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Ex. 12

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
 BHAVNAGAR**

**Miscellaneous Civil Application No.109 of 2025**

Shri Saurashtra Luhar Gnati Vidhyotejak  
 Mandal, Bhavnagar's Trustee,  
 Shri Bhavesh Savjibhai Dodiya,  
 Add: Plot No.781/B, Adarsh Co. Society,  
 Vijayrajnagar, Opp. Motivadi, Bhavnagar.

..... Applicant

**VERSUS**

- 1) The Joint Charity Commissioner,  
 Add: Shishuvihar Circle, Plot No.465/A,  
 Near Prabhudas Talav, Bhavnagar-364001.
- 2) The Charity Commissioner,  
 Gujarat State, Add: Bahumali Bhavan 2,  
 3<sup>rd</sup> Floor, Opp. Near Gurukul,  
 Drive-inn Road, Ahmedabad-52.

..... Opponents

: Application under Section-72 of The Gujarat Public Trust Act, 1950 :

**Appearance :**

Learned Advocate for the Applicant, ..... Mr.AK Vadher  
 Learned A. G. P. for the Opponents, ..... Mr.MH Maheta

**: J U D G M E N T :**

1. Being aggrieved and dissatisfied with an order, dated 06-10-2025, passed in an Appeal No.49/2024, passed by the Ld. Joint Charity Commissioner, Bhavnagar whereby, an order, passed in a Change Report No.335/2020, dated 15-12-2020, passed by the Ld. Assistant Charity Commissioner, Bhavnagar, is confirmed, the present applicant – Trust has preferred the present application under section-72 of the Gujarat Public Trust Act, 1950 (hereinafter referred as 'the Act').

2. The factual matrix, leading to the present proceedings, are as under :

2.1 It is the case of applicant that deceased Lavjibhai Ranchhodbhai Luhar had purchased two plots bearing plot No.39 and plot No.40, situated at Parmeshvar Park (residential colony), situated at Revenue Survey No.21/06 of village Adhevada and the said plots were gifted/donated by deceased Lavjibhai Ranchhodbhai Luhar in favour of the applicant – Trust *vide* a registered gift deed, dated 06-08-2012, for the purpose of construction of a girls' school and as per the terms and conditions of the said gift deed, the construction of a girls' school was to be completed within three years from the date of the gift deed and if the Trust fails to complete the construction of the said girls' school within three years as agreed between the parties, the donor or his legal heirs would be entitled to recover the possession of the above referred plots. As per case of the legal heirs of the deceased Lavjibhai Ranchhodbhai Luhar, the construction of the girls' school was not be completed within the stipulated period

and, therefore, the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar preferred Regular Civil Suit No.623/2020 before the learned Principal Senior Civil Judge, Bhavnagar. In the said suit, compromise was arrived at between the parties and it was agreed between the parties that the plot No.39 should be returned in favour of the legal heirs of donor - Lavjibhai Ranchhodbhai Luhar whereas, the plot No.40 shall be retained by the applicant – Trust and the applicant – Trust would be entitled to construct the girls’ school on plot No.40. Based on the above referred compromise, consent decree was passed by the Ld. Principal Senior Civil Judge, Bhavnagar in RCS No.623/2020 and based on the said decree, the names of the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar were inserted in the revenue record and the possession of the said plot was also handed over to the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar, but since the plot No.39 continued to be reflected in the PTR of the applicant – Trust, the applicant – Trust preferred an application in the form of Change Report bearing No.335/2020 under section-22(4) of the Act for deletion of plot No.39 which was running in the name of applicant – Trust in the PTR. The said application was dismissed by the Ld. Assistant Charity Commissioner *vide* an order, dated 15-12-2020 *inter alia* holding that without issuance of a notice to the Charity Commissioner, the consent decree was obtained by the applicant – Trust in RCS No.623/2020 and the legal heirs of donor - Lavjibhai Ranchhodbhai Luhar and also by holding that as no statutory notice was issued upon the Ld. Charity Commissioner, the order, passed by the Ld. Principal Senior Civil Court, Bhavnagar in RCS No.623/2020, dated 26-09-2020, cannot be

implemented. The said order, dated 15-12-2020 was further challenged by the applicant – Trust by preferring an Appeal under section-70 of the Act before the Ld. Joint Charity Commissioner and the same was registered as an Appeal No.49/2024.

