

**1995 (1) G.L.H. 627  
S. D. SHAH, J.**

Kirit S. Sevak ...Applicant  
Versus  
Bansidhar J. Pathak & Anr. ...Opponents

Civil Revision Application No. 1045 of 1994\*

D/ 27-10-1994

\*Revision against judgment of Second Joint District Judge, Kheda, Nadiad dismissing the application contending that the Second Joint District Judge, Kheda does not have jurisdiction to hear the dispute

**(A) Words and Phrases 'District Court' and 'District Judge' - 6 GLR 49 relied upon. (Para 9A)**

**(B) Bombay Public Trusts Act, 1950 - S. 50 - Exercise of power of appointment of trustee in accordance with the instrument of Trust is not subject to provisions of S. 50 - When such power is given to 'District Court' under an instrument of Trust an application to it for exercise of such power does not make it an application under S. 50 - When done of the power is 'District Court', the 'District Court' means District Court as provided under S. 12 of Bombay Civil Courts Act, 1869 and not District Judge as a *persona designata* - 6 GLR 49 is affirmed and not overruled by Full Bench in AIR 1985 Guj. 1.**

The aforesaid decision of P. N. Bhagwati, J. (as His Lordship then was) is the first binding precedent of this Court dealing with the very provisions of the very Scheme which was finally sanctioned by the Judicial Committee of the Privy Council, As per this decision, it is [*@page627*] abundantly clear that under Clause 7 of the Scheme, power to appoint and remove a member of Dakore Temple Committee is conferred on the District Court, Kheda as the Principal Civil Court of original jurisdiction in the District and not on the Presiding Officer of the District Court, namely, the District Judge as a *persona designata*. This decision is not said to have been overruled expressly or impliedly by any subsequent decision of this Court not (*sic. nor*) is it reversed by the Superior Court. (Para 10)

The question before the Full Bench was as to whether S. 50 of the Bombay Public Trust Act, 1950 would override the provisions contained in the instrument of Trust irrespective of the fact that the power to appoint/nominate trustee was vested in the specified authority by the Deed of Trust. In this context, the Full Bench of this Court made very pertinent observations in Para-11 of the reported judgment which are extracted hereinabove and more particularly the observations which are underlined clearly affirm the view taken by P. N. Bhagwati, J. (as His Lordship then was) in the case of *Shah Jagmohandas Purshottamdas* (supra). If the underlined observations are read with reference to the context in which they are made, there is no manner of "doubt that in cases where under the instrument of Trust for filling in the vacancy of a trustee, the power is vested in the District Court that Court is invited to fill in the vacancy, and such an application is not one made under S. 50 of the Act. The Full Bench has not taken the view that when the power is conferred by the instrument of Trust to appoint a trustee for filling in vacancy of a trustee, the District Judge himself and he alone can exercise the power. (Para 13)

**(C) Bombay Civil Courts Act, 1869 - Ss. 7 and 12 - Assignment of work.**

**(D) Interpretation of Statutes - Words in Statute are to be understood according to their well recognised legal meanings unless compilation of other words in the Statute indicate otherwise.**

Where the Legislature used words which have well recognised legal meanings, it must be assumed that the words are used in the sense which they bare according to such well recognised meanings and that it always requires the compilation of other words in a statute to induce the Courts to alter the well-known meaning of a

legal term. After reference to the provisions of S. 2(4) and (3) of the C. P. Code and Ss. 5, 7 and 8 of the Bombay Civil Courts Act, 1869, His Lordship noticed that there is a well recognised distinction between "District Court" and "a District Judge". The District Court is the principal Court of original civil jurisdiction in the district which hears appeals from all decrees and orders passed by the subordinate courts and in its turn is subordinate to the High Court and subject to the revisional jurisdiction of the High Court while the District Judge is the Judge who presides over the District Court. He, therefore, held that when High Court sanctioned the scheme and provided that the power to appoint or remove a member of the Committee shall be vested in the District Court, the High Court used the expression "District Court" according to its well recognised legal meaning and meant the principal Civil Court of original jurisdiction in the District which was subordinate to the High Court. He further held that if the intentions of the High Court were to leave the matter of appointment and removal of members of the Committee to the Presiding Officer of the District Court as *persona designata*, the High Court would have certainly used the more apt expression, namely, "District Judge". (Para 9A) [/@page628]

