

GUJARAT HIGH COURT

Hon'ble Judges:Vaibhavi D.Nanavati, J.

Sharadchandra Manjulal Bhatt Versus Joint Charity Commissioner

SPECIAL CIVIL APPLICATION No. 17043 of 2023 ; 17077 of 2023 ; *J.Date :-
OCTOBER 10, 2023

- [BOMBAY PUBLIC TRUSTS ACT, 1950](#) Section - [50A](#)
- [INDIAN PENAL CODE, 1860](#) Section - [323](#), [506\(2\)](#), [114](#)

Cases Referred To :

1. Bapugouda Yadgouda V. Vinayak Sadashiv, AIR 1941 Bom 317
2. Celir Llp Vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors., 2023 0 SCCOnLineSC 1209
3. [Chhotubhai L. Patel Vs. State Of Gujarat, 2007 2 GLR 1716 : 2007 \(16\) GHJ 1 : 2007 JX\(Guj\) 109 : 2007 GLHEL_HC 217409](#)
4. Dr. R.P. Kapoor & Ors. Vs. The Charity Commissioner, Maharashtra State & Ors., 1988 0 SCCOnLine(Bom) 279
5. Godrej Sara Lee Ltd. Vs. Excise And Taxation Officer-cum- Assessing Authority, 2023 0 SCCOnLineSC 95
6. Guru Nathrudhaswami. Guru Shidharudhaswami V. Bhimappa Gangadharappa Divate, AIR 1948 PC 214
7. [Hiragar Dayagar & Anr. Vs. Ratanlal Chunilal & Ors., AIR 1973 Guj 15 : 1972 GLR 181 : 1973 AIR Guj 15 : ILR\(Guj\) 1972 Guj 313 : 1971 GLHEL_HC 204931](#)
8. Ishwarbhai Narayanbhai Patel Vs. State Of Gujarat, 2021(0) AIJEL-HC-243416
9. [Jain Ranchhod Bhogilal Sevak & Ors. Vs. \(Shri\) Thakorlal Pranjivandas Jumkhawala & Ors., 1984 0 GLH 1134 : 1985 AIR Guj 1 : 1984 GLHEL_HC 205361](#)
10. [Jayantilal Dhanjibhai Patel & Anr. Vs. Rohitbhai Dhanjibhai Bin Gokalbhai Patel & Anr., AIR 2002 Guj 197 : 2002 \(1\) GLH 1 : 2002 AIR Guj 197 : 2002 \(1\) GHJ 262 : 2001 GLHEL_HC 205525](#)
11. [Jaymal Thakore Vs. Charity Commissioner, 2001 3 GLR 2124 : 2002 \(1\) GCD 686 : 2001 AIR Guj 279 : 2001 \(118\) Taxman 264 : 2001 GLHEL_HC 205603](#)

12. [Kantilal C. Shah Vs. Charity Commissioner, 1975 0 GLR 594 : 1974 GLHEL HC 206153](#)
13. Lambodar Dhonddeo Deo Vs. Dharanidhar Ganesh Deo, 1925 0 SCCOnLine(Bom) 34
14. Lambodar Dhonddeo Deo Vs. Dharanidhar Ganesh Deo, AIR 1926 Bom 167
15. Magadh Sugar & Energy Ltd. Vs. State Of Bihar, 2021 0 SCCOnLineSC 801
16. Mahadev Heramb Dev Vs. Govindrao Krishnarao Kale & Ors., AIR 1937 Bom 124
17. Mahadev Heramb Vs. Govindrao Krishnarao Kale & Ors., AIR 1937 BOM 124
18. Mallikarjun Basvanappa Masute & Anr. Vs. Dattatraya Krushnath Wadane & Ors., 2005 2 MhLJ
19. Managing Committee, Khalsa Middle School & Anr. Vs. Mohinder Kaur (Smt) & Anr., 1993 Supp4 SCC 26
20. Radha Krishan Industries Vs. State Of Himachal Pradesh, 2021 6 SCC 771
21. [Shah Jagmohandas Purshottamdas & Anr. Vs. Jamnadas Vrajlal Gandhi & Ors., AIR 1965 Guj 181 : 1965 GLR 49 : 1965 AIR Guj 181 : 1962 GLHEL HC 211132](#)
22. [Shri Bipinchandra Purshottamdas Patel & Ors. Vs. Jashwant Lalbhai Naik & Anr., AIR 1974 GUJ 129 : 1974 GLR 411 : 1974 AIR Guj 129 : 1973 GLHEL_HC 201875](#)
23. Vide Chandrakant V. Charity Commr. Of Gujarat, 1965 6 GujLR 649
24. Waman Vyankatesh Deshpande (Deceased) Y.S. Mashankar & Ors. Vs. Atul Pandurang Alshi (Dr.) & Ors., 2005 1 MhLJ 133
25. Whirlpool Corporation Vs. Registrar Of Trade Marks, Mumbai & Ors., 1998 8 SCC 1

JUDGMENT :-

ORAL JUDGMENT

1. The issue raised in both the captioned petitions challenging the order passed by the respondent no.1 Joint Charity Commissioner, Vadodara dated 13.09.2023 in Scheme Misc. Application No. 3 of 2023 below Exh.1, is almost identical in nature, heard analogously, are being disposed of by this common order with consent of the learned advocates appearing for the respective parties. However, the facts of both the cases are mentioned separately.

2. RULE, returnable forthwith. Learned advocates appearing for the respective parties in both the petitions waive service of Rule.

SCA NO. 17043/2023:

1. By way of the present petition, the petitioners herein have prayed for the following reliefs:

A. The Hon ble Court may be pleased to issue writ of mandamus and / or any other appropriate writ, direction and order to quash and set aside order dated 13.09.2023 passed by the Joint Charity Commissioner, Vadodara in Scheme Miscellaneous Application No.3 of 2023 (Annexure A);

B. Pending hearing and final disposal of the petition, Your Lordships be pleased to stay the implementation, operation and execution of the order dated 13.09.2023 passed by the Joint Charity Commissioner, Vadodara in Scheme Miscellaneous Application No.3 of 2023 (Annexure A);

C. To pass such other and further order/s necessary in the interest of justice.

2. Heard Mr. P.K. Jani, learned senior counsel assisted by Mr. Dhaval D. Vyas, learned advocate appearing for the petitioners.

3 Brief facts as stated by the petitioners herein leading to the filing of the present petition reads thus:

3.1. By way of the present petition, the petitioners have challenged the order dated 13.09.2023 passed by the Joint Charity Commissioner, Vadodara respondent no.1, on the application filed by respondent nos. 2 and 3 under **Section 50-A of the Gujarat Public Trusts Act, 1950** (registered as Scheme Miscellaneous Application No.3 of 2023), by which, five trustees have been appointed for Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari (a Public Trust registered with the office of the Charity Commissioner at PTR No.A.686 - Baroda), being violative of the principles of natural justice, erroneous on facts and in law, without jurisdiction, the same being motivated by extraneous considerations.

3.2. The petitioners are the Pujari Trustees of Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari (hereinafter referred to as the Trust for the sake of brevity). The family of the petitioners have been doing the sevapuja at the temple/s managed by the Trust since generations and are vitally concerned with the management and administration of the said trust.

3.3. A scheme for management and administration and for vesting the properties of the Trust came to be framed under the order dated 27.02.1970 passed in suo-motu proceeding initiated by the Charity Commissioner being Suo Motu Scheme Proceedings No. 1 of 1966. The said scheme for the said Trust was modified vide (i) order dated 22.07.1985 passed in Scheme Miscellaneous Application No. 3/1983 and allied matters and (ii) order dated 04.05.1996 passed in Scheme Modification Application Nos. 5 of 1983 and 6 of 1983, both by the Charity Commissioner.

3.4. As per the constitution of the Trust, there were two sets of trustees, (i) individual trustees and (ii) pujari trustees. The mode of appointment of both sets of trustees have been prescribed in clause 8 (a) and (b) of scheme. The said Trust has

been engaged in property disputes with Niranjan Akhada, Karnari in various litigations being (i) Regular Civil Suit No.114 of 2007 (re-numbered as Regular Civil Suit No. 123 of 2015) filed by Niranjan Akhada, Karnadi against the Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari and (ii) Regular Civil Suit No. 98 of 2023 which has been filed by Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari against Niranjan Akhada, Karnadi and Mahant Dineshgiri Guru. Both suits are pending hearing before the concerned Courts.

3.5. An application u/s 22-A of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the Act, 1950 for the sake of brevity) was filed which was registered as Miscellaneous Application No.3 of 2007 for registering the leasehold property as the trust property of the said trust, which has been disposed by an order dated 03.07.2023, against which, an appeal has been preferred by the said Trust being Appeal No.4 of 2023, which is pending hearing before the appellate authority.

3.6. The respondent nos. 2 and 3 filed an application under Section 50 A and 69 of the Act, 1950 seeking appointment of the trustees for the said Trust, on the ground that the term of the appointed trustees which was for a period of three years had lapsed long back, however no trustees thereafter have been appointed. The original opponent no. 4 had filed an application at Exh.17 seeking rejection of the application contending that the opponents have not been provided the documents which were filed by the applicants in support of the application filed u/s 50A of the Act, 1950. The said application filed at Exh.17 was directed to be heard along with main proceedings.

3.7. The original applicant had filed forms signed by two persons residing at Ahmedabad (appointee nos. 5 and 6) consenting to be appointed to be the trustees of the said trust vide purshis dated 07.07.2023. The said Trust upon following the due procedure, appointed new trustees under the resolution dated 20.08.2023 and accordingly an application under Section 22 of the Act, 1950 has been filed with the office of the Assistant Charity Commissioner on 21.08.2013, which is pending consideration.

3.8. The petitioners had preferred an application on 13.09.2023 seeking impleadment as parties to the said proceeding filed by the respondent nos. 2 and 3 under Section 50-A of the Act, 1950. The said application was not taken on record and was returned to the petitioners. The petitioners had thereafter preferred a written representation asserting the grievance against the manner and method in which the proceeding was approached by the respondent no.1 - Joint Charity Commissioner, which was sent to the office of the respondent no.1 by communication dated 13.09.2023.

3.9. The Joint Charity Commissioner respondent no.1 despite the aforesaid, has passed the order impugned dated 13.09.2023 appointing four new persons as trustees in the Trust. Shri Dineshgiri is the trustee of Niranjan Akhaka, Karndi and is facing allegations of commission of offences punishable under **Sections 323, 506 (2) and 114 of the Indian Penal Code** .

