade

3] Kishore Pendurkar

4] Sunil Rawade

4. The two appeals basically challenge the impugned judgment and order dated 30 October 2015 made by the City Civil Court, Mumbai on the grounds that the impugned order terminates the tenure of appellant Nos.2,3 and 4, even though, the said appellants were not impleaded as parties in original applications under section 41D of the MPT Act, seeking inter alia for removal of some of the trustees of the Bombay Diocesan Trust Association Pvt. Ltd. (Trust) . These appellants point out that they had in fact, vide applications dated 12 October 2012, applied to the Joint Charity Commissioner taking up the Original Application No. 28 of 2009 under section 41D of the MPT Act, for leave to intervene or for their impleadment, expressing apprehension that any order in the said proceedings might affect them. They point out that by order dated 16 October 2012, the Joint Charity Commissioner rejected the application for impleadment/intervention by observing that since there are no allegations against appellant Nos.2 to 4, there was no necessity of permitting their intervention or impleadment. They point out that in the order dated 16 October 2012, the Joint Charity Commissioner had also observed that there was no question of making any orders against persons who were not parties to the proceedings.

5. By judgment and order dated 17 December 2012, however, the Charity Commissioner partly allowed Application No. 28 of 2009 under section 41D of the MPT Act and removed almost ten trustees, who were styled as opponent Nos.1 to 10 in Application No. 28 of 2009 before the Joint Charity Commissioner. The Joint

Charity Commissioner then proceeded to appoint an Administrator to manage the affairs of the Trust, thereby at least indirectly, terminating the tenure of appellant Nos.2,3 and 4, against whom there were neither any allegation as contemplated by section 41D of the MPT Act and nor were they impleaded as parties to the proceedings under section 41D of the MPT Act as aforesaid.

6. The trustees, who were actually ordered to be removed by the Joint Charity Commissioner vide judgment and order dated 17 December 2012 appealed to the City Civil Court, Mumbai under section 72 (1) of the MPT Act, which appeals came to be numbered as Charity Application Nos.1 and 2 of 2013.

7. The appellants in First Appeal Nos.1327 and 1328 of 2015 took out Chamber Summons Nos. 734 and 735 of 2014 before the City Civil Court, Mumbai in pending appeals, seeking their impleadment, inter alia, on the ground that even they were affected by the impugned judgment and order dated 17 December 2012 made by the Joint Charity Commissioner. The chamber summons were allowed by orders dated 1 July 2014 and the appellants, were impleaded as parties in the pending appeals.

8. The City Civil Court Mumbai vide judgment and order dated 27 March 2015, allowed Charity Application Nos.1 and 2 of 2013, set aside the Joint Charity Commissioner's order dated 17 December 2012 and remanded the matter to the Joint Charity Commissioner for fresh consideration of Application NO.28 of 2009 under section 41D of the MPT Act after impleadment of all parties and after afford of opportunities to all parties to tender evidence/additional evidence.

9. The original applicants in Application No. 28 of 2009, i.e., James Baker and another, instituted a second appeal under section 41D (6) of the MPT Act questioning the judgment and order dated 27 March 2015 made by the City Civil Court, Mumbai. By the judgement and order dated dated 22 June 2015, the second appeals were allowed, the common judgment and order dated 27 March 2015 made by the City Civil Court, Mumbai in Charity Application Nos.1 and 2 of 2013 was set aside and the matter was remanded to the City Civil Court, Mumbai for disposal of the Charity Application Nos.1 and 2 of 2013, in accordance with law and on their own merits.

10. Pursuant to remand as aforesaid, the City Civil Court, Mumbai vide impugned judgement and order dated 30 October 2015, has dismissed the Charity Application Nos.1 and 2 of 2013, thereby confirming the judgment and order dated 17 December 2012 made by the Joint Charity Commissioner, removing the ten trustees of the Trust in exercise of powers conferred by section 41D of the MPT Act and appointing an Administrator to manage affairs of the Trust.

11. First Appeal No.1244 of 2015 and First Appeal No. 1250 of 2015 have been instituted by the trustees, who were actually ordered to be removed vide judgment and order dated 17 December 2012 made by the Joint Charity Commissioner under section 41D of the MPT Act. As noted earlier, the judgment and order dated 17 December 2012, stands confirmed by the impugned judgment and order dated 30 October 2015 made by the City Civil Court, Mumbai. In effect therefore, all the four appeals, question the impugned judgment and order dated 30 October 2015 made by the City Civil Court, Mumbai, affirming the judgement and order dated 17 December 2012 made by the Joint Charity Commissioner under section 41D of the MPT Act.

12. Mr. Kumbhakoni, learned senior advocate for the appellants in First Appeal No.1327 of 2015 and 1328 of 2015, has submitted that the judgments and orders dated 17 December 2012 and 30 October 2015, in effect, curtail the tenure of appellant Nos.2, 3 and 4 in the said appeals as trustees of the Trust. He submits that as against the said appellants there were neither any allegations in Original Application No. 28 of 2009 instituted before the Joint Charity Commissioner nor were said appellants impleaded as parties to the said Application No. 28 of 2009. The attempt on the part of the appellants to seek impleadment was turned down by the Joint Charity Commissioner by specifically observing that there were no allegations against the said appellants and accordingly, there was no question of making any adverse orders as against such appellants. In such circumstances, Mr. Kumbhakoni submits that the impugned orders, to the extent, they curtail tenure of appellant Nos.2,3 and 4 and thereby, indirectly, remove the said appellants as trustees of the said Trust, violate the principles of natural justice and fair play and therefore, are required to be set aside qua the said appellants.