2.2 After hearing the Ld. Advocates for the respective parties, the Ld. Joint Charity Commissioner was pleased to dismiss the Appeal No.49/2024, preferred under section-70 of the Act *inter alia* holding that without issuing a statutory notice upon the Charity Commissioner, no civil decree could be obtained which may adversely affect the right of the beneficiary of the public trust. It was further held that without prior permission of the Charity Commissioner, the suit was preferred and, therefore, the suit itself was not maintainable. This order was passed on 06-10-2025. Both the above referred orders, namely, order dated 15-12-2020 and order dated 06-10-2025, passed by the Ld. Assistant Charity Commissioner, Bhavnagar and Joint Charity Commissioner, Bhavnagar respectively, are the subject matter of challenge before this Court.

3. Ld. Advocate for the applicant – Trust submitted that the Ld. Assistant Charity Commissioner, Bhavnagar and Ld. Joint Charity Commissioner, Bhavnagar being *quasi* judicial authorities, have no jurisdiction to come to a conclusion that the decree, passed by the Ld. Principal Senior Civil Court in RCS No.623/2020, is *non est* and is none executable decree. He further submitted that the Ld. Charity Commissioner had

preferred an RCS No.588/2021 before the Ld. Principal Senior Civil Court, Bhavnagar and the said suit was unconditionally withdrawn on 01-10-2022 and since the suit, preferred by the Ld. Charity Commissioner, Bhavnagar was unconditionally withdrawn, it was not open for the Ld. Assistant Charity Commissioner, Bhavnagar and the Ld. Joint Charity Commissioner, Bhavnagar to refuse the Change Report No.335/2020. He further submitted that as it was agreed between the parties in RCS No.588/2021 that the applicant – Trust shall not enter into any agreement which may adversely affect the status of the suit property and it was also agreed by the applicant – Trust that it shall not transfer the suit property in favour of any party and pursuant to said declaration made in RCS No.533/2021, the Change Report under section-22(4) of the Act was preferred and the Ld. Assistant Charity Commissioner and Ld. Joint Charity Commissioner, Bhavnagar were only required to decide as to whether the said Change Report is required to be allowed or dismissed and they were not possessing any authority and power to hold that the consent decree, passed by the Ld. Principal Senior Civil Court in RCS No.623/2020, is *non est* and non-executable decree. Therefore, since the *quasi* judicial authorities had exceeded their powers and have failed to honour the decree, passed by the competent Civil Court, both the impugned orders, namely, order dated 15-12-2020, passed in Change Report No.335/2020, passed by the Ld. Assistant Charity Commissioner, Bhavnagar and order dated 06-10-2025, passed in Appeal No.49/2024, passed by the Ld. Joint Charity Commissioner, Bhavnagar, are required to be quashed and set aside.

4. *Per contra*, the Ld. AGP for the opponents submitted that the decree which was passed in RCS No.623/2020 was *non est* decree and the same was passed behind the back of the Ld. Charity Commissioner, more particularly, on the basis of said decree the plot No.39 has gone out of the ownership of the applicant – Trust and since the property of the trust was directly or indirectly in question, the Civil Suit itself was not maintainable without joining the Charity Commissioner as one of the parties – defendant in the suit. He further submitted that the Civil Suit concerning the rights and liabilities of the immovable property of the trust cannot be settled and the Hon’ble High Court has time and again held that the compromise decree cannot be passed in a suit concerning the rights and liabilities of the immovable property, owned and possessed by the public Trust.

5. In the re-joinder, the Ld. Advocate for the appellant has relied upon the ratio, laid down in the case of **Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel**, reported in **MANU/SC/0345/1967** and submitted that it is there is no straight jacket formula that a suit concerning the rights and liabilities of the immovable properties of the suit cannot be settled and no consent decree can be passed by the Civil Court.

6. Heard the Ld. Advocates for the parties.

7. From the above referred rival submissions, the following points emanate for determination of the present Appeal :

1. Whether the impugned order ,dated 15-12-2020, passed by the Ld. Assistant Charity Commissioner, Bhavnagar in Change Report No.335/2020 and the impugned order, dated 06-10-2025, passed by the Ld. Joint Charity Commissioner, Bhavnagar in Appeal No.49/2024, call for any interference ?