3.10. In the aforesaid set of facts, the petitioners herein approached this Court seeking the relief as stated herein-above.

4. Heard Mr. P.K. Jani, learned senior counsel assisted by Mr. Dhaval D. Vyas, learned advocate appearing for the petitioners.

4.1. Mr. P.K. Jani, learned senior counsel appearing for the petitioners at the outset submitted that the petitioners herein are the Pujari Trustees and the respondent no.1 was obliged to take the application preferred by the petitioners herein, who were appointed as Pujarai Trustees in the temple/s being managed by the said Trust, the said application cannot and could not have been refused to be taken on record.

4.2. Mr. Jani, learned senior counsel submitted that Section 50-A of the Act, 1950 requires for passing orders only after giving the trustees of Trust an opportunity of hearing and the petitioners being the Pujari Trustees, as reflected on record, neither were impleaded nor were the newly appointed trustees permitted to be impleaded rather their application was not even on record. It was submitted that, the the aforesaid exercise was against the provisions of the Act, 1950.

4.3. Mr. Jani, learned senior counsel further submitted that the application filed under Section 50-A r/w. Section 69 of the Act, 1950 was not maintainable.

4.4. It was submitted that the terms of the trusteeship of the general trustees to be of 3 years, which had lapsed, and consequently, there were no existing trustees in the Trust requiring steps to be taken for appointing the new trustees, which was misplaced and factually incorrect.

4.5. It was submitted that, new trustees were appointed under a resolution of the said Trust, for which an application under Section 22 of the Act, 1950 being Change Report No. 368 of 2023 was filed before the competent authority, which is pending. Thus, the respondent no.1 ought not to have overreached the proceeding for outdoing the said pending change proceedings. It was submitted that, the petitioners were not made a party, as also were denied the right to be heard in the impugned proceedings, which is not maintainable and in any case, no orders could have been passed in the manner under Section 50-A of the Act, 1950 and in view thereof, the order impugned dated 13.09.2023 passed by the respondent no.1 is required to be interfered with and the same is required to be quashed and set aside.

4.6. Reliance was placed on the decision rendered by the Hon ble Division Bench of this Court in the case of **Ishwarbhai Narayanbhai Patel v/s. State of Gujarat reported in 2021(0) AIJEL-HC-243416** , in the case of **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai & Ors. reported in (1998) 8 SCC 1** . Placing reliance on the aforesaid ratio as laid down by the Hon ble Division Bench and the Hon ble Apex Court, it was submitted by Mr. Jani, learned senior counsel in the facts of the present case, this Court may exercise the extraordinary powers under Article 226 of the Constitution of India.

4.7. Placing reliance on the aforesaid submissions, Mr. Jani, learned senior counsel also placed reliance on the order passed by the Hon ble Division Bench in Letters Patent Appeal No. 545 of 2022 dated 20.09.2022 and in the case of **Chhotubhai L. Patel v/s. State of Gujarat reported in 2007 (2) GLR 1716** .

SCA NO. 17077/2023:

1. Draft Amendment dated 03.10.2023 is taken on record, the same is allowed and directed to be carried-out forthwith.

2. By way of the present petition, the petitioners herein have prayed for the following reliefs:

(A) This Hon ble Court be pleased to issue a Writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order, quashing and setting aside the impugned order dated 13.09.2023 passed by the learned Joint Charity Commissioner, Vadodara in Scheme Misc. Application No.03 of 2023, annexed at Annexure-A to the petition.

(B) Pending admission, hearing and final disposal of the petition, this Hon ble Court be pleased to stay the execution, operation and implementation of the impugned order dated dated 13.09.2023 passed by the learned Joint Charity Commissioner, Vadodara in Scheme Misc. Application No.03 of 2023, annexed at Annexure-A to the petition.

(C) The Hon'ble Court be pleased to grant such other and further relief in the interest of justice.

3 Brief facts as stated by the petitioners herein leading to the filing of the present petition reads thus:

3.1. The petitioners are nominated as individual trustees of Shee Kubereshwar Mahadev and Shree Someshwar Sayunkt Sansthan, Karnali. The family of the petitioners is associated with the Kubereshwar Temple managed by the trust since generation and is interested in proper management and administration of the trust. That Shree Kubereshwar Mahadev and Shree Someshwar Sayunkt Sansthan, Karnali (hereinafter referred to "the Trust" for the sake of brevity) is a public charitable trust registered under the provision of the Gujarat Public Trust Act, 1950 (hereinafter referred to as "The Act, 1950" for the sake of brevity).

3.2. That for the purpose of management and administration of the Trust so also for vesting various properties in the Trust, a Scheme came to be framed by the Charity Commissioner, Gujarat State in SOU-MOTU SCHEME proceedings No.1 of 1996 vide order dated 27.02.1970. Thereafter, the said Scheme came to be modified by way of order dated 22.07.1985 passed in Scheme Misc. Application No.03 of 1983 and other connected matters. The same came to be further modified vide order dated 04.05.1996 passed in Scheme Modification Nos.05 of 1983 and 06 of 1983.

3.3. As per Clause-8 of the Scheme, there are two kinds of trustees will manage the affair of the Trust, viz. Individual Trustees and Pujari Trustees. The mode and manner in which the said trustees are to be appointed as prescribed in clause-8 of the scheme referred to hereinabove. So far as individual trustees are concerned, there is no fixed tenure and they shall continue for the lifetime, whereas, the pujari trustees would continue for a period of three years.

3.4. That various civil proceedings have been initiated by and against the Trust with respect to various properties of the Trust. The Regular Civil Suit No. 114 of 2007 (re-numbered as Regular Civil Suit No. 123 of 2015) is filed by one Niranjana Akhada, Karnali against the Trust, whereas, Regular Civil Suit No.98 of 2023 has been filed by the Trust against the said Niranjana Akhada and against Mahant Dineshgiri Gurushivgiri.

3.5. Another proceedings being Appeal No.4 of 2023 has been preferred by the Trust against the order passed in Misc. Application No.03 of 2007 dated 03.07.2023 passed under Section 22-A of the Act, 1950. The said proceedings are also pending before the concerned Appellate Authority. It is the case of the petitioners that, there are various proceedings are pending between the parties.

3.6. In the backdrop of the aforesaid proceedings, respondent Nos.2 and 3 filed Scheme Misc. Application No.3 of 2023 before the respondent no.1 - Joint Charity Commissioner, Vadodara under Sections 50-A and 69 of the Act, 1950 seeking appointment of trustees in the Trust mainly on the ground that the term of the appointed trustees of the Trust has expired and no new trustees have been appointed thereafter. The petitioner No.1 herein is joined as respondent No.1 in the said proceedings. In the said application the prayer made is to appoint five persons as trustees namely, (1) Mahant Dineshgiri Guru Niranjandev, (2) Nandgiri Guru Niranjdev, respondent No.2, (3) Mahant Shivshankar Guru Mahant Govindpuri, (4)Mahant Narmadapuri Niranjana Dave and (5) Sharma Sureshbhai Ghanshyambhai.

3.7. It is the case of the petitioners that, there was no prayer to appoint Parendu Kanaiyalal Bhagat and Bharat Virubhai Bhagat, respondent Nos.10 and 11 in Misc. Application No.3 of 2023 in spite of which by way of impugned order, the said 2 persons also have been appointed as trustees.

3.8. During the pendency of the aforesaid proceedings, the Trust had appointed new Pujari trustees and individual trustees vide resolution dated 20.08.2023 and an application under Section 22 i.e. the change report was filed before the respondent no.1 - Joint Charity Commissioner on 02.08.2023 seeking change in the PTR register bearing No.368 of 2023 which is pending.

3.9. The petitioners herein are nominated as individual trustees of the Trust by way of said change report. As far as Misc. Application No.3 of 2023 filed by the respondent Nos.2 and 3 herein are concerned, the petitioner No.1 filed an application below Exh.17 requesting the respondent no.1 to dismiss the Misc. Application No.3 of 2023 on the ground that the said application is preferred without giving any documents to the respondents. Secondly, it was alleged that

though Section 50-A of the Act, 1950 provided that all the trustees of the Trust have to be made parties, however, in the present case, all the trustees are not made parties, and therefore, application is not maintainable.

3.10. The hearing of the said application below Exh.17 was undertaken on 12.09.2023 and it was pointed out to the respondent no.1 that the application in the said form was not maintainable and though copies of the documents relied upon by the applicants have not been provided, and therefore, application deserves to be rejected. The application below Exh.17 should have been considered first, only then the main application below Exh.1 ought to have been taken into consideration. However, the respondent no.1 passed an order dated 12.09.2023 directing that the application below Exh.17 would be heard alongwith the main application below Exh.1 and the main application below Exh.1 was ordered to be taken up for hearing on 13.09.2023 i.e. on the very next day and thereby leaving no time for the petitioner No.1 to challenge the order dated 12.09.2023.

3.11. On 13.09.2023, the petitioner No.1 submitted an application to grant time in the application below Exh.1 to file reply. It was also requested that the petitioner No.1 wanted to challenge the order dated 12.09.2023 before this Court, and therefore, the petitioners be granted time in Exh.1 application.

3.12. That when the matter was taken up in the first session on 13.09.2023, the respondent no.1 has agreed to grant time, however, since learned advocate for the applicants was not present and his colleague was present, the matter was kept in the second session only for the purpose of confirmation with the advocate for the applicants regarding date on which the matter is to be kept. However, in the second session, learned advocate for the applicants raised an objection against the grant of time and prays for hearing on the same day, and therefore, though the learned advocate for petitioner No.1 so also petitioner No.1 had left the office of learned Joint Charity Commissioner, they were called for hearing and in spite of objections being raised by the petitioner No.1 and his advocate, the application of the petitioner No.1 dated 13.09.2023 seeking time was rejected on 13.09.2023 and on the same day, the impugned order came to be passed below Exh.1.

3.13. On the same day, the request for adjournment was rejected and without there being any reply of the petitioner No.1, the main application is taken up for hearing and the impugned order dated 13.09.2023 is passed in complete violation of principles of natural justice.

3.14. Another application was also filed by Shri Sharadchandra Bhatt and two others seeking to join themselves in the proceedings, however, the said application was not even accepted by the respondent no.1 and in a complete arbitrary manner, the main application was taken up for hearing and the impugned order came to be passed, whereby, 5 persons came to be appointed as trustees of the Trust. On an application filed by the petitioner no.1 to stay its order, the respondent no.1 has been pleased to suspend the operation of order for a period of 15 days.