13. Mr. G. S. Godbole, learned counsel for James Baker and another, the original applicants in Application No. 28 of 2009 under section 41D of MPT Act, submits that appellant Nos.2,3 and 4 were admittedly impleaded as parties before the appellate court, i.e., the City Civil Court, Mumbai in Charity Application Nos.1 and 2 of 2013. He submits that consequent upon the removal of most of the trustees, i.e., ten trustees vide judgment and order dated 17 December 2012, the Joint Charity Commissioner, was acted well within his powers to appoint an Administrator to govern the affairs of the Trust. Accordingly, Mr. Godbole submits that this is not a case of removal of appellant Nos.2,3 and 4 as trustees of the said Trust, but rather, this is a case where the Joint Charity Commissioner, in the exercise of powers vested him in under section section 41D of MPT Act has rightly appointed an Administrator to govern the affairs of the Trust, which, affairs, could obviously, have not been governed only by appellant Nos.2,3 and 4, after, all the trustees, other than them, stood removed vide judgment and order dated 17 December 2012 made by the Joint Charity Commissioner. For these reasons, Mr. Godbole submits that there is absolutely no infirmity in the orders dated 17 December 2012 and 30 October 2015 and the two

first appeals, i.e., First Appeal No. 1327 of 2015 and 1328 of 2015 may be dismissed.

14. In the alternate, Mr. Godbole submits that the tenure of appellant Nos.2,3 and 4 has long ago ended. Accordingly, he submits that First Appeal No.1327 of 2015 and First Appeal No. 1328 of 2015 have been rendered infructuous and may be dismissed on the said ground as well.

15. In this case, appellant Nos.2,3 and 4 should have been permitted to intervene in Application NO. 28 of 2009 instituted by James Baker and another, i.e., before the Joint Charity Commissioner at least at the stage when the Joint Charity Commissioner formed a tentative opinion that almost all the trustees of the Trust, except appellant Nos.2,3 and 4 deserved to be removed as trustees under section 41D of the MPT Act and that appointment of Administrator might be necessary to govern the affairs of the Trust. As noted earlier, appellant Nos.2,3 and 4 had in fact applied for intervention/impleadment. Such application was however, rejected by the Joint Charity Commissioner on 16 October 2012 by making the following observations :

"there are no allegation against the party proposed to be added as respondent. No orders will be passed against the applicant as he is not party to the proceeding and unless opportunity of hearing is granted to him. Hence, at this stage, Mr. Vipul Rawde cannot be added as party Opponent No.11".

16. Mr. Kumbhakoni, learned senior advocate for the appellants in First Appeal Nos.1327 of 2015 and 1327 of 2015, in the circumstances, is right in contending that there has been violation of principles of natural justice, at least insofar as appellant Nos.2,3 and 4 are concerned. Their tenure was curtailed on account of appointment of Administrator vide order dated 17 December 2012 in Application No. 28 of 2009 made by the Joint Charity Commissioner in exercise of powers conferred upon him under section 41D of the MPT Act. Prior to such curtailment, however, appellant Nos.2 to 4 were deprived opportunity of hearing, even though, they had specifically applied for such opportunity by taking out applications for intervention/impleadment.

17. However, it appears that by virtue of certain interim orders made by this court, appellant Nos.2,3 and 4 secured at least some limited protection. Further, there is no dispute whatsoever that the term/tenure of appellant Nos.2,3 and 4 as trustees has long ended. The impugned orders neither visit appellant Nos.2,3 and 4 with any

stigma nor do the impugned orders impose any embargo upon appellant Nos.2,3 and 4 to recontest elections and seek yet another tenure, in terms of the trust deed and law. Taking into consideration such circumstances, no useful purpose will be served by interfering with the impugned judgments and orders, at this stage, at the behest of the appellants in First Appeal No.1327 of 2015 and 1328 of 2015. However, the two first appeals, i.e., First Appeal No.1327 of 2015 and First Appeal No. 1328 of 2015 can be disposed of by clarifying that nothing in the impugned orders cast or shall be construed as casting any stigma upon appellant Nos.2,3 and 4 or rendering them ineligible to contest for the position of trustees of the said Trust, at the election/election process. First Appeal No.1327 of 2015 and 1328 of 2015 are disposed of in the aforesaid terms.

18. Mr. Godbole, learned counsel for Mr. James Baker and another, the applicants in Application No. 28 of 2009 before the Joint Charity Commissioner urged that First Appeal No.1244 of 2015 and 1250 of 2015 may also be disposed of as infructuous, since the tenure of the appellants in the appeals has also ended, and even the period for which the appellants in the said first appeals were directed to be suspended, has since expired. He submits that the charges against the appellants in First Appeal No. 1250 of 2015 are quite grave and the same have been held as proved, concurrently by the Joint Charity Commissioner as well as the City Civil Court, Mumbai. On this basis, Mr. Godbole submits that First Appeal No.1244 of 2015 and 1250 of 2015 deserve dismissal with exemplary costs.

19. Ms Prachi Tatake and Mrs. V.V. Thorat, learned counsel for the appellants in First Appeal Nos.1244 of 2015 and 1250 of 2015, dispute the contentions of Mr. Godbole and submit that the two first appeals cannot be regarded as infructuous, at least for the following two reasons:

a] The impugned orders cast stigma upon the appellants, which needs to be wiped out in these appeals:

b] In terms of the impugned orders, Rev. Dr. P.B. Amolik, the appellant in First Appeal No. 1250 of 2015, has been permanently removed as trustee. This means that Rev. Dr. P.B. Amolik has been debarred from contesting to the position of trusteeship, for life . Mrs V.V. Thorat submits that apart from such direction being contrary to law, unless, such direction is set aside in such appeal, Rev. Dr. P.B. Amolik will secure no real redressal in the matter.