**Cases Referred :**

1. Jai Rahchhod Bhogilal Sevak v. Thakorelal Pranjivandas Jhumkhawala, AIR 1985 Guj. 1 (FB) (Paras 7, 11, 12)
2. Rathod Bhojaji Shantuji v. Pathan Nasir Khan Kesharkhan, 3 GLR 803 (DB) (Para 7)
3. Shah Jagmohandas Purshottamdas v. Jamnadas Vrajlal Gandhi, 6 GLR 49 (Paras 8, 9, 13, 17)
4. Dahyabhai Nathubhai v. Suleman Isaji Dadabhai, 3 GLR 877 (Paras 8, 16)
5. Central Talkies Limited, Kanpur v. Dwarka Prasad AIR 1961 SC 606 = 1961(3) SCR 495 = 1961 (1) Cr. L.J. 740 (Paras 8, 16, 17)
6. Yasinmian Amirmian Faroqui v. I. A. Shaikh, 18 GLR 54 (DB) (Para 11)
7. Parthasardhi Naidu v. Koteswara Rao, AIR 1924 Madras 561 (Para 17)

**Appearances :**

Mr. D. D. Vyas for petitioner  
Mr. K. S. Nanavati for respondent No. 1  
Mr. Mehul Rathod, A.G.P. for respondent No. 2

**S. D. SHAH, J. :-**

1. Rule. Mr. K. S. Nanavati waives services of rule on behalf of respondent No. 1. Mr. Mehul Rathod, A.G.P. appears and waives service of rule on behalf of respondent No. 2. With the consent of the learned Advocates appearing for the parties, the matter is finally heard today and is decided by this judgment.

2. This Civil Revision Application is directed against judgment and order of Second Jt. District Judge, Kheda, Nadiad, dated 23rd September 1994, whereby he dismissed the application tendered by present petitioner in Misc. Application No. 2 of 1994 pending before him. By such application, the present petitioner *inter alia* contended that there does exist a Scheme for the administration of the properties of ancient Temple of Shri Ranchhod [Temple]. Under the Scheme as finally sanctioned by the Judicial Committee of the Privy Council, the administration of the properties of the temple is to be carried on by a Trust Committee called "Dakore Temple Committee". The Committee was to consist of five members, and all of whom were required to be Hindus professing faith in Ranchhod Raiji. The first five members of the Committee were appointed by Clause-3 of the Scheme while the future constitution of the Committee was provided for in Clauses 4 to 7. Clause No. 7 being relevant for the purpose of this proceeding, is reproduced hereunder :

"7. Any member of the Committee shall, on good cause shown, be liable to be removed by the District Court of Ahmedabad . Any vacancy occurring in this or in any other manner shall be filled up by the District Court of Ahmedabad subject to the reservation contained below :

When the Tambekar member vacates his seat, his place will be occupied by another representative from the Tambekar family subject to the proviso in Clause 4.

When the nominee of the Sevak vacates his seat, his place will (subject to the reservation contained in Clause 6) be occupied by another nominee of the Sevaks."

3. It may be stated that though at the date when the Scheme was finally sanctioned by the judicial Committee of the Privy Council, the town of Dakore was within the jurisdiction of the District Court of Ahmedabad, it came under the [/@page629] control of District Court of Kaira and accordingly District Court of Kaira has acquired jurisdiction. Corresponding to this change, a modification was made in the Scheme substituting the words "District Court of Ahmedabad" by the words "District Court of Kaira". From the averments made in Dakore Temple Application No. 21 of 1994, it becomes clear that the term of one of its members Mr. B. J. Diwan was to expire on 28th of September 1994. The said vacancy was required to be filled-in under Clause-7 of the Scheme. To fill in the vacancy, the application was made by one Bansidhar J. Pathak on 14th of June 1994.

4. On 14th of June 1994, the District Judge of Kheda at Nadiad ordered general notice and public notice to issue after clear vacancy arises.