3.15. Being aggrieved and dissatisfied with the impugned order dated 13.09.2023 passed by the respondent no.1 in Scheme Misc. Application No. 3 of 2023, the

petitioners herein are constrained to approach this Court seeking the reliefs as referred hereinabove.

4. Heard Mr. Mihir Thakore, learned senior counsel assisted by Mr. Dipen Desai, learned advocate appearing for the petitioners.

4.1. Mr. Mihir Thakore, learned senior counsel assisted by Mr. Dipen Desai, learned advocate appearing for the petitioners, at the outset submitted that the order impugned passed by the respondent no.1 passed in the capacity as persona designata . In view thereof, no powers could be exercised by the respondent no.1 as a quasi judicial authority. It was submitted that the respondent no.1 exercised the powers as a person authorized to execute the scheme in terms of the Clause-8 of the Scheme. Placing reliance on the same, it was submitted that the aforesaid powers having been exercised as persona designata , the respondent no.1 could not have exercised the powers under Section 50-A(2A) of the Act, 1950. It was submitted that, once the respondent no.1 could not have exercised the powers under Section 50-A of the Act, the only remedy of the petitioners is only to invoke the provision of Article-226 of the constitution of India by filing the present petition.

4.2. To substantiate the aforesaid submissions, Mr. Thakore, learned senior counsel relied on the decision in the case of **Mallikarjun Basvanappa Masute & Anr. v/s. Dattatraya Krushnath Wadane & Ors. reported in 2005 (2) Mh. L.J., in the case of Dr. R.P. Kapoor & Ors. v/s. The Charity Commissioner, Maharashtra State & Ors. reported in 1988 SCC OnLine Bom 279, in the case of Jain Ranchhod Bhogilal Sevak & Ors. v/s. (Shri) Thakorlal Pranjivandas Jumkhawala & Ors. reported in 1984 GLH 1134.**

4.3. Reliance was also placed by Mr. Thakore, learned senior counsel relied on the decision of the Hon ble Division Bench in Letters Patent Appeal No. 1980 of 2007 dated 30.09.2008, in the case of **Managing Committee, Khalsa Middle School & Anr. v/s. Mohinder Kaur (Smt) & Anr. reported in 1993 Supp (4) SCC 26** , in the case of **Mahadev Heramb Dev v/s. Govindrao Krishnarao Kale & Ors. reported in AIR 1937 Bombay 124** (before Amendment), in the case of **Lambodar Dhonddeo Deo v/s. Dharanidhar Ganesh Deo reported in 1925 SCC OnLine Bom 34** (before amendment), AIR 1937 Bombay 143 (before amendment).

4.4. It was further submitted by Mr. Thakore, learned advocate that the order passed is in gross violation of principles of natural justice. It was submitted that the petitioners who are appointed as trustees, as also persons having interested in the Trust, moved an application for being impleaded as party to the proceedings and were required to be heard, however, the respondent no.1 refused to take such application on record and was returned back to the petitioners stating that the Pujarari trustees of the Trust were not required to be heard in the proceedings, which seeks appointment of individual trustees only.

4.5. To substantiate the aforesaid submission, Mr. Thakore, learned senior counsel submitted that, the Gujarat Public Trusts Act, 1950, treats all trustees whether individual or pujari trustees equally and does not provide any distinction between

the two, thus, the said petitioners ought to have been heard before appointing the trustees for the present Trust.

4.6. It was submitted that, considering an application under Section 50A(2A) of the Act, 1950, the respondent no.1 is empowered only to appoint first trustees and not empowered to fill up vacancies. Therefore, it cannot be said that the respondent no.1 has exercised the powers under Section 50A of the Act, which were reserved on him while framing the scheme under Section 50A of the Act, 1950.

4.7. It was submitted that even otherwise, no application under Section 50A of the Act, 1950 could have been entertained, unless, all the trustees as per the PTR were joined as parties. In the present case, admittedly, all the trustees were not joined and an objection was specifically taken before the respondent no.1, which has been ignored by the respondent no.1.

4.8. It was submitted that the application under Section 50A of the Act, 1950 has to meet with the requirements of Rule- 26 of the Rules. In the facts of the present case, such requirement has not been fulfilled and further the draft scheme required under Rule-26 has not been submitted, and therefore, the application ought not to have been entertained.

4.9. Reliance was placed by Mr. Thakore, learned senior counsel upon the resolution dated 20.08.2023 appointing the trustees and accordingly, a change report having been filed before the competent authority on 21.08.2023, which was prior to the passing of the impugned order dated 13.09.2023 of appointing the trustees. It was submitted that, in view thereof, the respondent no.1 has no power or jurisdiction or role in appointment of trustees or filling up the vacancies as per amended condition No. 8(a) of the Scheme, more particularly, the appointment of the trustees under the resolution of the trust were to be accepted as appropriate and be recognized under the scheme of the Trust. The appointments so made were effective immediately upon the resolutions being passed and could not have been treated as unconfirmed, only for the change reports having been filed and pending before the competent authority.

4.10. It was submitted that once there is an appointment of the trustees, it was not open for the respondent no.1 to pass the impugned order under Section 51A of the Act, 1950. It was submitted that Clause 8(a) of the Scheme clearly provides that the appointment of individual trustees shall be made as per Clause-7 and Clause-7 provides that the trustees has to be wellwisher (Hit-Chintak) of the Trust. It was on record of the authority that the appointee nos. 2 and 3 had an adversarial interest than that of the present Trust and that various litigations are pending between the present Trust and the said respondents and their Trust, and therefore, clearly cannot be categorized as well-wisher (Hit-Chintak) of the Trust. The respondent no.1 also has neither inquired about nor has arrived at a finding that the appointees were Hit-Chintak s of the Trust, thus, the complete exercise undertaken by the respondent no.1 suffers inconsideration of and not adverting to the relevant and material aspects for appointing the trustees.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS IN BOTH THE PETITIONS:

1. Per contra, the aforesaid submissions canvassed by Mr. P.K. Jani, learned senior counsel and Mr. Mihir Thakore, learned senior counsel were objected by Mr. N.D. Nanavaty, learned senior counsel assisted by Mr. Umarfaruk M. Kharadi, learned advocate appearing for the respondent nos. 2 and 3 in both the petitions.

1.1. Mr. N.D. Nanavaty, learned senior counsel submitted that the last appointment of trustees to the present Trust were made in the year 1999 and since 2002, the Trust has no trustees, barring one Trustee (whose term had expired as admitted by the petitioners in 2002) and another ineligible trustee living in the United States, all the individual trustees are deceased and since 2002 there have been no individual trustees to govern the said Trust.

1.2. It was submitted that pursuant to an application filed by the respondent no.2 in March, 2003, the respondent no.1 was pleased to appoint total 5 trustees including the petitioner no.1 in Special Civil Application No. 17077 of 2023, exercising the powers under Clause 8(a) of the Scheme sanctioned under Section 50A(2A) of the Act, 1950.

1.3. At the outset, Mr. Nanavaty, learned senior counsel submitted that the petitioners have an alternative remedy to challenge the impugned order under Section 72 of the Act, 1950. It was submitted that, even the submissions on jurisdiction can also be made before the Appellate Authority.

1.4. Mr. Nanavaty, learned senior counsel submitted that the petitioners had prayed for 4 adjournment applications seeking time to file a reply, instead of filing a reply and contesting the application or suggesting other names as trustees, the petitioners chose to file a Suit in July, 2023 and an application for change of trustees under Section 22 of the Act, 1950 in August, 2023. It was submitted that the said application is filed after a delay 20 years and is completely de-hors the scheme of the Trust, since there were no trustees that could have resolved to appoint these individual trustees.

1.5. It was submitted that the petitioners case on violation of natural justice is a blatant falsehood and a deliberate misstatement and may not be considered by this Court. The reliance was placed on the record of the respondent no.1 and reliance was placed on the proceedings that were undertaken before the respondent no.1 in Misc. Scheme Application No. 3 of 1983.

1.6. Placing reliance on the aforesaid, it was submitted that the petition may kindly be dismissed.

1.7. It was also submitted that the respondent nos. 4, 5, 6 and 7 in Special Civil Application No. 17077 of 2023 having expired, the writ could not be maintainable qua the deceased persons.

1.8. Placing reliance on the aforesaid contentions, Mr. Nanavaty, learned senior counsel relied on the following decisions:

(A). In the case of **Shri Bipinchandra Purshottamdas Patel & Ors. v/s. Jashwant Lalbhai Naik & Anr. reported in AIR 1974 GUJ 129** .

(B) In the case of **Waman Vyankatesh Deshpande (deceased) Y.S. Mashankar & ors. v/s. Atul Pandurang Alshi (Dr.) & Ors. reported in 2005 (1) Mh. L.J. 133.**

(C) In the case of **Hiragar Dayagar & Anr. v/s. Ratanlal Chunilal & Ors. reported in AIR 1973 Guj. 15.**

(D) In the case of **Shah Jagmohandas Purshottamdas & Anr. v/s. Jamnadas Vrajlal Gandhi & Ors. reported in AIR 1965 Guj 181.**

2. Heard Mr. Anshin Desai, learned senior counsel assisted by Mr. Rohan Lavkumar, learned advocate appearing for the respondent no.10 in both the petitions.

2.1. Mr. Anshin Desai, learned senior counsel appearing for the respondent no.10 adopted the submissions advanced by Mr. N.D. Nanavaty, learned senior counsel appearing for the respondent nos. 2 and 3 and while adopting the said contentions, submitted that petitioners be relegated to avail alternative remedy, when the statutory remedy is available, this Court may not entertain the present petitions invoking the provisions under Article 226 of the Constitution of India.

2.2. To substantiate the said submissions, Mr. Anshin Desai, learned senior counsel placed reliance on the decision in the case of **Celir LLP v/s. Bafna Motors (Mumbai) Pvt. Ltd. & Ors. reported in 2023 SCC OnLine SC 1209.** It was also submitted that the present petitions are filed seeking reliefs against the persons, who are deceased and in view thereof, the petitions are required to be dismissed on the said ground.

2.3. Mr. Anshin Desai, learned senior counsel also reiterates the facts and submissions canvassed by Mr. Nanavaty, learned senior counsel, though, the petitioners were given ample opportunity to appear before the respondent no.1, having not availed the same, at the time when the respondent no.1 was proceedings with the said Misc. Scheme Application No. 3 of 2023, the petitioners approached the respondent no.1 with an application seeking joining party and as stated by the petitioners herein, after the said petitioners came to be nominated as trustees on 20.08.2023 and after filing change report before the competent authority on 21.08.2023.