20. There is merit in the contention of Ms Tatake and Mrs.Thorat, learned counsel

for the appellants in First Appeal Nos.1244 of 2015 and 1250 of 2015. The impugned orders, undoubtedly, cast a stigma upon the appellants in the said appeals. The impugned order also purports to debar the appellants in First Appeal No.1250 of 2015 from holding the position of trustee of the Trust forever. In such circumstances, the first appeals cannot be disposed of as infructuous, even though, the tenure of the trustees has ended and fresh elections will have to be held in the matter.

21. Ms Tatake and Mrs. V.V. Thorat have attacked the findings of fact recorded by the Joint Charity Commissioner in his judgment and order dated 17 December 2012 and by the City Civil Court, Mumbai in its judgment and order dated 30 October 2015. They submit that there is no evidence to link the appellants with the charges levelled against them and in any case, the charges, were by no means sufficient for initiation of action under section 41D of the MPT Act. In such circumstances, they submit that the impugned judgments and orders made by the Joint Charity Commissioner and the City Civil Court at Mumbai are liable to be set aside.

22. On the other hand, Mr. Godbole, learned counsel for the respondents, who had instituted Application No. 28 of 2009 seeking action under section 41D of the MPT Act submits that there is overwhelming evidence on record, which establishes the charges leveled against the appellants and therefore, there is no case made out to interfere with the impugned judgments and orders.

23. Mrs. Thorat, learned counsel for the appellants in First Appeal No.1250 of 2015, i.e., Rev. Dr. P.B. Amolik, in the alternate submits that the removal of the appellant as trustee for life, is clearly a direction which is in excess of jurisdiction vested in the Joint Charity Commissioner. She submits that there is no provision under the MPT Act, which entitles the Joint Charity Commissioner to make an order of such nature. She submits that the Joint Charity Commissioner, in making such an order, has virtually, re written the provisions of section 41D of the MPT Act, which is clearly impermissible. She therefore, submits that even if the charges leveled against Rev. Dr. P.B. Amolik, are to be accepted as proved, there is absolutely no authority or justification to debar Rev. Dr. P.B. Amolik, to be the trustee of the Trust for life. She points out that Rev. Dr. P.B. Amolik, is 84 years of age and in the evening of his life, there is no justification that he suffers such a harsh direction, particularly, when such direction was never justified either on facts or in law.

24. Mr. Godbole, learned counsel for the respondents, who had originally instituted Application No. 28 of 2009 before the Joint Charity Commissioner submits that the impugned order disqualifying Rev. Dr. P.B. Amolik, to hold the trusteeship for life is very much justified, both on facts as well as in law. He submits that if Rev. Dr. P.B. Amolik, is permitted to contest the election, despite, such serious charges having been held as proved against him, the very governance of the Trust will be serious

jeopardy. He submits that the provision contained in section 41D of the MPT Act is required to be interpreted in light of the statement of objects and reasons as also other provisions of the MPT Act. Thus construed, Mr. Godbole submits that there is no legal infirmity whatsoever in the impugned judgment and order and the direction made therein.

25. Based upon the pleadings as well as the submissions made by learned counsel for the parties, the following two main points arise for determination in First Appeal No. 1244 of 2015 and 1250 of 2015.

i] Whether the charges leveled against the appellants were sufficient and proved so as to entitle the Joint Charity Commissioner to suspend/remove the appellants as trustees of the Trust in exercise of powers conferred upon him under section 41D of the MPT Act ?

ii] Whether the Joint Charity Commissioner is empowered under section 41D of the MPT Act to dismiss Rev. Dr. P.B. Amolik as trustee of the Trust "forever" ?

26. In order to evaluate the rival contentions, at the outset, reference is necessary to the provisions contained in section 41D of the MPT Act, which read thus:

"41D. (1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under Section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he

(a) makes persistent default in the submission of accounts report or return;

(b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;

(c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;

(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or

(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee;

(f) if convicted of an offence involving moral turpitude.

(2) When the Charity Commissioner proposes to take action under subsection (1), he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) A trustee, aggrieved by an order made under subsection (1) may, within ninety days from the date of communication of the order of suspension, removal or dismissal, apply to the Court against such order.

(6) An appeal shall lie to the High Court against the decision of the Court under subsection (5) as if such decision was a decree from which an appeal ordinarily lies.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final."

27. From the aforesaid, it is clear that the Charity Commissioner may either on an application of trustee or any interested in the Trust, or on receipt of report under section 41D of the MPT Act or suo motu suspend, remove or dismiss any trustee of a public trust, if such trustee makes persistent default in the submission of accounts report or return; wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of MPT Act or rules made thereunder by the State Government; continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust; misappropriates or deals improperly with the properties of the trust of which he is a trustee; or accepts any position in relation to the trust which is inconsistent with his position as a trustee; if he is convicted of an offence involving moral turpitude. There is no dispute in terms of section 3 of the MPT Act, even a Joint Charity Commissioner is empowered to exercise powers under section 41D of the MPT Act. Accordingly, there is no challenge to the exercise of powers under section 41D of the MPT Act by the Joint Charity Commissioner.

28. Section 41D (2) of the MPT Act provides that when the Charity Commissioner proposes to take action under subsection (1) of section 41D of the MPT Act, i.e., action of suspension, removal or dismissal of the trustee, the Charity Commissioner shall frame charges against the trustee and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal will have to state the charges framed against the trustee, his explanation and record the finding on each charge, with the reasons therefor.