5. It appears that thereafter the District Judge, Kheda at Nadiad transferred the said application to Second Jt. District Judge in Nadiad, who on 26th of July 1994 ordered notice to issue to the opponents and also ordered general notice and public notice to be published in newspaper *Sandesh* .

6. Thereafter on 23rd September 1994, the present petitioner filed application at Exhibit-107 *inter alia* contending that under Clause-7 of the Scheme power to appoint members of Dakore Temple Committee is given to District Court, Kheda at Nadiad and that therefore only District Court has jurisdiction to appoint members of Temple Committee. The Second Jt. District Judge being not the 'District Court' has no jurisdiction to hear the application and to pass any order and, therefore, he prayed that the application be transferred back to or referred to District Court, Kheda at Nadiad. Such application is dismissed by Second Jt. District Judge by the impugned order which has given rise to the present Civil Revision Application.

7. Mr. D. D. Vyas, learned Counsel appearing for the petitioner urged before this Court that under the Scheme which was sanctioned by the Judicial Committee of the Privy Council, the properties of the temple were to be administered by a Trust Committee. The constitution of the Committee was provided by various clauses of the Scheme. The mode of appointment and the manner of succession of members to the said Committee is provided by Clauses 4 to 7. In case of occurrence of any vacancy in the post of member of the Dakore Temple Committee, it is stipulated by Clause-7 that it shall be filled up by "the District Court of Kheda". Under such Clause-7, the District Court of Kheda was empowered to appoint a member of the committee. The power is given to the District Court by Clause-7 of the Scheme. The District Court is the specified nominee under the deed of trust and/or under the Scheme, the power which the District Court exercises is a power conferred on it by Clause-7 of the Scheme. It is not exercising any civil jurisdiction nor appellate jurisdiction. It is only exercising jurisdiction which is conferred upon it by Clause-7 of the Scheme. The District Court, Kheda itself being a donee of power to whom the power was (*sic.* was) conferred by the High Court and/or by a Scheme, it alone can exercise the power because it is acting merely as a nominee or as a specified authority and does not act as court of law under the Bombay Civil Courts Act. He further submitted that under a Scheme or by instrument of trust, power is given to the District Court of Kheda and, therefore, the District Court, Kheda is the delegate of power and it cannot further delegate its power to the Second Jt. District Judge. He, therefore, submitted that power having been specifically conferred upon the District Court at [/@page630] Kheda under the Scheme, it alone can exercise the power and it cannot transfer the proceeding to Second Jt. District Judge nor can it delegate such power to Second Jt. District Judge. In order to make good the aforesaid submission, Mr. D. D. Vyas, invited attention of this Court to the decision of the Full Bench of this Court in the case of *Jai Ranchhod Bhogilal Sevak v. Thakorelal Pranjivandas Jumkhawalal* reported in AIR 1985 Gujarat p.1. He also invited attention of this Court in the case of *Rathod Bhojaji Shantuji v. Pathan Nasir Khan Kesharkhan* reported in 3 GLR p. 803. A detailed reference to the aforesaid decisions shall be made hereafter.

8. Mr. K. S. Nanavati, learned Counsel for the respondent on the other hand submitted that the power which the District Court at Kheda exercises is in its original civil jurisdiction. The District Court at Kheda is not nominated as " *a persona designata* " but it simply functions as a court of Civil Judge, Senior Division, having original jurisdiction and, therefore, the provisions of the Bombay Civil Courts Act, 1869 would be attracted and more particularly under Section 12 of the said Act a Jt. District Judge, who is invested with co-extensive powers and concurrent jurisdiction with the District Judge can exercise the power and function which the District Judge is empowered to exercise under Clause-7 of the Scheme. He has in this connection invited attention of this Court to the decision of P. N. Bhagwati, J. (as His Lordship then was) in the case of *Shah Jagmohandas Purshottamdas v. Jamnadas Vrajlal Gandhi* reported in 1965 (6) GLR p. 49; another decision of P. N. Bhagwati, J. (as His Lordship then was) in the case of *Dahyabhai Nathubhai v. Suleman Isaji Dadabhai* reported in 3 GLR p. 877 and to the decision of the Supreme Court in the case of *Central Talkies Limited, Kanpur v. Dwarka Prasad* reported in AIR 1961 SC p. 606.