2.4. It was submitted that the petitioner no.1 was arraigned as respondent, from the inception of the said proceedings and it was not open for the petitioner no.1 to submit that the order impugned is passed without following due principles of natural justice.

2.5. The present petition is also filed challenging the impugned order dated 13.09.2023 after a lapse of about 10 days, when the 15 days time that was extended by the respondent no.1 was about to get over.

2.6. In view thereof, it was submitted that it cannot be said that the petitioners have approached this Court with clean hands. It is submitted that the petitioners have approached this Court only to overreach the procedure adopted by the respondent no.1 exercising the powers under Section 50A (2A) of the Act, 1950.

2.7. Placing reliance on the aforesaid, it was submitted that the petition does not require to be entertained and the same requires to be dismissed.

3. Heard Mr. D.C. Dave, learned senior counsel assisted by Mr. Prerak P. Oza, learned advocate appearing for the respondent no.11 in Special Civil Application No. 17077 of 2023 submitted that the order impugned is passed under Section 51-A of the Act, 1950. Placing reliance on the same, it was submitted that it is open for the petitioners to avail alternative statutory remedy by approaching the competent court under the provision of Section 72 of the Act, 1950.

3.1. It was submitted that without prejudice to the aforesaid contention, it was also open for the petitioners to approach the competent court under Section 50 of the Act, 1950, if it is the case of the petitioners that the respondent no.1 has acted as persona designata and that respondent no.1 does not have the powers to act as quasi judicial authority under Section 50A(2A) of the Act, 1950.

3.2. Under such circumstances, it is open for the petitioners to take permission from the respondent no.1 to prefer the Civil Suit.

3.3. Placing reliance on the aforesaid submissions, Mr. Dave, learned senior counsel submitted that the present petition requires to be dismissed on both the grounds, (I) either they may avail statutory remedy by filing appeal under Section 72 of the Act, 1960 and (II) they may approach before the competent court seeking permission of the respondent no.1, if it is the case of the petitioners that the respondent no.1 has exercised the powers as persona designata .

3.4. Reliance was placed by Mr. D.C. Dave, learned senior counsel to the ratio as laid down by the Hon ble Apex Court in the case of **Jayantilal Dhanjibhai Patel & Anr. v/s. Rohitbhai Dhanjibhai Bin Gokalbhai Patel & Anr. reported in AIR 2002 Guj 197.**

3.5. Placing reliance on the aforesaid submissions, Mr. Dave, learned senior counsel submitted that the petition being devoid of any merits, is required to be dismissed at the threshold.

4. Ms. Jyoti Bhatt, learned Assistant Government Pleader appearing for the respondent-State supports the submissions canvassed by the learned counsels appearing for the respondents. Ms. Bhatt, learned AGP relied on the decision of the Division Bench of this Court rendered in Letters Patent Appeal No. 545 of 2022 in Special Civil Application No. 2572 of 2022 and submitted that the impugned order does not call for any interference of this Court and the present petition may kindly be dismissed at the threshold.

5.1. At this stage it is apposite to deal with the position of the law as relied upon Mr. Thakore, learned senior counsel to the decision of Mallikarjun (supra), the same is with respect to settling a new scheme in lieu of an existing scheme under Section 50A of the Act, 1950. The aforesaid is not applicable to the facts of the present case, as the same in the present case being in existence.

5.2. So far as the decision relied upon by Mr. Thakore, learned senior counsel in the case of Dr. R.P. Kapoor (supra), wherein, the Bombay High Court in Para-15 held that the Court can appoint trustee or trustees in certain circumstances, which is undisputed. The reference was made to the decision in AIR 1974 GUJ. 129 and it was held that, it cannot possibly be disputed that before the Charity Commissioner proceed to frame a scheme a scheme for management and administration of the trust, the Charity Commissioner has to satisfy himself that it is necessary or expedient to do so in the public interest. The same was found to wanting in the facts of the said case and in view thereof, the order passed by the Charity Commissioner was interfered with. The facts of the present case, does not pertain to framing of the scheme and in view thereof, the said decision is not applicable.

5.3. So far as the decision in the case of **Kantilal C. Shah v/s. Charity Commissioner reported in 1975 GLR 594** relied upon by Mr. Thakore, learned senior counsel is concerned, in the facts of the said case, the Trust came to be registered in or about 1955, wherein, Shri K.C. Shah was the managing trustee of the said Trust. While framing of the Scheme, the Charity Commissioner appointed the first trustee. Shri K.C. Shah was not appointed as trustee, which led to the filing of the said petition. Under such circumstances, it was held that the Charity Commissioner has the powers to appoint the first trustee. In the facts of the present case, the scheme is in existence since 1970 and amended from time to time and in view thereof the question of appointment of first trustee does not arise.

5.4. So far the decision reported in 1984 GLH 1134 (supra) is concerned, the Hon ble Full Bench was considering the appointment of new trustees as per the existing scheme in ordinary mode, after death, resignation and removal. Under such circumstances, the Charity Commissioner under normal mode of succession, appoints the new trustees as per pesona-designata or in administrative capacity. In the facts of the present case, in absence of trustees since 2002, the respondent nos. 2 and 3 approached the Charity Commissioner under Section 50A of the Act, 1950, wherein, the Charity Commissioner exercised powers as quasi-judicial authority. The facts of the present case and the decision of the Hon ble Full Bench in AIR 1984 GLH 1134 (supra) being distinct, the ratio as laid down in AIR 1974 GUJ. 654 would apply.

5.5. So far as the decision rendered in the case of **Managing Committee Khalsa Middle School and Anr. v/s. Mohinder Kaur (SMT) and Anr. reported in 1993 Supp (4) SCC 26** , is concerned, in the said case, the resolution was passed by the trustees, whereas, in the facts of the present case, the resolution was passed on 20.08.2023 and were non-trustees.

5.6. So far as the decision rendered in Letters Patent Appeal No. 1980 of 2007 order dated 30.09.2008, in the facts of the said case is that once the resolution is passed the trustees cannot be removed, in the facts of the present case, no trustees are removed.

5.7. So far as the decision relied on in the case of **Mahadev Heramb V/s. Govindrao Krishnarao Kale & Ors. , reported in AIR 1937 BOMBAY 124** ,

wherein, it was held that the District Judge had authority to make the inquiry, enabling him to exercise his administrative functions under the Scheme and the decisions were not subject to appeal. The aforesaid is a decision of the Bombay High Court, before the amendment.

5.8. So far as the decision relied on in the case of **Lambodar Dhonddeo Deo v/s. Dharanidhar Ganesh Deo reported in AIR 1926 Bom 167** , the District Court acted as persona designata and no appeal would lie. The aforesaid can be said to have been in the facts of the said case and before the amendment.

5.9. Mr. P.K. Jani, learned senior counsel relied on the decision, (I) in case of **Whirlpool Corporation V/s. Registrar Trade Marks, Mumbai reported in 1998 (8) SCC 1** , (II) in case of **Radha Krishan Industries v/s. State of Himachal Pradesh reported in 2021 (6) SCC 771** , (III) in the case of **Magadh Sugar & Energy Ltd. v/s. State of Bihar reported in 2021 SCC OnLine SC 801** , (IV) in the case of **Ishwarbhai Narayanbhai Patel v/s. State of Gujarat reported in 2021(0) AIJEL-HC-243416** and (V) in the case of **Godrej Sara Lee Ltd. v/s. Excise and Taxation Officer-cum- Assessing Authority reported in 2023 SCC OnLine SC 95**.

5.10. The aforesaid proposition of law, as relied upon by Mr. P.K. Jani, learned senior counsel that the Court should exercise the extraordinary jurisdiction under Article 226 of the Constitution of India, is the proposition which cannot be denied, however, the same depends upon the facts and circumstances of each and every case.

ANALYSIS:

6. Heard the learned counsels appearing for the respective parties.

6.1. The petitioners in Special Civil Application No. 17043 of 2023 are Pujari Trustees of the Trust and petitioners of Special Civil Application No. 17077 of 2023 have approached this Court in their capacity as nominated trustees of the said Trust, Karnari challenging the order passed by the respondent no.1 on the ground that the respondent no.1 has no jurisdiction to pass the impugned order dated 13.09.2023 in Scheme Misc. Application No. 3 of 2023 below Exh.1 invoking Section 51A of the Act, 1950, as the same is also without following principles of natural justice. The respondent no.1 has exercised powers as persona designata having framed the scheme of the Trust in the year 1970 and the said having been amended from time to time.

6.2. The order impugned dated 13.09.2023 passed by the respondent no.1 in Misc. Scheme Application No. 3 of 2023, relevant part of the said order reads thus:

"... As discussed earlier, the copies of the documentary evidences upon which the applicant has relied have been provided to the respondent. Further, since it is an application for beneficiary, as many documentary evidences have been produced as are possible as per Rule 26(2). From among the individual trustees, since the evidences of (1) Gopaldas Shirolawala are not available on behalf of the applicant,

their time limit is over. Thus, the hearing of Exhibit 17 has been conducted on 28/08/23 and 12/09/23. Since the application of the respondent with Exhibit 01 is liable to be heard in the interest of justice, the application with Exhibit 17 is rejected and the further proceedings of the the application with Exhibit 01 is conducted.

(7) Ld. advocates of both the parties have been heard with respect to the said application with Exhibit 1. Further, prior to the hearing, Ld. advocate for the respondent submitted the application to challenge in the Hon ble High Court of Gujarat the order dated 12/09/2023 of the Exhibit 17 and stated in a written reply with it that the advocate for the applicant has not submitted any reply with respect to the application of Exhibit 17. Arguments with respect to Exhibit 17 were made on behalf of both the parties on 12/09/23 and it has been submitted on behalf of the Respondent No.4 that, after the decision with respect to Exhibit 17 in the said case, the rights to submit reply for the application with Exhibit 1 and to make submission with respect to Exhibit 1 should be reserved. It is proved that in the said application, mere objective is to misuse the process of law with regard to the application submitted by the applicant. Against the order dated 03/07/2023 in the judicial Miscellaneous Application No.03/2005 as per section 22(A) of the Gujarat Public Trust Act, 1950, appeals have been filed in this office, which are pending for adjudication. If the affected party is joined for the reason that, their intention is to usurp the properties of Shri Kubereshwar and Someshwar Mahadev Sanyukt Sansthan, Karnali, with Trust No.A/ 686/Vadodara as per the unlawful ex-parte order received in the consolidation Application No.10/2005 of the Niranjani Akhada Karnali Trust, it is likely to be revealed. Therefore, the final hearing has not been fixed for today and the adjournment application to challenge the order in connection with Exhibit 17 has been produced with Exhibit 21. The applicant has raised a strong objection for the same. It has been requested to complete the final hearing today. In this manner, since both the parties disagreed with respect to the adjournment application, the hearing of the said matter has been conducted in the afternoon session. As the officer is inviting multiple proceedings by causing delay without any reason, the applicant has stated to conduct the final hearing today in the interest of justice to prevent fulfillment the malafide intention of the respondent.