29. Section 41D of the MPT Act provides that where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust. This provision, is possibly the provision under which the Joint Charity Commissioner, by his order dated 17 December 2012 appointed an Administrator to govern the affairs of the Trust. However, from the impugned order, it is not at all clear as to whether, in terms of the instrument of the Trust, governance of Trust was not possible, consequent upon

the suspension and removal of the appellants in First Appeal Nos.1244 of 2015 and 1250 of 2015.

30. In this case, perusal of the Joint Charity Commissioner's order dated 17 December 2012 would indicate that there is substantial compliance with the procedure prescribed under section 41D(2) of the MPT Act.

31. From the record, it is apparent that the Joint Charity Commissioner did frame charges against the trustees, afford such trustees sufficient opportunity of meeting such charges of testing the evidence adduced against them and opportunity for themselves adducing evidence in their favour. Accordingly, there is no case made out to interfere with the impugned orders on the grounds of breach of any principles of natural justice or lack of opportunity to meet charges, to test the evidence in support of the charges or to adduce the evidence in order to demolish the charges so leveled. Besides, the impugned order dated 17 December 2012 made by the Joint Charity Commissioner states the charges framed against the trustees, records their explanation and further, also gives findings on each charge with reasons therefor. On procedural grounds, therefore, there is no case made out to interfere with the impugned order.

32. The Full Bench of this Court in Prabhakar S. Chaudhari vs. Laxman B. Mali - Second Appeal No. 700 of 2008 decided on 1 April 2016 (Aurangabad Bench), in the context of provisions of section 72(4) of the MPT Act held that even though, the said provision contemplates an appeal to the High Court against the decision of the court under subsection (2) of section 72 of the MPT Act, as if, such decision was a decree from which an appeal ordinarily lies, such appeal, is not to be adjudged by the rigorous, which normally apply to a second appeal under section 100 of CPC. Applying similar principle to an appeal under section 41D (6) of the MPT Act, it will be safer to proceed on the basis that the present appeals, though technically are second appeals, the same, will not be adjudged by applying the rigorous of section 100 of the CPC, in absence of any specific provisions to this effect under the MPT Act. Accordingly, the full opportunity was granted to learned counsel for the parties to make their submissions in the context of charges which have been held as proved against the appellants in First Appeal Nos. 1244 of 2015 and 1250 of 2015. The record was also examined and considered for this purpose. Further, since this matter relates to charges and action under section 41D of the MPT Act, this court, was conscious of the circumstance that the higher degree of proof is necessary in order to sustain the charges levelled against the appellants, as laid down in certain decisions on the subject, to which, some reference was made by Mrs. Thorat, learned counsel for the appellants in First Appeal No. 1250 of 2015.

33. The charge levelled against Rev. Dr. P.B. Amolik was that he permitted frittering away of the trust property, i.e., Claire Road property, C.T,S. No.242, for a song and

without there being any resolution of the Board of Trustees authorising such action. By way of elaboration, it was stated that the Claire Road property admeasuring 785 sq.mtrs of which, the Trust was a lessee in terms of lease deed dated 19 April 1938 for a period of 99 years was purported to be sold to Fizabhai and Nafisa Ali Taherbhai for a consideration of Rs.7 lakhs or thereabouts, when in fact, the Ready Reckoner price estimates the value at Rs.3 crores. It is stated that the purchasers have constructed a 40 storey building upon said property and amassed a fortune and the Trust, has only received an amount of Rs.7 lakhs.

34. Mrs. Thorat, learned counsel for Rev. Dr. P.B. Amolik, submitted that the purchasers were sublessees in respect of Claire Road property. Since, the Trust was only the lessee of the property, there was no necessity of obtaining permission of the Charity Commissioner under section 36 (1)(a) of the MPT Act and therefore, there was no infirmity in transferring the property to the purchaser even during pendency of application under section 36(1)(a) of the MPT Act. She submits that the amount of RS.8,50,000/was received by cheque and therefore, the charge as levelled against Rev. Dr. P.B. Amolik was required to be held has not proved or in any case not sufficient to warrant any action under section 41D of the MPT Act.

35. The Joint Charity Commissioner as well as the City Civil Court, Mumbai in the impugned judgments and orders, upon appreciation of the evidence on record in great details held the charge as proved as against Rev. Dr. P.B. Amolik. The evidence on record clearly establishes that the Trust had held the Claire Road property, which is undoubtedly, a prime property, on basis of lease for the term of 99 years. The evidence on record also establishes that absence of any proper resolutions to back the action of Rev. Dr. P.B. Amolik. The evidence on record also establishes that permission was applied for from the Charity Commissioner under section 36(1) (a) of the MPT Act. However, even before such permission could obtained, Rev. Dr. P.B. Amolik proceeded with the transactions and eventually transferred the Claire Road property admeasuring 785 sq. meters and conservatively valued at least Rs.3 crores to Fizabhai and Nafisa Ali Taherbhai, for virtually a song. The circumstance that the amount of RS.7 lakhs or Rs.8,50,000/(as is borne from the evidence on recored) was received by cheque in favour of the Trust, is hardly some ground to excuse or mitigate the action of Rev. Dr. P.B. Amolik in dealing with the trust property, in such a manner. Section 41 D (1)(d) clearly provides that the Charity Commissioner may suspend, remove or dismiss a trustee, where the trustee misappropriates or deals improperly with the properties of the trust of which he is a trustee. The evidence on record is more than sufficient to sustain the first charge against Rev. Dr. P.B. Amolik as well as the other trustees, who, at least, on account of their neglect, permitted, frittering away of the trust property both, without authority of law and virtually, for a pittance.