9. All the aforesaid precedents excepting one of Supreme Court cited before this Court directly deal with the Scheme of Dakore Temple committee and, therefore, in my opinion, it would be appropriate and apposite to make reference to such precedents at this stage.

9(A). In the case of *Jagmohandas Purshottamdas* (supra) on the demise of a member of a Committee, a vacancy occurred which was required to be filled up. Disputes arose regarding this appointment and one Jamnadas Vrajlal Gandhi filed an application in the District Court of Kheda for appointment of one Navintlal Ranchhoddas as a member of the Committee in the vacancy caused by the death of one of the members. The petitioners before the Court opposed such appointment and contended that Shrimati Sumatibehn Morarji should be appointed to fill in the vacancy. The District Judge after hearing the parties on merits appointed Navintlal Ranchhoddas as a member of the Committee to fill in the vacancy and thereupon the petitioner approached this Court. In the proceeding which was Civil Revision Application before this Court, the opponent contended that the power conferred on the District Court to appoint a member of the Committee was conferred not on the District Court as a court of law but on the Presiding Officer of the District Court, namely, the District Judge, as a *persona designata* and that the District Judge having made the impugned order as a *persona designata* and not as a Court of law, no revision application was competent under Section 115 of the Civil Procedure Code. It was in the context of aforesaid controversy that the learned Judge held that Clause-7 of the Scheme was very clear and explicit. It entrusted [*@page631*] the exercise of the power to appoint and remove a member of the Dakore Temple Committee to the District Court and not to the District Judge. The Court further held that reading the clause in its natural and ordinary sense it is clear that the "District Court" referred to in the clause must mean the District Court as a Court of Law and not the presiding officer of the District Court, namely, the District Judge, as a *persona designata*. It was further observed that when the High Court sanctioned the Scheme and provided that the power to appoint or remove a member of the Committee shall be vested in the District Court, the High Court used the expression "District Court" according to its well recognised legal meaning and meant the principal Civil Court of original jurisdiction in the District which was subordinate to the High Court and subject to its revisional jurisdiction and not the District Judge presiding over such court. Before the learned Single Judge a large number of binding precedents of Bombay High Court prior to the establishment of the State of Gujarat were also cited in order to bring home the point that the District Court acting under the provisions of a Scheme or an instrument of a trust while exercising power to appoint and/or to remove a member or trustee is not acting as ordinary court of civil jurisdiction but it is acting as a *persona designata*. P. N. Bhagwati, J. however, in the context of this very Clause-7 of this very Scheme, took the view that under Clause-7, the power to appoint or to remove a member of the Committee was conferred on the District Court and not on the District Judge. The District Court necessarily would have (sic. have) reference to a Court of law and not to the presiding officer of the District Court, namely, the District Judge as a *persona designata*. The learned Judge also referred to well-known principle of interpretation that where the Legislature used words which have well recognised legal meanings, it must be assumed that the words are used in the sense which they bare according to such well recognised meanings and that it always requires the compilation of other words in a statute to induce the Courts to alter the well-known meaning of a legal term. After reference to the provisions of Section 2(4) and (3) of the C. P. Code and Sections 5, 7 and 8 of the Bombay Civil Courts Act, 1869, His Lordship noticed that there is a well recognised distinction between "District Court" and "a District Judge". The District Court is the principal Court of original civil jurisdiction in the district which hears appeals from all decrees and orders passed by the subordinate courts and in its turn is

subordinate to the High Court and subject to the revisional jurisdiction of the High Court while the District Judge is the Judge who presides over the District Court. He therefore held that when High Court sanctioned the scheme and provided that the power to appoint or remove a member of the Committee shall be vested in the District Court, the High Court used the expression "District Court" according to its well organised legal meaning and meant the principal Civil Court of original jurisdiction in the District which was subordinate to the High Court. He further held that if the intentions of the High Court were to leave the matter of appointment and removal of members of the Committee to the Presiding Officer of the District Court as *persona designata*, the High Court would have certainly used the more apt expression, namely, "District Judge".