(8) A scheme has been formed vide Scheme Application No.1/66 for the administration and management of the said organization. A provision for producing the Scheme Revision Application No.05/83 and 06/83 was made in it for the administration of the said organization. The copy of the P.T.R. has been produced with Mark 3/11 in this case. My predecessor officer has made change in the provisions 8(A) and 8(B) of the scheme. It is as under:

"8 (A) Regarding filling up the vacancy of the trustees except the priest trustee..... If any of the trustees other than the priest Trustees appointed under this Scheme or any of the Trustees other than the priest Trustees to be appointed hereafter under this Scheme dies or if he is absent from India for a continuous period of 6 months without the written permission of the Charity Commissioner or he is convicted in any criminal offence involving moral turpitude, or he becomes insolvent, or he is

unable to perform his duties as a trustee properly or is incapacitated to exercise his powers, or he is unwilling to do so, in all such circumstances, the remaining individual trustees shall appoint, by a majority vote, any person other than the priest as new trustee to replace such trustees subject to section-7. If the individual trustees do not appoint a new trustee within 3 months after knowing about such vacancy, the Charity Commissioner may appoint any person other than the priest as a new trustee on such vacant post subject to section-7 after 3 months. After a period of 3 months but before the Charity Commissioner appoints a new trustee in the vacant post in the above circumstances, if the individual trustees have appointed a new trustee on the vacant post, such appointment shall be considered as appropriate and recognized."

In addition, the applicant has submitted during the hearing that, the copy of the change report submitted on 21/08/2023 to the Assistant Charity Commissioner, Vadodara on behalf of Shri Kubereshwar and Someshwar Sanyukat Sansthan, Karnali has been produced.

Relying thereupon, it was averred that, out of the individual trustees, 03 have died. Therefore, on the P.T.R. of the Trust, 05 posts of individual trustees are lying vacant. As per the amended provisions of the Scheme of Trust with regard to evidence qua Clause-8(a), in accordance with the Scheme of Trust, in the higher interest of the trust and the highest interest of justice, it has been prayed to grant the relief and appoint the trustees as prayed for. Whereas, it has been averred by the Respondents that, as the stated changes have been admitted vide Change Report No. 368/2023 in the Office of Assistant Charity Commissioner, the Scheme Miscellaneous Application is not tenable. Further, 03 out of the present trustees have died and the tenure of 02 trustees has been completed. Therefore, the remaining members cannot appoint trustees. Considering the same, how an individual trustee on P.T.R. can appoint another individual trustee? It has been submitted by the applicant that not any satisfactory explanation has been given in this regard. Further, perusing the provisions vide the Scheme Revision Application No. 05/1983 and 06/1983, where individual trustees do not appoint an individual trustee on a post becoming vacant, it is the Charity Commission who is vested with the first right to make such an appointment. Perusing the Change Report produced herein, 03 out of 05 individual trustees have died. There is no information about one trustee and the tenure of one trustee is completed. Therefore, as the individual trustees have not been appointed within the prescribed time, it has been requested to appoint 05 individual trustees as have been prayed for.

During the hearing of the present case, the Respondents have submitted orally that, as a written reply is to be submitted in Scheme Miscellaneous Application No. 03/2023, an application seeking time has been presented at Exhibit-21. As the applicants have not produced necessary documents along with the stated application, the Respondents could not submit their written reply at the time of the earlier Application for Seeking Time and therefore, further extension has been sought. Apart from that, not any other representation has been made. Thus, as discussed above, perusing the documentary evidences produced, it emerges that the Scheme Miscellaneous Application has been presented on 21/03/2023.

Thereafter, on the notice for hearing being served, Learned Advocate Shri S.R. Patel has appeared for the Respondent No. 4. Further, the documents relied on by the applicant has been asked for and frequently, time has been sought for submitting a reply after such documents are received. The Respondents have appeared on behalf of the trust. The copies of Scheme Change Application No. 5/1983 and 6/1983 are with the trust. A copy of P.T.R. has been provided by the applicant. An entry with regard to Change Report Application has been recorded therein. The applicant has been relying thereon. A copy of Change Report produced before the Office of Assistant Charity Commissioner has been produced in the present case at Mark 18/1. Thus, it emerges from the record that consequent to admission of Scheme Miscellaneous Application and hearing thereof, a reply has not been submitted. The stated Change Report has been produced with an intention of delaying the Scheme Miscellaneous Application. Perusing the P.T.R.-copy produced in the present case, it appears that the last change in the trust was effected in 1999. It does not emerge from the P.T.R.-copy that any individual trustee or priest trustee has been appointed since then and the same is based on the records.

Therefore, in the present case, the order which had been passed in Scheme Revision Application No. 5/1983 and 6/1983 with regard to Clause 8(a) reads;

"... Where on such a post lying vacant, if the individual trustees, within 3 months of it coming to notice, do not appoint a new trustee, the Charity Commissioner may, after 3 months, appoint any person other than the priest as a new trustee, subject to Section-7..."

Thus, the fact, that not any individual trustee or priest trustee has been appointed in the present trust since 2002, appears to be based on record. Therefore, as there is no trustee in the present trust and the trust has been functioning without a trustee, in the paramount interest and as provided under the Scheme of Trust, it is this authority who is vested with powers to appoint trustees and appointing new trustees seems appropriate in the interest of the trust and its beneficiaries and to regularize the trust. Perusing the facts stated in the application and material records, Consent Letters and affidavits produced, it seems appropriate to appoint the 04 individual nominated by the applicant and 01 individual for the Respondent, who is on P.T.R., as trustees. But, as the Consent Letter and Affidavit of the Respondent has not been produced in the present case, along with an instruction to do the same, the following order is passed.

: -ORDER-:

(1) As discussed above, the Scheme Miscellaneous Application No. 03/2023 is granted, partially.

(2) For proper management of the Scheme and in the interest of administration, the following trustees are being appointed.

(1) Niranjan Madhavlal Vaidya Address: 11-A, Rokadnath Society, Nr. Arunoday Complex, Race Course, Vadodara.

(2) Mahant Dineshgiri Guru Shivgiri Address: Berna, District Sabarkantha.

(3) Shri Mahant Nandgiri Guru Niranjandev Address: Panachyati Akhada, Shri Niranjani Trust, Mahakali Temple, Karnali, Vadodara.

(4) Shri Parendu Kanaiyalal Bhagat Address: "Parishram", 28, Punit Nagar Society No.3, Opp. Mayur Pankh Society, Nr. Shyamal Cross Road, Satellite, Ahmedabad.

(5) Shri Bharat Vidurbhai Bhagat Address: 21, Pavanputra Society, Radhaswami Road, Ranip, Ahmedabad.

(3) In the present case, Sr.No.1 has been appointed as an Individual Trustee. He shall produce before this office his Consent Letter for being appointed as a trustee in the present trust and an Affidavit within 21 days of this order.

(4) No order as to cost.

(5) The parties and their advocates be informed of this order and a complete copy of this order be forwarded to the Assistant Charity Commissioner, Vadodara for necessary action.

Place: Vadodara

Date: 13/09/2023

Sd/- (illegible)

Joint Charity Commissioner

Vadodara Division, Vadodara

6.3. The Joint Charity Commissioner while passing the impugned order as referred above, exercised the powers under Section 50A of the Act, 1950. It is apposite to refer to Section 50A of the Gujarat Public Trusts Act, 1950, which reads thus:

"50 A. Power of Charity Commissioner to frame; amalgamate or modify schemes:

(1) Notwithstanding anything contained in section. 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may; after

(a) publishing a notice in the Official Gazette and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard, frame a common scheme for the same.

[2(A) A scheme under this section may provide for the number of trustees, the mode of appointment of trustee including the appointment of the first trustees, vesting of the trust property in the trustees so appointed, mode of filling any vacancy of a trustee the remuneration of a trustee, or manager of the public trust and where necessary, a clarification of the objects of the public trust.]

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under subsection (1) or subsection (2).

(4) The scheme framed under subsection (1) or subsection (2) or modified under subsection (3) shall, subject to the decision of the competent court under section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50."

6.4. The undisputed facts that emerge for the consideration of this Court reads thus:

a. A scheme for management and administration and vesting of the properties of Shree Kubereswar Mahadev and Shree Someshwar Sayunkt Sansthan, Karnali (hereinafter referred to "the Trust" for the sake of brevity) came to be framed under the order dated 27.02.1970 passed in suo-motu proceedings initiated by the Charity Commissioner being SUO-MOTU Scheme proceedings No.1 of 1996 vide order dated 27.02.1970. Thereafter, the said Scheme came to be modified by way of order dated 22.07.1985 passed in Scheme Misc. Application No.03 of 1983 and other connected matters. The same came to be further modified vide order dated 04.05.1996 passed in Scheme Modification Nos.05 of 1983 and 06 of 1983 both by the Charity Commissioner, copies of which is duly produced at Annexure-D. Considering the fact that the scheme came to be framed by the Charity Commissioner under Section 50A of the Act, 1960, the Charity Commissioner has exercised the powers under Section 50A(2A) of the Act, 1950, which provides for number of trustees, mode of appointment of trustees including the appointment of first trustees, vesting of the trust property in trustees so appointed, mode of filling any vacancy of the trustee, the remuneration of a trustee, or manager of the public trust and where necessary, a clarification of the objects of the public trust.

b. In the facts of the present case, the last appointment of the trustees in the said Trust was in the year 1999. Since 2002, the Trust has no trustees, barring one trustee (whose term expired as admitted by the petitioners in 2002) and another trustee living in the United States, who according to the respondents ineligible trustee and all the individual trustees have expired. Since 2002 there have been no individual trustees in the said Trust.

c. In the aforesaid set of facts, the respondent nos.2 and 3 approached the respondent no.1 on 21.03.2023 being Misc. Scheme Application No. 3 of 2023 below Exh.1 to appoint total 5 individual trustees including the petitioner no.1 in Special Civil Application No. 17077 of 2023 under Clause 8(a) of the Scheme invoking Section 50A(2A) of the Act, 1950.