36. The second charge against the trustees, who were styled as opponent Nos.1 and

3 in Application No. 28 of 2009 made before the Joint Charity Commissioner is that they took no steps to recover an amount of Rs.2,32,10,000/from the developer of the property styled as St. Crispin's Home, at Pune, which was due and payable to the Trust. On this ground, it was alleged that there is continuous neglect on the part of the said trustee in discharge of their duties, apart from misfeasance, malfeasance and improperly dealing with the trust property.

37. Again, there is substantial evidence on record to sustain the finding that such charge stands proved. Apart from concurrent findings recorded by the Joint Charity Commissioner and the City Civil Court, Mumbai, it is to be noted that there is ample evidence on record which establishes that such amounts were required to be recovered from the developer in relation to the development of the trust property. The material on record also establishes that the said trustees were responsible and duty bound to have taken steps to effect such recovery. Rather than take such steps, it is apparent that the said trustees, failed and neglected in discharge of their duties. Accordingly, there is no reason to interfere with the findings as regards Charge No.2.

38. Charge No.3 was framed against Rev. Dr. P.B. Amolik to the effect that he leased out the trust property at Matheran bearing M.P. No.10, admeasuring 27652.5sq.mts, without sanction from the Charity Commissioner by misleading the Board of Trustees. There is also a charge that Rev. Dr. P.B. Amolik did not account the lease rent and thereby, continuously neglected his duty and committed malfeasance, misfeasance and misappropriation and even otherwise, improperly dealt with the trust property. Again, the Joint Charity Commissioner as well as the City Civil Court, Mumbai have held the charge as proved on the basis of material on record.

39. Mrs. V.V. Thorat, learned counsel for Rev. Dr. P.B. Amolik, has contended that permission from the Joint Charity Commissioner could not be obtained as the lease deed dated 23 March 2005 was in a cupboard located in the trust office and the same was sealed by Azad Maidan Police Station. She further contended that Matheran property was not leased to Deep Swapna Trust for any commercial purpose, but the same was leased because the objects of the Trust were similar to the objects of the Bombay Diocesan Trust Association Private Ltd.. Further, Mrs.Thorat contended that after the term of lease expired, only a leave and licence was granted and there is no prohibition under the MPT Act for entering into any such transactions.

40. The evidence on record does indicate that sealing of the Trust office by Azad Maidan Police Station took place some time in March 2004. This means that the lease agreement dated 23 March 2005 could not have been in the cupboard at the trust office, which stood sealed from May 2004. In any case, the defences hardly merit acceptance. In absence of proper and valid reasons and without apprising

Board of Trustee of full, true and correct particulars, Rev. Dr. P.B. Amolik was not at all justified in dealing with Matheran property admeasuring 27652.5 sq. meters, in the manner in which he has purported to deal with the same. Again, this is a clear case of improperly dealing with the Trust property. Such a large and valuable property at Matheran was purportedly handed over to another trust without being any corresponding benefit to the Trust. Accordingly, the third charge against the appellant stands duly proved.

41. The fourth charge against the trustees styled as opponent Nos.1 to 10 (except opponent No.2) in Application No.28 of 2009, is that they dealt with yet another Mahabaleshwar property of the trust, in a totally improper manner and further, continuously neglected their duties and committed acts as contemplated by section 41D(1)(b) (c) of the MPT Act. The charge is that the property was agreed to be sold to one Mrs. Sulochana Bavlekar for an amount of Rs.5 lakhs, which amount in fact was deposited by her with the trust. The trustees in question, even without there being any resolution in that regard, created a lease in respect of said Mahabaleshwar property in favour of M/s. Sawarna Builders. The amount received from M/s. Sawarna Builders was not at all properly accounted for and at a later stage, an amount of Rs.10 lakhs was indicated as liability to M/s. Sawarna Builders. Again, both the Joint Charity Commissioner as well as the City Civil Court, Mumbai have held this charge as proved against the trustees.

42. There is documentary evidence on record, which indeed supports the charge leveled against the trustees. There are no resolutions produced by the trustees in support of their action. The amount of Rs.10 lakhs received from M/s. Sawarna Builders was indicated as liability to the developer and that too, with regard to Mahabaleshwar property, when in fact, M/s. Sawarna Builders were dealing with the Mahabaleshwar property of the Trust. This is again, a case where the trustees, have improperly dealt with the trust property and thereby, caused losses to the trust. The appeal court has in fact recorded the trustee's disobeyed the orders made by the Joint Charity Commissioner and further, there was misappropriation of Rs.5 lakhs. Even if misappropriation aspect is excluded from consideration, there is sufficient material on record to sustain charge No.4 with regard to improper dealing with Mahabaleshwar property of the Trust.

43. The fifth charge leveled against the trustees styled as opponent Nos.1 to 10 (except opponent No.2) in Application No. 28 of 2009 relates to Ahmedabad property admeasuring 108846 sq.ft. This charge is held as not proved against the trustees. As such there is no necessity to proceed further in relation to this charge.

44. The sixth charge leveled against the trustees styled as opponent Nos.1 to 10 (except opponent No.2) in Application No.28 of 2009 states that the trustees alienated Proctor Road property from development, without there being any

sanction or proper resolution of the Board of Trustees. There is also reference to Agripada property in relation to Charge No.6.

45. The charge is that the properties were transferred without permission and in any case in breach of terms of sanction by the Charity Commissioner. The transferee, consumed the entire FSI, constructed building and flats, which were eventually sold to third parties. Several defences were raised, which, deserve no acceptance. One of the defence was that all this exercise was done because the Trust received a donation of Rs.10 lakhs. This is hardly a valid defence to such a serious charge of improperly dealing with trust property. The evidence on record including in particular documentary evidence on record, which has referred to by the Joint Charity Commissioner and also the appellate court very clearly establishes this charge. In fact, the appellate court has observed that the flats were never sold to the persons from low income group or Christians. However, opponent No.10, who signed the agreement received an amount of Rs.15 lakhs and residential accommodation, as a quid pro quo. All this material is sufficient to prove the 6th charge leveled against the trustees.