**10.** The aforesaid decision of P. N. Bhagwati, J. (as His Lordship then was) is the first binding precedent of this Court dealing with the very provisions of the very Scheme which was finally sanctioned by the Judicial Committee of the Privy Council. As per this decision, it is abundantly clear that under Clause-7 of [/@page632] the Scheme, power to appoint and remove a member of Dakore Temple Committee is conferred on the District Court, Kheda as the Principal Civil Court of original jurisdiction in the District and not on the Presiding Officer of the District Court, namely, the District Judge as a *persona designata*. This decision is not said to have been overruled expressly or impliedly by any subsequent decision of this Court not (*sic.* nor) is it reversed by the Superior Court.

**11.** Reference is now required to be made to the Full Bench Decision of this Court in the case of *Jai Ranchhod Bhogilal* (supra) to decide the question whether the power of appointment of trustee in accordance with the instrument of Trust is subjected to the provisions of Section 50 of the Bombay Public Trust Act, 1950 when such power is conferred on the District Court. One Division Bench of this Court in the case of *Yasinmian Amirmian Faroqui v. I. A. Shaikh* reported in 18 G.L.R. p. 54 took the view that in view of the provisions of Section 50 of the Bombay Public Trust (*sic.* Trust) Act, the provision in the scheme already settled would be overridden and would have to be adjusted and reshaped subject to the provisions of Section 50 of the Act. The Division Bench further took the view that no suit or proceeding for any of the reliefs mentioned therein including the appointment of a new trustee would be maintainable without the consent of the Charily Commissioner. Another Single Judge of this Court (late A. N. Surti, J.) however could not agree with the reasoning of the Division Bench and he ordered the matter to be placed before the learned Chief Justice who referred the matter to the Full Bench. Before Full Bench also the question was about the scheme of Dakore Temple Committee and question centered round Clause-7 of the Scheme. On occurrence of a vacancy in the post of a trustee, an application was made to the District Court at Kheda and District Court appointed Sumantibehn Morarji in the vacancy. Application for appointment in the anticipated vacancy was rejected on the ground that the application was premature. Against that part of the order, Civil Revision Application was preferred which was allowed by this Court by directing the District Court to make appointment in the anticipated vacancy. After remand, the District Court appointed one D. G. Desai, which order was challenged. A contention was raised that District Court would have no jurisdiction to entertain the application for appointment of new trustees in view of the decision of the Division Bench of this Court in the case of *Yasinmian Amirmian* (supra) and that is how the matter came to be referred to the Full Bench.

**12.** From the aforesaid fact situation it appears that before the Full Bench of this Court in the case of *Jai Ranchhod Bhogilal Sevak* (supra) altogether a different controversy was raised as to whether the District Court which is a specified authority under the Scheme or instrument of Trust would be competent to exercise the power conferred by the Scheme or the instrument of Trust after coming into force of Section 50 of the Bombay Public Trust Act. The Full Bench of this Court after reference to various provisions of the Bombay Public Trust Act and more particularly to the provisions of Sections 50 to 52 of the said Act, made certain observations in para 11 of the report on which much reliance is placed by Mr. D. D. Vyas, learned Counsel for the petitioner. The observations made in para 11 being relevant, the same are reproduced hereunder :

"However the question is whether Section 50 has any application when an [/@page633] application is made under Clause 7 of the instrument of trust. It is not an application, for removal of a trustee and appointment of a new trustee in that place. Every instrument of trust, whether created by author of the trust or under a Scheme, has to provide for mode of succession to the office of the trustee. The author or the scheme may provide for succession of trustee and filling in the vacancy in the office of the trustee in numerous diverse ways some of which may be, election, co-option, nomination, appointment and the power of nomination or appointment may