6.5. At this stage it is apposite to refer Clause-8(a) of the amended Scheme being Scheme Revision Application No. 5 of 1983 and 6 of 1983 (pg-56-57), which reads thus:

"8 (a) Regarding filling up the vacancy of the trustees except the priest trustee.....

If any of the trustees other than the priest Trustees appointed under this Scheme or any of the Trustees other than the priest Trustees to be appointed hereafter under this Scheme dies or if he is absent from India for a continuous period of 6 months without the written permission of the Charity Commissioner or he is convicted in any criminal offence involving moral turpitude, or he becomes insolvent, or he is unable to perform his duties as a trustee properly or is incapacitated to exercise his powers, or he is unwilling to do so, in all such circumstances, the remaining individual trustees shall appoint, by a majority vote, any person other than the priest as new trustee to replace such trustees subject to section-7.

If the individual trustees do not appoint a new trustee within 3 months after knowing about such vacancy, the Charity Commissioner may appoint any person other than the priest as a new trustee on such vacant post subject to section-7 after 3 months. After a period of 3 months but before the Charity Commissioner appoints a new trustee in the vacant post in the above circumstances, if the individual trustees have appointed a new trustee on the vacant post, such appointment shall be considered as appropriate and recognized."

6.6. This Court deems it fit to refer to the dates of events, which are germane for the adjudication of the dispute in question, duly placed on record, by the learned advocate appearing for the respondent and the same being uncontroverted / undisputed, which reads thus:

Sr. No.	Date	Particulars	Reference
1.	1952	The Kubereshwar and Someshwar Mahadev Sanyukt Trust, Karnali was registered by one Gajanand Shankarlal Bhatt. The Trust was registered at No. A-686-Vadodara.	Pg. 54/B
2.	1966	The Ld. Charity Commissioner initiated suo motu Scheme Proceeding No. 1/1966.	Pg. 54/C

3. 27th February 1970 The Ld. Charity Commissioner passed Pg. 54/C
an Order in the Scheme Proceedings No.
1 of 1966 and formulated a Scheme for
the said Trust. At the said time while
formulating the scheme, the Ld. Charity
Commissioner had appointed 9
Trustees.
- From the aforesaid 9 Trustees, 4
Trustees were Poojari Trustees, whose
term was fixed for three years and 5
Trustees were Individual Trustees.
- It is pertinent to note that after expiry of
three months from the end of term of
Poojari Trustees, if new appointments
thereto are not made by the majority of
trustees, the Ld. Charity Commissioner
was empowered to appoint Trustees
under Clauses 8A and 8B of the
Scheme
4. 22nd July 1985 The Ld. Joint Charity Commissioner in Annex. C at
Scheme Misc. Application No. 3 of 1983 pg. 41/A
and other allied matters appointed the
following persons as Trustees with
consent of the parties:
- A. Poojari Trustees**
1. Gajanand Shankarlal Bhatt
 2. Arunkumar C. Pandit
 3. Prasannalal T. Bhatt
 4. Pravinchandra R. Bhatt
- B. Individual Trustees**
1. Ochhavlal C. Shah
 2. Gordhanbhai F. Patel
5. 4th May 1996 The Ld. Charity Commissioner ordered
modification in the said scheme of the
Trust.

6. 1999 Individual Trustees were last appointed in 1999. Change Report pursuant thereto was accepted. The term of the Trustees who were appointed in the said year expired in the year 2002. Since 2002 there have been effectively no trustees, even as per the admission of the Petitioner (*Change Report filed on 21st August 2023 at pg. 109*)

7. February 2007 Panchayati Akhada had filed Regular Civil Suit 114 of 2007 for declaration and injunction over one property against the present Trust.

[Subsequently numbered as RCS 123 of 2015] Annex. D Colly. At pg. 60.

8. 21st January 2023 Respondent No. 2 filed the Misc. Application No. 03 of 2023 for appointment of Trustees since only one surviving individual trustee existed and that too his term had expired. Annex. F at pg. 103

9. 15th April 2023 The Respondents therein (including the present Petitioner) were issued Notice for the said proceedings

10. 16th May 2023 The Petitioner herein entered appearance and filed an Adjournment Application vide Exhibit 8. Exhibit 8 of the Record

11. 25th May 2023 Petitioner herein once again filed adjournment Application vide Exhibit 10. Exhibit 10 of the Record

12. 28th June 2023 The Petitioner herein again filed an adjournment Application Exhibit 11 of the Record

13. 7th July 2023 Advocate for the Applicant therein filed Exhibit 12 of a further list of new proposed Trustees, the Record which included the present Respondent.
- Contrary to the oral submissions of the Petitioner, the same was served on the Petitioner. His acknowledgement is reflected on the same.
- It is pertinent to note that the Petitioner did not endorse his objection. The Petitioner merely acknowledged receipt of the same. The Petitioner on the said date also filed Adjournment Application vide Exhibit 15.
14. 7th July 2023 The contesting Respondents had filed Exhibit 16 of an application suggesting that a the Record newspaper publication be made inviting other suggested names for appointment of Trustees. This application was strongly opposed by the Petitioner. Accordingly, it came to be withdrawn by the Respondents.
15. 24th July 2023 The present Trust filed a civil suit Annex. D at against Niranjani Akhada regarding a pg. 80 property seeking declaration.
16. 22nd August 2023 Application was filed raising a Exhibit 17 of preliminary objection vide Exhibit 17. the record. This was opposed by the contesting Respondent.

17. 21st August 2023 The Petitioner purportedly filed a Annex. G at Change Report without even filing a pg. 109 reply on merits in the present Application.
- It is pertinent to note that no change report could have been filed since there were no valid trustees to make the said Change Report.
- In any case, the Change Report has been signed and proposed by the intending Trustees themselves, which is invalid.
- In accordance with the scheme of the Trust, once three months pass without any change report having been made, it is only the Ld. Charity Commissioner under Clause 8A who could appoint the new Trustees.
- It is pertinent to note that in the said change report, the Petitioner himself has admitted that his term as a Trustee of the said present Trust has expired. [*Annex. G at Pg. 109*]
18. 28th August 2023 The matter was heard at some length and adjourned thereafter.
19. 12th September 2023 The Ld. Joint Charity Commissioner Annex. H at passed and Order under Exhibit 17 pg. 116 with a direction that the said application will be heard along with the final arguments. By specific direction, final hearing of the matter was posted on 13.09.2023.
20. 13th September 2023 The Ld. Joint charity Commissioner Annex. A at passed the Impugned Order. pg. 21
- The Petitioner herein had filed Adjournment Application (vide Exhibit 21 which was rejected by the Ld. Commissioner) [Pg. No. 117 119]

21. 13th September 2023 The said order was stayed for a period Pg. 29 of 15 days.
22. 25th September 2023 After 12 days, the Petitioners filed the present SCA.

The following is a list of Trustees as on 1999 and their current status

Sr. No.	Name	Category of Trustee	Status as on date of filing application
1.	Manubhai Keshavbhai Pathak	Individual Trustee	Died on 21.01.2014
2.	Ochhalal C. Shah	Individual Trustee	Died on 30.03.1993
3.	Yogeshkumar O. Shah	Individual Trustee	Died on 15.01.2022
4.	Gopaldas Ramanlal	Individual Trustee	Term Expired
5.	Niranjan Madhavlal Vaidya	Individual Trustee	Term Expired
6.	Gajanand Shankarlal Bhatt	Poojari Trustee	Died on 21.01.1995
7.	Prasannalal Trikamlal Bhatt	Poojari Trustee	Died on 20.01.1998
8.	Pravinchandra Rasiklal Bhatt	Poojari Trustee	Died on 16.10.2019
9.	Shirishbhai Trikamlal Bhatt	Poojari Trustee	Died on 20.11.2017
10.	Navinchandra Krushnalal Bhatt	Poojari Trustee	Died on 1995
11.	Arunkumar C. Bhatt	Poojari Trustee	Term Expired
12.	Sharatchandra M. Bhatt	Poojari Trustee	Term Expired

6.7. Considering the above, the scheme having been framed as back as in the year 1970 and in absence of any trustees, having been appointed in regular mode, in the opinion of this Court, it was competent for the Charity Commissioner to invoke the powers as quasi judicial authority under the provision of Section 50A of the Act, 1950. The respondent nos. 2 and 3 having approached the Charity

Commissioner invoking the provision of Section 50A of the Act, 1950 in his capacity as quasi judicial authority.

6.8. This Court has considered the order impugned passed by the respondent no.1, wherein, the Charity Commissioner proceeded to pass the impugned order, considering the fact that three trustees out of the present trustees expired and the tenure of two trustees is completed. In view thereof, the remaining members cannot appoint the trustees. Further, it is considered by the respondent no.1 as to how an individual trustees on PTR can appoint another individual trustees. The respondent no.1 has considered the provisions of the Scheme No. 5 of 1983 and 6 of 1983, wherein, the individual trustees do not appoint an individual trustees on the post become vacant, it is the Charity Commissioner who is vested with the first right to make such an appointment. On perusal of the Change Report produced before the respondent no.1, three out of five individual trustees have expired. There is no information about one trustee and the tenure of one trustee is completed. In view thereof, the individual trustees have not been appointed within the prescribed time, it is requested to appoint five individual trustees as have been prayed for.

6.9. The legislature by insertion of sub-section 2A by Gujarat Act No. 31 of 1962, has empowered the Charity Commissioner while framing a scheme to provide for all the matters specified therein. It is left with the Charity Commissioner to provide for the number of trustees and mode of appointment of trustees. It cannot, therefore, be opined that the Charity Commissioner has no power in respect of appointment of trustees. The appointment of trustees, in the aforesaid set of facts, is an important and integral part of the power of framing of a scheme which without the former, the latter power becomes useless.

6.10. While considering the aforesaid, the powers of Charity Commissioner under Section 50A (2A) of the Act, 1950 are wide enough and section itself starts with non-obstante clause. This power is in addition to be the powers under other provisions of the Act. It is the subjective satisfaction of Charity Commissioner to decide that a scheme is in the interest of proper management of the Trust is necessary and he is entitled to exercise his powers under Section 50A of the Act, 1950.