46. The seventh charge was against the trustee styled as opponent no.10 in Application No.28 of 2009. The charge was that this trustee signed the Memorandum of Understanding dated 18 August 2009 as a Chairman of Emmanuel Church Co.Op. Housing Society, which is the society of the beneficiaries of the Bombay Diocesan Trust Association Pvt. Ltd. On this basis it was alleged that the said trustee had accepted the position in relation to the Trust, which is inconsistent with his position as a trustee.

47. Although, both Joint Charity Commissioner as well as the City Civil Court at Mumbai have held this charge as proved , since, it is not quite clear as to how such action on the part of the opponent No.10 trustee attracts the provisions contained in section 41D (1)(e) of the MPT Act, it will be safer to hold said charge as not proved against opponent No.10 trustee. This, however, affords no cause to interfere with the final impugned orders.

48. Charge No.8 leveled against Rev. Dr. P.B. Amolik, is that the said trustee, without authority or resolution of the board of trustee improperly dealt with the Panvel property of the Trust. The Trust, in any case was due to get 72480 sq ft of built up area from the developer M/s. Nikhil Enterprises. The trustee, took no steps to recover such area. Besides, the trustee caused vague resolutions to be passed conferring undue benefits to the developer. Thereafter, in breach of restraining orders certain flats were permitted to be sold for throw away prices. By way of illustration, it was alleged that Flat No. 403 admeasuring about 793 sq. ft having market value of Rs.40 lakhs was sold for consideration of hardly Rs.4,80,000/.

49. Again, both the Joint charity Commissioner and the City Civil Court, Mumbai have held the charge as proved. There is ample documentary evidence to hold that the charge as proved. The defence, as raised by Mrs. Thorat was totally vague and therefore, merits no acceptance. From the material on record, it is apparent that the trustees dealt with the Trust property improperly and has in fact frittered away the trust property for a song. There are no resolutions or permission from the competent authority to sustain such acts. The documents produced on record clearly establish this charge.

50. Charge No.9 relates to the property at Pune. The allegation is that Rev. Dr. P.B. Amolik was styled as Opponent No.1 in Application No. 28 of 2009 entered into a development agreement with Jai Construction, without there being any resolution of the Board of Trustees. Again, the agreement purported to confer certain rights upon the builder at the rate of Rs.65/per sq. ft. An amount of Rs.75 lakhs was received from the developer, but never accounted for. In the records, the liability was indicated against Pune property admeasuring 2,65,892 sq. ft in an amount of Rs.5 lakhs for the financial year 2005-2006.

51. Again, the Joint Charity Commissioner and City Civil Court, Mumbai have correctly held this charge as proved against the trustee. There is no proper resolution on record authorising the trustee to enter into the transaction in this magnitude in relation to the trust property. No permission has been obtained from the statutory authority for dealing with the Trust property in this manner. There is no explanation, regards the amount of Rs.75 lakhs. This is indeed a serious charge and the same stand proved, even on the basis of the documents on record.

52. Finally, the tenth charge relates to the Trust property, admeasuring 2659 sq. mtrs at Guruwarpeth Pune. The allegation is that Rev. Dr. P.B. Amolik styled as opponent No.1 in Application No. 28 of 2009 is alleged to have dealt with the development rights in respect of this property were given to Mr. Ambalal Jain and an amount of Rs.7,50,000/was purportedly received as donation. Again, both Joint Charity Commissioner and City Civil Court have held the charge as proved against the trustee. The documents on record bear out that the Trustee dealt with this property in absence of any resolution or permission from the statutory authority. Obviously, the value of the property at Guruwar Peth, Pune admeasuring 2659 sq. mtrs. is much greater and it is not possible to accept that the transaction was entered into in lieu of donation of Rs.7,50,000/in favour of the Trust. This charge is also rightly held as proved against the trustee.

53. After holding the charges as proved, the Joint Charity Commissioner made the following order dated 17 December 2012:

ORDER

1. Application is allowed.

2. Opponent No.1 Mr. P.B. Amolik is hereby dismissed from the trusteeship of the Trust "Bombay Diocesan Trust Association Pvt. Ltd.", having P.T.R. No.E923 (Bom.) u/s. 41D of The Bombay Public Trust Act, 1950 forthwith forever.

3. Opponent Nos.3,4,5,6,7,9 & 10 are hereby removed from the trusteeship of the Trust "Bombay Diocesan Trust Association Pvt. Ltd." having P.T.R. No.E923 (Bom.) u/s.41D of The Bombay Public Trust Act, 1950 for six months from the date of passing of this order.

4. Opponent No.8 is hereby removed from the trusteeship of the Trust "Bombay Diocesan Trust Association Pvt. Ltd.", having P.T.R.No. E923 (Bom.) u/s. 41D of The Bombay Public Trust Act, 1950 for five years from the date of passing of this order.

5. Deputy Charity Commissioner is hereby directed to dispose off all the pending change reports before him in respect of "Bombay Diocesan Trust Association Pvt. Ltd." having P.T.R. No.E923 (Bom) within a period of six months from date of passing of this order.

6. Assistant Charity Commissioner (I) & Assistant Charity Commissioner (Hospital) are hereby directed to take over the charge of BDTA Trust & to lookafter the day to day management and administration of the Trust. Assistant Charity Commissioner (Hospital) to assist and cooperate to Assistant Charity Commissioner (I). They are further directed to hold election of the Trust as per the provisions of the Articles of Association within a period of six months from the date of passing of this order and report compliance to this authority. They are further directed not to take any policy decision.