be located in specified authorities. In a given case it could be the Collector, it could be the Government, it could be a Court or a District Court. There are thousands of public trusts registered under the Act having different modes of succession and filling in the vacancies arising in ordinary and natural course by death and resignation and the instrument of trust is required to make provision for the same and the Charity Commissioner after due inquiry under Section 19 is required to record his findings with reasons as to the mode of succession to the office of the trustee and that finding is required to be entered into the public trust register. Such entries are final and conclusive under Section 21(2) of the Act. In the present case the instrument of trust provides for filling in vacancies by the District Court. Therefore, in accordance with the instrument of trust, the District Court is called upon to fill in the vacancy by appointment of a new trustee. *Such an application to the District Court cannot be said to be in the nature of a suit, because the instrument of trust itself provides for a specified number of trustees and for mode of succession in the office of the trustee and filling in the vacancies arising in the office of the trustees. If the instrument of trust had provided for any other authority than the District Court for filling in the vacancies, no question would have arisen of obtaining permission of the Charity Commissioner under Section 50 of the Act or making an application to such specified authority. It would not make any difference whatsoever when such specified authority in the present case happens to be the District Court. The District Court is not called upon to fill in the vacancy under Section 50 of the Act. Appointment of trustees and the mode of succession are ordinarily the matters for the author of the trust and these are the matters pertaining to its constitution and in giving effect to the same, if the authority specified in the instrument of trust is approached in accordance with the constitution of a trust (the instrument of a trust) no question arises of a Court under the Bombay Public Trusts Act exercising any power of appointment of a trustee under Section 50 . Section 50 contemplates invoking the jurisdiction of a Court in one of the three contingencies; namely, (i) breach of a public trust; (ii) recovery of possession of property of public trust; and (iii) where the permission of the Court is deemed necessary for the administration of the new public trust. Admittedly conditions (i) and (ii) are not attracted. The learned Counsel for the appellant submits that condition No. (iii) is attracted, that the permission of the Court is deemed necessary for the administration of a public trust, by seeking a relief of appointment of a new trustee. Appointment of a new trustee is not always a necessary direction for administration of a public trust. The instrument of trust provides for the mode of succession to the office of a trustee. It is only then independent of the instrument of trust or as a consequence of a removal of any trustee by Court if any direction becomes necessary for appointment of a new trustee for the administration of a public trust that third [page634] condition would be attracted. In case of ordinary and natural vacancies mode of succession provided by the instrument of trust has to be followed and the authority specified in the instrument of trust has to be approached and merely because that authority happens to be District Court in the present case. It cannot be held that condition No. (iii) is attracted. *The order of the Court is necessary for appointment of a new trustee, in this case because the District Court happens to be the authority under the instrument of trust for filling in the vacancy. Therefore, the District Court is invited to fill in the vacancy under Clause 7 of the instrument of trust and not under Section 50 and it is not necessary to move the Court under Section 50 of the Act in the present case .* As pointed out earlier, instead of the District Court if any other authority was specified to fill in the vacancy, no question would have arisen of applicability of Section 50 of the Act and the authority specified in the trust would have and could have made valid appointments and filled in the vacancy. Here, the District Court is exercising the same power under the instrument of trust. If independent of Cl. (7) any direction was necessary for appointment of a trustee, then third condition would have been attracted and the consent of the Charity Commissioner under Section 50 would have been necessary. However, in the present case such consent is not necessary because the application does not attract the applicability of Section 50 of the Act."*

**13.** The Full Bench noticed that under Clause 7 of the Scheme provision was made for filling the vacancies by the District Court. Therefore, in accordance with the instrument of trust, the District Court was called upon to fill in the vacancy of a new trustee. Such an application to the District Court is not in the nature of a suit because under the Scheme itself trustees are to be appointed and for mode of succession and the manner of appointment, power is to be found from the instrument itself. *If the instrument of trust had provided for an authority other than the District Court for filling the vacancies, no question would have arisen of obtaining the permission of the Charity Commissioner under Section 50 of the Act. Since in the facts of the case, specified authority was the District Court, the court found that it would not make any difference .* The observations to the effect that appointment of trustees [ sic. trustees] and the mode of succession are ordinarily the matters for the author of the trust pertaining to its constitution and in giving effect to the same, if the authority specified in