POSITION OF LAW:

7.1. In the facts of the present case, the ratio as laid down reported in case of AIR 1974 Guj. 129 in case of Bipinchandra (supra) would apply. The said decision is also relied upon by the Hon ble Division Bench in the case of **Jaymal Thakore V/s. Charity Commissioner reported in 2001 (3) GLR 2124** , relevant Para-5 reads thus:

"5. The decision of Charity Commissioner under Section 50A in the matter of framing of a scheme of management is subject to judicial scrutiny by a Civil Court on an Application to be made by aggrieved party under Section 72(1) of the Act, although, such grievance by Application against decision of Charity Commissioner is available on restricted grounds relating to the existence of the trust or as to whether any property is trust property or not. Sub-section (1A) of Section 72

restricts decision of the Application of a Civil Court on the evidence adduced before the Charity Commissioner and permits production of additional evidence only when such evidence was unreasonably not allowed to be led before the Charity Commissioner. Under Sub-section (4) of Section 72, the decision of Civil Court on the Application against decision of the Charity Commissioner is open to Appeal to the High Court as a decree. The Explanation appended below Section 72 is also of importance as it states that the expression "decision" shall include a scheme framed or modified under Section 50A. Relevant provisions of Section 72 also deserve to be reproduced for considering the nature of proceedings before the Charity Commissioner:-

"Section 72 Application from Charity Commissioner's decision under Sections 40, 41, 50A, 70 or 70A etc.

(1) Any person aggrieved by the decision of the Charity Commissioner under Sections 40, 41, 50A, 70 or 70A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the Court to set aside the said decision. Application from Charity Commissioner's decision under Sections 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A etc.

(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence: Provided that whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

(2) xx xx xx xx

(3) xx xx xx xx

(4) An appeal shall lie to the High Court against the decision of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies. Explanation- In this Section, the expression "decision" of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies."

7.2. In the case of Shri Bipinchandra Patel V/s. Jashwant Naik (supra), wherein, it is held that the powers under Section 50A (2A) of the Act, 1950, the Charity Commissioner assumes the power of quasi judicial authority and that the Charity Commissioner has powers to fix the number of trustees and it is open for the Charity Commissioner to reduce and / or to increase the number of trustees, relevant para on Para-4, 15, 34, 41 and 45 which reads as under:

"4.Mr. I.M. Nanavati, appearing for the appellants, made the following submissions.

(1) On a true interpretation of Section 50-A of the Act, the Charity Commissioner has jurisdiction to frame a scheme only in a case where a trust exists but there is no scheme for its administration.

(2) Even if the power under Section 50-A of the Act can be exercised despite a scheme being in existence for administration or management in the instrument of trust, no additional trustees can be appointed by the Charity Commissioner under Section 50-A of the Act.

(3) If Section 50-A of the Act is construed to be a parallel provision of Section 50 of the Act, then inquiry must be held as a judicial inquiry and no statements recorded behind the back of the party and not disclosed to him and not allowed to be tested by cross-examination can form the basis of either an order initiating inquiry under Section 50-A of the Act or framing a scheme under Section 50-A of the Act, where it involves appointment of new trustees or a removal of a trustee.

(4) In the instant case, judicial inquiry has not been held, either at the stage prior to actual initiation of the proceedings under Section 50-A of the Act, or in the course of the proceedings under Section 50-A of the Act.

15. After referring to sub-section (2-A) of Section 50-A of the Act, it is observed:

"The wording of sub-section (2-A) makes it clear that, the Charity Commissioner has powers even to fix the number of trustees and it cannot be denied that, while fixing the number of trustees, it is open to him to reduce or increase the number of trustees. If any authority is needed on the point, it is provided by the decision in the case of **Bapugouda Yadgouda v. Vinayak Sadashiv, AIR 1941 Bom 317** , in which it has been observed, Framing a scheme for the management of an institution may or may not involve the appointment of new trustees or the removal of existing trustees . In the case of **Guru Nathrudhaswami. Guru Shidharudhaswami v. Bhimappa Gangadharappa Divate, AIR 1948 PC 214** , also, it has been observed: In settling a scheme for the administration of a charitable trust involving the appointment of trustees or managers, the Court is bound to secure persons whom it regards as suitable. The fact that the late deceased trustee desired that the present trustee should succeed him does not fetter the discretion of the Court or preclude consideration of the conduct of the present trustee both before and since the death of the late trustee ".

34. In the third category of cases falls Section 50-A of the Act, which is material for our purposes. The legislature has, in my opinion, intentionally and advisedly not referred to any nature of the inquiry specifically. It is not stated therein that the inquiry is to be made in the prescribed manner or the inquiry is to be made in the manner the Charity Commissioner deems fit. The only condition laid down therein is that the Charity Commissioner is entitled to frame a scheme for the management or administration of a public trust if he is satisfied that it is necessary or expedient so to do after giving the trustees of such trust due opportunity to be heard. It, therefore, means that the legislature intended that due opportunity should be given to the trustees to be heard, and that opportunity is to be given when the Charity Commissioner has reasons to believe that in the interest of the proper management

or administration of a public trust a scheme should be settled for it. It clearly means that it will depend upon his subjective satisfaction. If there is such subjective satisfaction of his, he has to give the trustees due opportunity to be heard, and after giving such due opportunity to be heard, he has to satisfy himself that it is necessary or expedient so to do to frame a scheme for the management or administration of such public trust or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that in the interest of the proper management or administration of a public trust, a scheme should be settled for it, he has to give such due opportunity to the trustees of being heard and after being satisfied that it is necessary or expedient so to do, he is entitled to frame a scheme for the management or administration of such a public trust. In my opinion, therefore, it cannot be said that in all such cases, the procedure that is to be followed in the trial of a suit has got to be followed. In my opinion, it will all depend on the facts and circumstances of each case and on the facts and circumstances of each case, one will be required to decide whether due opportunity to the trustees of such public trust of being heard was given or not.

41. There is no doubt that the functions to be discharged by the Charity Commissioner in a proceeding under Section 50-A of the Act are of a quasi judicial character. It cannot be said that it is to discharge administrative functions. Section 50-A (4) of the Act clearly indicates that the decision regarding the framing of a scheme or a modification of a scheme by the Charity Commissioner has the effect as a scheme settled or altered, as the case may be, under a decree of a Court under Section 50. It is also made appealable. In my opinion, as said earlier, the legislature has advisedly stated that the Charity Commissioner has to come to a decision and frame a scheme after giving opportunity to the trustees of being heard and on his satisfaction, that it is necessary or expedient so to do. If really the procedure of a trial of a suit was to be followed or the inquiry was to be made in the prescribed manner in all cases falling under Section 50-A of the Act, the legislature could have very well made a specific provision in that behalf. If the suit trial procedure was to be followed, in my opinion, there would have been no good reason for the legislature to empower the Charity Commissioner to frame such a scheme as that could have been done by institution of a suit by the Charity Commissioner as contemplated under Section 50 of the Act. In my opinion, therefore, what is required to be seen is, whether on the facts and circumstances of the case, could it be said that due opportunity of being heard was given to the appellants-trustees or not.

45. I have, therefore, no hesitation in coming to the conclusion that the functions that are to be discharged by the Charity Commissioner under Section 50-A of the Act are quasi judicial functions. One has, therefore, to see whether there is any violation of principles of natural justice. It is significant to note that the authorities referred to in Section 37 of the Act which includes the Charity Commissioner amongst them, have been given supervisory jurisdiction over such public trusts."

7.3. In the decision reported in 2005 (1) Mh.L.J. in case of Waman Deshpande (supra), relevant para-1, 6, 7 and 8 reads thus:

"1. The appellants have challenged the order dated 23-3-1998 passed by the learned Single Judge dismissing their first appeal No. 473/1997 against the order dated 3-10-1997 passed by the Joint Charity Commissioner, Nagpur, appointing 15 persons as the trustees of the public trust.

6. Another important aspect is that suo motu proceedings No. 41/63 for framing scheme were initiated by the Joint Charity Commissioner under section 50-A of the Act in respect of Shri Ambadevi Sansthan and a scheme was framed on 13-9-1965. Clause 6 of the said scheme prescribes that the number of trustees shall not be less than 7 and not more than 30. For the purposes of the present appeal, Clause 9(b) is material. It reads as under:

Appointment of new trustee:

(b) If any of the trustees shall die or be absent from Maharashtra for a period of one year or be adjudicated an insolvent or be convicted of a criminal offence involving moral turpitude and punished with imprisonment or desire to be discharged from or refuse or in the opinion of the Charity Commissioner of Maharashtra (hereinafter referred to as the "the Charity Commissioner") become unfit or in the like opinion incapable to act in duties and powers reposed in him or them under this Scheme the surviving or continuing trustees or trustees from the time being or if they shall all retire simultaneously or the last surviving trustees shall by writing appoint any other person or persons being permanent residents of Amravati after obtaining the consent of the Charity Commissioner in writing to be a trustee or trustees in the place of the trustee or trustees so doing, or being absent from Maharashtra or becoming insolvent or being convicted of a criminal offence involving moral turpitude and punished as aforesaid or desiring to be discharged or refusing or becoming unit or incapable to act as aforesaid. In the event of any such contingency arising and if no appointment of new trustees or new trustee as the case may be shall be made within six months of the happening thereof it shall be lawful for the Charity Commissioner at any time after the expiry of such period by writing to appoint a new trustees or new trustees as the circumstances may require.

7. The bare perusal of the above clause shows that if no appointment of new trustee/trustees is made by the surviving/continuing trustees within six months from the date of vacancy, it shall be lawful for the Charity Commissioner at any time after expiry of such period to appoint a new trustee. The order passed by the Joint Charity Commissioner shows that he exercised the power to appoint trustee under Clause 9(b) of the Scheme. The learned Single Judge also opined that there is clear authority under the Scheme to the Joint Charity Commissioner to appoint a trustee, in case the vacancy is not filled in within the stipulated period. So though the provisions of section 47 are not attracted to the present case so as to empower the Joint Charity Commissioner to appoint new trustee, it was well within his competence to appoint new trustees under the powers conferred upon him by the Scheme.

8. It appears to us that section 47 of the Act is not the only repository of the power of the Charity Commissioner to appoint trustees. A scheme framed by the Charity Commissioner under section 50-A of the Act may also contain a clause empowering the Charity Commissioner to appoint trustees in case a vacancy arises and the same is not filled in by the remaining trustees. As pointed out earlier, in the present case the Joint Charity Commissioner has exercised his powers under Clause 9(b) of the Scheme under which he is authorised to appoint trustees in the vacant posts. Thus in our view the learned Single Judge rightly held that there was no merit in the appeal. We find no error in the order of the learned Single Judge. Hence the L.P.A. is dismissed with no order as to costs."

The Bombay High Court dealt with an identical clause in the scheme, wherein, if after lapse of six months, no appointment was made, it would be lawful for Charity Commissioner to any time after expiry of said period, to appoint new trustees, as the circumstances may require. The Charity Commissioner assumes the powers under Section 50A of the Act, 1950 to appoint new trustees, the vacancy not filled within the stipulated time.