7. Assistant Charity Commissioner (II) is hereby directed to hold enquiry in respect of the Trust property in direction that how many Trust properties are sold during the tenure of opponent No.1 and in how many transaction there is a valid resolution passed by the trustees and whether there is a sanction obtained before alienation of the property. He is also directed to assess the

loss caused to the Trust by the misappropriation, negligence in duties, breach of trust at the hands of opponent trustees & report accordingly.

8. Parties be informed accordingly.

9. Send the copy of this judgment to Assistant Charity Commissioner (I),(II) & (Hospital) immediately."

54. Since, most of the charges against the trustees stand proved, there is really no case made out to interfere with the exercise of powers by the Joint Charity Commissioner under section 41D of the MPT Act. The Joint Charity Commissioner, has in fact, been charitable to most of the trustees except perhaps Rev. Dr. P.B. Amolik, since, most of the trustees, were removed as trustees only for a limited period of six months and the trustee styled opponent No.8 was removed for a period of five years. Rev. Dr. P.B. Amolik was, however, dismissed from the trusteeship "forever". Although, the charges held as proved against Rev. Dr. P.B. Amolik are indeed serious and warrant a very serious action, the question is whether the Joint Charity Commissioner is empowered to order the removal a trustee "forever"?.

55. Mr. Godbole, learned counsel for James Baker and another, i.e., applicants in Application No.28 of 2009, relied upon certain principles in service jurisprudence and submitted that an employer, in case of proved and gross misconduct on the part of employee, can always dismiss the employee and particularly in case of government service can impose penalty of dismissal which shall operate as disqualification for future employment in government service. Mr. Godbole also made reference to certain provisions of Pension Scheme, 1995 as regards forfeiture of service, particularly in case of gross misconduct. Mr. Godbole has also relied upon decision of Hon'ble Supreme Court in Shyam Lal vs. State of U.P. and anr. AIR 1954 SC 369, in support of such submission.

56. On the other hand, Mrs. Thorat, placed on record the Maharashtra Ordinance No.XIII of 1997 dated 28 May 1997, by which, certain subsections were inserted in section 41D of the MPT Act, so as to disqualify trustees, who were dismissed by the Charity Commissioner under subsection (1) of section 41D of MPT Act from contesting elections or being appointed to the office of the Trust, unless such dismissal is stayed by competent court or ultimately set aside. She submits that such ordinance lapsed and therefore, subsections 7 and 8 to section 41D of the MPT Act, no longer find place on the statute book. She submits that in absence of such

provisions, the Joint Charity Commissioner clearly exceeded jurisdiction in dismissing Rev. Dr. P.B. Amolik as trustee of the Trust "forever".

57. The second point for determination in this appeal is therefore, whether the Joint Charity Commissioner is empowered under section 41D of the MPT Act to dismiss Rev. Dr. P.B. Amolik as trustee of the Trust "forever" ?

58. Although, it is true that Rev. Dr. P.B. Amolik has committed very serious acts of misconduct and action is warranted against him under section 41D of MPT Act, the question really is whether the Joint Charity Commissioner has power to order dismissal of the trustee "forever". The import of Joint Charity Commissioner's order, which has now been upheld by the City Civil Court is that Rev. Dr. P.B. Amolik stands dismissed as a trustee not only for the term for which he was appointed as a trustee, but, the expression "forever" indicates that Rev. Dr. P.B. Amolik is disqualified from contesting any elections or being appointed to the office of the trustee, unless, the dismissal order is stayed or set aside by the appellate authority. In this case, there is no case made out to set aside the dismissal order. This means that if the impugned order, which purports to dismiss Rev. Dr. P.B. Amolik "forever" is sustained, then Rev. Dr. P.B. Amolik will not be in a position to contest for election or be appointed, as a trustee of the trust.

59. The principles of service jurisprudence cannot be imported in a matter of this nature. In any case, Mr. Godbole relied upon the specific provision under certain service regulations, which permit the adoption of such a course of action. However, such provisions, are conspicuous by their absence in the MPT Act.

60. The Legislature, was perhaps conscious of the absence of such provision and with a view to remedy such mischief, the Bombay Public Trust (Amendment) Ordinance 1997 (1997 Ordinance) was promulgated in order to insert subsections 7 and 8 in section 41D of the MPT Act.

61. The 1997 Ordinance reads thus:

"MAHARASHTRA ORDINANCE No. XIII OF 1997

(28th May 1997)

BOMBAY PUBLIC TRUSTS (AMENDMENT) ORDINANCE, 1997.

AN ORDINANCE further to amend the Bombay Public Trusts Act, 1950.

WHEREAS both Houses of the State Legislature are not in session;

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Bombay Public Trusts Act, 1950;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:

1. Short title and commencement. (1) This Ordinance may be called the Bombay Public Trusts (Amendment) Ordinance, 1997.

(2) It shall come into force at once.

2. Amendment of section 41D of Bom. XXIX of 1950. In section 41D of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the principal Act"), after subsection (7) the following subsection shall be added, namely:

"(8) A trustee of a public trust who has been dismissed by the Charity Commissioner under subsection (1), shall be disqualified for contesting any election or being appointed, to the office of a trustee of such trust unless,

(i) the order of his dismissal is stayed or set aside by the Court under subsection (5) or by the High Court, in appeal, under subsection (6); or

(ii) no stay is granted by the High Court in an appeal filed by the Charity Commissioner or any trustee of the trust or any person interested in the trust, under subsection (6), against the order of the Court under subsection (5) setting aside the dismissal order of the Charity Commissioner".