the instrument of the Trust is approached in accordance with the Constitution of a trust, no question arises of a Court under the Bombay Public Trust Act exercising any power of appointment of a trustee under Section 50 are pertinent. In my opinion, the aforesaid observations which are underlined from para-11, on which reliance is placed by Mr. D. D. Vyas, learned Counsel for the petitioner, do not militate against the interpretation of this very Clause-7 made by P. N. Bhagwati, J. (as His Lordship then was) in the case of *Jagmohandas Purshottamdas* (supra). In fact, that very decision was cited before the Full Bench. The Full Bench referred to and relied upon the said decision for recovering the fact that under Clause 7 of the Scheme, the District Court is a Court of Law and not a *persona designata*. The Full Bench has neither overruled nor expressly or even implied disagreed with the said view of the learned Single Judge. The observations in Para-11 are required to be read in the context in which they are made. It is true that Author of the trust may provide for succession of trustee for filling the [ @page635] vacancy in the office of the Trustee. It is also true that when the power is located in specified authority, that authority shall have to exercise the powers. In the present case, under Clause 7 the specified authority is the District Court and the District Court according to its well recognised legal meaning would mean the principal Civil Court of original jurisdiction in the district. *In the context of this Clause 7 of this very Scheme, P. N. Bhagwati, J. (as His Lordship then was) took the view that the District Court "referred to in the clause must mean the District Court as a court of law and not the presiding officer of the District Court, namely, the District Judge as a persona designata"*. This view expressed by P. N. Bhagwati, J. (as His Lordship then was) in the context of this very Clause 7 of this very Scheme was cited before and brought to the notice of the learned Judges, who constituted in Full Bench. R. A. Mehta, J. speaking for the Full Bench referred to this very decision and accepted and approved the ratio laid down by P. N. Bhagwati, J. (as His Lordship then was). In fact, the point which the Full Bench of this Court was called upon to decide was totally different. On coming into force of the provisions of Section 50 of the Bombay Public Trust Act, 1950, a controversy was raised before this Court that all applications for appointment or mode of succession of trustees of a Public Trust shall have to be made to the District Court within Whose jurisdiction the Public Trust is located and no other court can decide the application. On this controversy, there were two divergent views as stated hereinabove and, therefore, on reference being made by the learned Single Judge (late A. N. Surti, J.) matter was placed before the Full Bench for limited purpose of deciding the effect of Section 50 of the Bombay Public Trust Act. In cases where by the deed of Trust, the power to appoint/nominate a trustee of a Public Trust was vested in the specified authority ....The question before the Full Bench was as to whether Section 50 of the Bombay Public Trust Act, 1950 would over-ride the provisions contained in the instrument of Trust irrespective of the fact that he power to appoint/nominate trustee was vested in the specified authority by the Deed of Trust. In this context, the Full Bench of this Court made very pertinent observations in Para-11 of the reported judgment which are extracted hereinabove and more particularly the observations which are underlined clearly affirm the view taken by P. N. Bhagwati, J. (as His Lordship then was) in the case of *Shah Jagmohandas Purshottamdas* (supra). If the underlined observations are read with reference to the context in which they are made, there is no manner of doubt that in cases where under the instrument of Trust for filling in the vacancy of a trustee, the power is vested in the District Court that Court is invited to fill in the vacancy and such an application is not one made under Section 50 of the Act. The Full Bench has not taken the view that when the power is conferred by the instrument of Trust to appoint a trustee for filling in vacancy of a trustee, the District Judge himself and he alone can exercise the power. The attempt made by Mr. D. D. Vyas in this direction, is thoroughly misconceived and is nothing but a clear attempt to misread the judgment of the Full Bench and to re-write the observations very clearly made by the Full Bench. In my opinion, this decision of the Full Bench is not in any way inconsistent with or running counter to the proposition of law laid down by P. N. Bhagwati, J. (as His Lordship then was) in the case of *Shah Jagmohandas Purshottamdas* (supra). However in the context of Clause 7 of this very Scheme, P. N. Bhagwati, J. (as His Lordship then was) has held that the specified authority is the District Court [ @page636] and not the District Judge as a *persona designata*. The observations of the Full Bench therefore cannot be pressed into service to make good the submissions that the District Court at Kheda under Clause 7 would mean the District Judge of Kheda and that he cannot by exercising power under Section 12 of the Bombay Civil Courts Act, 1869, transfer the proceeding before him to the Jt. District Judge.