7.4. In the case reported in AIR 1973 Guj 15 of Hiragar Dayagar (supra), relied on Para-7, which reads thus:

"7. Now it may be noticed that the District Court in an application under Section 72 is given the power to confirm, revoke or modify the decision of the Charity Commissioner and there are no limits or fetters upon this power. The entire matter which was before the Charity Commissioner is at large before the District Court and the District Court has full and complete power to review the decision of the Charity Commissioner, either on law or on fact in such manner as it thinks proper. If this be not an appellate power, it is difficult to see what else it can be. It is true that the Charity Commissioner is not subordinate to the District Court in the sense that the District Court has no power of superintendence over the Charity Commissioner but there can be no doubt that inter alia in the matter of his decisions under Section 70, the Charity Commissioner is inferior to the District Court in that the District Court has power to revoke or modify his decisions. What is of the essence of an appeal is that a superior Tribunal should have the power to review the decisions of the inferior Tribunal and that power, the District Court certainly has under Section 72. The District Court, as we have already pointed out, may confirm, revoke or modify the decisions of the Charity Commissioner on an application under Section 72. The District Court may also, in the exercise of its inherent power under Section 76 read with Section 151 of the CPC, make an order of remand to the Charity Commissioner, if the District Court thinks it necessary to do so in a proper case. **Vide Chandrakant v. Charity Commr. of Gujarat, (1965) 6 Guj LR 649** . We may point out that sub-section (1-A) of Section 72 also reinforces the view that the power conferred on the District Court under Section 72 is an appellate power. The provision enacted in sub-section (1-A) of Section 72 is in identical terms as Order 41, Rule 27 of the CPC and it emphasizes that what the District Court is called upon to do under Section 72 is to review the correctness of the decision of the Charity Commissioner on the evidence which was before him and this is clearly a characteristic of appellate power. There can, therefore, be no

doubt that though the word "appeal" is not used by the Legislature and the proceeding under Section 72 is designated as an application, the jurisdiction conferred on the District Court while dealing with such proceeding is appellate jurisdiction. This view is completely supported by the decision in (1965) 6 Guj LR 649 (supra) which being a decision given by a Division Bench of this Court, is binding upon us. There the question was whether an application under Section 72 could be regarded as an appeal within the meaning of Section 29(2) of the Limitation Act and after examining the real nature of the right conferred by Section 72, the Division Bench consisting of M.U. Shah, J. and myself held that though an application under Section 72 cannot be said to be an appeal within the meaning of Section 75, it was certainly liable to be regarded as an appeal within the meaning of the Limitation Act What we said there must apply equally in the present case and we must hold that the jurisdiction of the District Court while dealing with an application under Section 72 is appellate jurisdiction."

In the said decision, the District Court in an application under Section 72 of the Act, 1950 is given the power to confirm, revoke or modify the decision of the Charity Commissioner and there are no limits fettered upon the said power. Placing reliance on the aforesaid, submitted that any application can be subject matter of appeal under Section 72 of the Act, 1950.

7.5. In the case of **Shah Jagmohandas Purshottamdas and Anr. V/s. Jamnadas Vrajlal Gandhi and ors. , reported in AIR 1965 Guj 181** relevant Para-7 and 29 reads thus:

"7. At the outset Mr. I.M. Nanavati, learned advocate appearing on behalf of Opponents Nos. 1 and 5 to 8, raised a preliminary objection to the maintainability of the Revision Applications and since the preliminary objection, if well founded would be fatal to the Revision Applications rendering it unnecessary to give any decision on the merits, I heard the parties on the preliminary objection which is now being disposed of by this judgment. The preliminary objection was founded on the well-known distinction between a Court acting as a Court of law and a presiding officer of a Court acting as a persona designata. Mr. I.M. Nanavati 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 in making an appointment of a member of the Committee, therefore, acted as a persona designata and not as a Court of Law so as to attract the revisional jurisdiction of the High Court. The conclusion which Mr. I.M. Nanavati pressed for my acceptance following this line of reasoning was that the District Judge having made the impugned order as a persona designata and not as a Court of Law, no Revision Application could lie against such order under Section 115 of the CPC and that the Revision Applications preferred by the petitioners and the Charity Commissioner were, therefore, not maintainable. Mr. A.D. Desai, learned Advocate appearing on behalf of the petitioners, however, resisted this conclusion and contended that the power to appoint a member of the Committee was conferred in terms clear and explicit on the "District Court" and the "District Court" could mean only the District Court as a Court of law and not the

District Judge acting as a persona designata. Mr. A.D. Desai pointed out that there might have been some scope for doubt or equivocation if the power had been conferred on the District Judge but the power having been conferred in clear and unambiguous language on the District Court and not on the District Judge, it was clear that it was the District Court as a Court of law and not the District Judge as a persona designata who was entrusted with the exercise of the power. The District Court in making the appointment of Shri Navnital Ranchhoddas, therefore, argued Mr. A.D. Desai, acted as a Court of law and not as a persona designata and the order of the District Court was, therefore, subject to the revisional jurisdiction of the High Court. These were broadly the rival contentions of the parties on the preliminary objection and they raised a question of some importance possibly bearing in some measure also on the merits of the dispute which I shall now proceed to answer. Before, however, I do so, I must mention that the argument advanced on behalf of Opponents Nos. 1 and 5 to 8 by Mr. I.M. Nanavati was a very able and careful argument but for reasons which I shall presently state, it must fail to carry conviction. 29. For these reasons I am of the opinion that the District Court referred to in Clause 7 of the Scheme is the District Court acting as a Court of Law and not the District Judge acting as a persona designata. It must, therefore, follow that the District Court in making the order appointing Shri Navnit Lal Ranchhoddas as a member of the Committee acted as a Court of Law and that the order is, therefore, subject to the revisional jurisdiction of the High Court. In this view of the matter the Revision Applications would have to be heard on the merits and it would have to be decided by me whether any of the conditions specified in Section 115 of the CPC is fulfilled so as to warrant interference with the order made by the District Court. The hearing of the Revision Applications on the merits will be fixed on 28th July, 1932."

8. In view of the aforesaid, this Court is inclined to pass the following order:

A. It is held that the functions discharged by the Charity Commissioner in proceedings under Section 50A of the Act, 1950 are of quasi judicial in nature, in line with the ratio as laid down in the case of Bipinchandra Patel (supra). The test is whether there is any violation of the principles of natural justice. In the facts of the present case, the petitioner no.1 was party respondent since the inception of the proceedings and notices having been issued from time to time, ample opportunity of hearing were granted. Pending the Scheme Misc. Application, the original respondents (present petitioners) did not submit any reply and prayed for adjournment to peruse the documentary evidences. Further, it was considered by the respondent no.1 that the Change Report has been produced with an intention of delaying the Scheme Misc. Application. On perusal of the copy of the PTR, it was held that the last change in the Trust was effected in the year 1999 and that no individual trustees or priest has been appointed since then and the aforesaid is decided based on the record.

B. In Special Civil Application No. 17077 of 2023, the petitioner is held to be not maintainable qua the deceased trustees respondent nos. 4 to 7.

C. The contention was also raised vehemently that the civil proceedings are pending between the parties. The Civil Suits which are pending and are on record, (i) Regular Civil Suit No.114 of 2007 (re-numbered as Regular Civil Suit No. 123 of 2015) filed by Niranjana Akhada, Karnadi against the Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari and (ii) Regular Civil Suit No. 98 of 2023 which has been filed by Shri Kubereshwar Mahadev and Shri Someshwar Sanyukt Sansthan, Karnari against Niranjana Akhada, Karnadi and Mahant Dineshgiri Guru. Notably, while the proceedings are pending, the present Trust is not party to the proceedings. The present petition is filed through individual members in their capacity as Pujari and individuals being interested persons in the well being of the trustees. This Court has also noted that the scheme application came to be filed in March, 2023 and the suit against the newly impleaded trustees came to be filed by the Trust in July, 2023. It is only to overreach the process, without actually contesting the said application. The aforesaid conduct of the petitioners does not inspire confidence to this Court.

D. Further, in Special Civil Application No. 17043 of 2023 it is submitted that, Shri Dineshgiri, against whom, criminal proceedings are pending, is not a party to the present proceedings and the present petition suffers from non-joinder of necessary party.

E. In the opinion of this Court, provision of Section 22-A and 50A of the Act, 1950 are independent of each other. The powers exercised under Section 22-A and 50A of the Act, 1950 do not overlap, and therefore, for an application that is pending under Section 22-A of the Act, the powers exercised under Section 50A of the Act cannot be said to excess of jurisdiction.

F. The petitioners appears to have called upon for meeting in August, 2023 and filed change report is only to circumvent the proceedings under Section 50A(2A) of the Act. Rather than assisting /claiming objection in the said Misc. Scheme Application before the Charity Commissioner, the petitioners waited for the Charity Commissioner to pass the final order and to challenge the same, which in the opinion of this Court, amounts to overreaching the process of law. It is also noted that, while it is averred in the petition that the interim applications filed by the petitioners being Exh.17 and 21, having not been challenged by the petitioners till today and the same amounts to accusing the rights qua raising the said contention.

G. In the opinion of this Court, considering the position of law as referred above and the facts of the present case as well as the provisions of the Act, the respondent no.1 has the powers to act in two domains, in the administrative capacity as also quasi judicial authority. The respondent no.1 having been the author / framed of the scheme, while framing the scheme on acted in his administrative capacity, however, the trustees having not been appointed in regular mode and on application filed for appointment of the new trustees, the respondent no.1 was empowered to exercise the powers under Section 50A(2A) of the Act, 1950, in line with the ratio as laid down in the case of Bipinchandra Patel (supra).

H. The proceedings initiated by the petitioners herein are neither through the Trust nor the Trust is impleaded as party respondent to adjudicate the dispute in question in its true spirit.

9.1. For the foregoing reasons, no interference is called for, to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India, reserving the liberty to avail appropriate statutory remedy, in accordance with law.

9.2. Both the present Petitions being Special Civil Application No. 17043 of 2023 and Special Civil Application No. 17077 of 2023 fail and the same are dismissed accordingly.

9.3. Upon request made by the learned counsels appearing for the petitioners, interim arrangement vide order dated 13.09.2023 by the Joint Charity Commissioner is directed to be continued for a period of 7 days from today i.e. 16.10.2023. The petitioners are also restricted from taking any decision, in accordance with their statement made earlier in the present proceedings.

Direct service is permitted.