62. If the impugned action had been taken during subsistence of the Ordinance, then, there was absolutely no reason to interfere with the impugned order to the extent it disqualifies Rev. Dr. P.B. Amolik from contesting or being appointed to the

office of a Trust. However, at the stage where the impugned orders were made, the ordinance had already lapsed and was no longer operative. It is an admitted position that the State Legislature did not introduce of bill in the legislative assembly, so as to amend section 41D of the MPT Act, by inserting subsections 7 and 8 to section 41D as aforesaid. Mr. Godbole's contention that the Ordinance was allowed to lapse or that no bill was introduced in the legislative assembly because the existing provisions of section 41D of the MPT Act itself imposed an implied bar, cannot be accepted. The circumstance that an Ordinance was promulgated and subsections 7 and 8 introduced in section 41D of the MPT Act, itself suggests that but for such promulgation and introduction, there was no power vested in the Charity Commissioner to debar a dismiss trustee from recontesting for the position of trustee, consequent upon determination of his tenure.

63. In view of the aforesaid, although, the dismissal of Rev. Dr. P.B. Amolik is required to be upheld, such dismissal, to the extent, it purports to debar Rev. Dr. P.B. Amolik from contesting for the position of trustee post determination of his tenure, is required to be set aside. This means that the expression for "forever", as it appears in clause (2) of operative portion of the judgment and order dated 17 December 2012, is liable to be set aside and is hereby set aside. First Appeal No.1250 of 2015 instituted by Rev. Dr. P.B. Amolik is therefore, allowed to the aforesaid extent only.

64. This is a fit case where the appellants in First Appeal Nos.1244 and 1250 of 2015 are required to be saddled with exemplary costs. From the evidence on record, it is clear that the appellant trustees have frittered away the trust property for a pittance. The appellants have raised false and frivolous defences to the charges under section 41D of the MPT Act and further, failed to establish such defences. Such costs are required to be paid to the Joint Charity Commissioner.

65. There is no dispute that tenure of the trustees, has already expired. There is no dispute that in terms of the instrument of trust the elections are long over due. Already there are directions issued for holding elections in accordance law, such directions are required to be implemented. In fact, the concerned Charity Commissioner, should ensure that the election process is completed as expeditiously as possible and in any case not later than three months from the date of this order.

66. Writ Petition No. 12089 of 2015 instituted by Jamesh Baker and another impugns the following observation recorded in the impugned order dated 30 October 2015 made by the City Civil court, Mumbai.

"85. Needless to mention that the applicant no.1 Mr. James Baker is also not a holy cow. He is involved in several criminal activities. Some criminal cases are pending against him in Gujarat state. It further seems that after passing impugned judgment the applicant no.1 with a view to capture the trust seems to have filed certain applications with Joint Charity Commissioner and attempted to mislead. Be that as it may, the parties to present proceeding are not free blame, therefore, I recommend/suggest the learned Joint Charity Commissioner to initiate *soumoto* (sic) proceeding under section 50A of the Act prepare a scheme and to appoint Collector as Exofficio Chairman of the Trust to manage the Trust. I further recommend that the learned Joint Charity Commissioner appoint prominent persons from Christian community as trustees of the Trust by following the procedure as contemplated u/s 50A of the Act so that the huge property of the Trust in question can be saved from being wasted in future at the hands of applicant no.1 and all the respondents."

67. In a matter of this nature, the observations that James Baker is not a holy cow or that he has mislead the authority, were really not warranted. In a matter of this nature, what is really important is the message and not messenger. Section 41D of the MPT Act also empowers the Charity Commissioner to exercise his jurisdiction *suo moto*. Accordingly, the observations made against James Baker are ordered to be expunged. The writ petition is therefore, allowed to the said extent.

68. The appeals and the writ petition are therefore, disposed of with the following order:

a] First Appeal Nos.1327 and 1328 of 2015 are disposed of by clarifying that nothing in the impugned orders dated 17 December 2012 and 30 October 2015 cast or shall be construed as casting an stigma upon appellant Nos.2,3 and 4 in the said appeals or renders them ineligible to contest for the position of trustees of the said Trust at the election/election process now ordered to be held for the position of trustees to the trust;

b] First Appeal No.1244 of 2015 is dismissed with costs assessed at Rs.25,000/(Rupees Twenty Five Thousand only) payable by the appellant to the Joint Charity Commissioner within a period of four weeks from today;

c] First Appeal No. 1250 of 2015 is partly allowed and the expression "forever" which appears in clause (2) of the operative portion of the impugned order dated 17 December 2012 made by the Joint Charity Commissioner is set aside. However, the appeal, to the extent, it challenges the rest part of the impugned order dated 17 December 2012 and the impugned order dated 30 October 2015, is hereby dismissed with costs assessed at Rs.1,00,000/(Rupees One Lakh only) payable by Rev. Dr. P.B. Amolik to the Joint Charity Commissioner, within a period of four weeks from today;

d] Writ Petition No. 12089 of 2015 is allowed and the observations made in paragraph 85 of impugned judgment and order dated 30 October 2015 made by the City Civil Court, Mumbai against the petitioner James Baker, are set aside;

e] The concerned Charity Commissioner and the Joint Charity Commissioner is directed to hold elections for the position of trustees of the Trust, in accordance with law as expeditiously as possible and to complete election process, not later than three months from the date of this order;

f] The first appeals and the writ petition are disposed of in the aforesaid terms;

g] The pending civil applications do not survive and the same are disposed of.

69. At this stage, Mrs. Thorat, learned counsel for the appellant-Rev Dr.P.B. Amolik requests that the time for payment of costs by the appellant Rev. Dr.P.B. Amolik be extended to eight weeks instead of four weeks. The extension is granted. Accordingly, the costs may be paid withing eight weeks from today.