14. At this stage reference is required to make to the provisions of the Bombay Civil Courts Act, 1869. Under Section 5 of the said Act, it is provided that there shall be in each District a District Court presided over by a Judge to be called the District Judge. Under Section 7 of the said Act, the District Court shall be the principal Court of original Civil jurisdiction in the district, within the meaning of the Code of Civil Procedure. Under

Section 8 of the said Act, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. Under Section 9, the District Judge shall have the general control over all the Civil Courts and their establishments within the District. Section 12 being relevant, is reproduced hereunder :

"Section 12 : The State Government may appoint in any District a Joint Judge who shall be invested with coextensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court."

15. It is thus clear that power is given to the State Government to appoint in any District a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge. He is empowered to transact such civil business as he may receive from the District Judge. The District Court being the principal Court of original civil jurisdiction, is the specified authority under Clause 7 of the Scheme. He can, therefore, transfer his civil business to the Joint District Judge and Joint District Judge can exercise the same co-extensive powers and a concurrent jurisdiction which the District Judge possesses. In view of the aforesaid, when the matter is transferred by the District Judge to Joint District Judge, in my opinion, the Joint District Judge was right in holding that he has jurisdiction to appoint trustees under Clause 7 of the Scheme and that he was not required to transfer the proceedings to District Judge of Kheda at Nadiad.

16. The view which I am inclined to take is further supported by the decision of the Single Judge of this Court in the case of *Dahyabhai Nathubhai v. Suleman Isaji Dadabhai* reported in 3 GLR p. 877 as well as the decision of the Supreme Court in the case of *Central Talkies Limited, Kanpur v. Dwarka Prasad* reported in AIR 1961 SC 606.

17. In the case of *Central Talkies Limited, Kanpur* (supra) the Apex Court was called upon to decide the question as to whether under Section-2(d) and Section-3 of the U. P. (Temporary) Control of Rent and Eviction Act, it was competent for Additional District Magistrate to exercise all powers of District Magistrate. The Court noticed that an Additional District Magistrate who has been appointed as such by a Notification under Section 10(2) of Criminal Procedure Code, where-under he is invested with all powers of the District Magistrate under that Code as well as under any other law for the time being in force is competent to deal with [page 637] an application under Section 2(d) and under Section-3 of the U. P. (Temporary) Control of Rent and Eviction Act for permission to file a Civil Suit. The Supreme Court also found that the District Magistrate mentioned in Section-3 of the U. P. Act was not a *persona designata*. This decision, in my opinion, does not help the contention sought to be agitated before this Court by Mr. D. D. Vyas. On the contrary, it supports the view taken by P. N. Bhagwati, J. (as His Lordship then was) in the case of *Shah Jagmohandas Purshottamdas* (supra). The Supreme Court gave very convincing reasons in Para-9 of the judgment and held that the District Magistrate was not a *persona designata*. A *persona designata* is "a person, who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." The Supreme Court approved the decision of the Full Bench of Madras High Court in the case of *Parthasarathi Naidu v. Koteswara Rao* reported in AIR 1924 Madras p. 561, where the view was taken that *persona designata* are "persons selected to act in their private capacity and not in their capacity as Judges". In view of the aforesaid clear exposition of law both by P. N. Bhagwati, J. (as His Lordship then was) of this Court and by the Apex Court in the aforesaid case, there is no merit whatsoever in the submission made by the learned Counsel appearing for the petitioner.

18. I, therefore, do not find any substance in the submissions made by Mr. D. D. Vyas, learned Counsel for the petitioner. I uphold the judgment and order of the Joint District Judge of Kheda at Nadiad. In the result, this Civil Revision Application fails, the same is dismissed. Rule is discharged. There shall be no order as to costs.

19. At this stage, Mr. D. D. Vyas, learned Counsel for the petitioner requests the Court that the judgment and order of this Court as well as proceedings before the Trial Court be stayed for some period to enable the petitioner to approach the higher forum. The request being just and proper, the same is granted. The judgment and order of this Court as well as the proceedings before the Second Joint District Judge are stayed upto 5th March 1995.



(VSM) Revision dismissed.