2. What order ?

7.1 For the reasons stated hereinafter, my findings on the above points are as under :

1. In the negative.
2. As per final order.

**: REASONS :**

8. **POINT NO.1** :

8.1 It is not in dispute that *vide* a gift deed, dated 06-08-2012, the plots Nos.39 and 40 came in ownership and possession of the applicant-Trust. On the above referred two plots, a girls' school was supposed to be constructed and as agreed between the parties, the construction of the said girls' school was required to be completed within three years from the date of execution of the said gift deed, dated 06-08-2012. It is not in dispute that the construction of the said girls' school could not be completed within three years from the execution of the said gift deed and, therefore, the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar preferred an RCS

No.623/2020 for declaration and permanent injunction and in the said suit, compromise was arrived at between the parties and the copy of the consent decree, dated 26-09-2020, passed by the Ld. Principal Senior Civil Judge, Bhavnagar is produced at page Nos.60 to 65. If we carefully peruse the order, dated 26-09-2020, passed by the Ld. Principal Senior Civil Judge, Bhavnagar in RCS No.623/2020, it clearly appears that nobody appeared for the Trust and trustees, who were joined as parties – defendants. It is also required to be noted that the above referred suit was preferred on 01-09-2020 and strangely, a suit was disposed of on 26-09-2020, based on the consent terms and settlement, arrived at between the parties. As per the per the consent terms arrived at between the parties, the ownership and possession of plot No.39 was to be handed over to the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar i.e. plaintiff of RCS No.623/2020 whereas, the ownership and possession of plot No.40 shall be retained by the applicant – Trust and trustees who were joined as parties – defendants in the above referred suit. If we carefully peruse the order, dated 26-09-2020, RCS No.623/2020, it clearly appears that the immovable property, namely, plot No.39 is ordered to be handed over to the legal heirs of the donor - Lavjibhai Ranchhodbhai Luhar. Thus, it was incumbent upon the parties of RCS No.623/2020 to join the Charity Commissioner as one of the parties in the suit as the result of the suit is going to adversely affect the rights and liabilities, attached with the plot No.39. It is also required to be noted that though no

lawyer appeared for the trust and trustees, the settlement was arrived at between the parties in the “*Lok-Adalat*” and based on the said settlement, arrived at between the parties, the Court has drawn the decree on 6<sup>th</sup> October, 2020. It is also required to be noted that thereafter, the Ld. Charity Commissioner preferred an RCS No.588/2021 and prayed before the Ld. Principal Senior Civil Judge, Bhavnagar that the consent decree, passed in RCS No.623/2020, is required to be quashed and set aside, as the same was obtained behind the back of the Ld. Charity Commissioner. In the said suit, the applicant – Trust moved a *pursis* below Ex.32 *inter alia* declaring therein that the trust shall not enter into any agreement concerning the immovable properties of the trust and shall follow the provisions, contained under the Gujarat Public Trust Act and it was also declared that the trust shall not transfer any property in favour of anybody. Based on the above referred *pursis*, the Ld. AGP moved an application *inter alia* seeking withdrawal of RCS No.588/2021. Ultimately on 01-10-2022, the Ld. Principal Senior Civil Judge, Bhavnagar allowed the unconditional withdrawal of RCS No.588/2021 and taking disadvantage of the fact that the RCS No.588/2021 was withdrawn, it is sought to be contended before this Court as well as before the Ld. Joint Charity Commissioner that the suit, preferred by the Trust has yielded no favourable results for the Charity Commissioner, therefore, the Change Report No.335/2020 was required to be allowed.

8.2 At the outset, it is required to be noted that it is the settled principle of law that, the Court cannot allow the parties to settle a civil dispute concerning the immovable properties, owned and possessed by a public trust. Here in the present case, the plot No.39 was owned and possessed by the applicant – Trust and it was the statutory duty of the Trust and trustees to not enter into any consent terms with third-party which may adversely affect the rights, connected with the immovable properties, owned and possessed by the public trust. A reference is required to be made of the case *A P Shah v/s. B M Institute of Mental Health*, 1986 (2) GLR 910, wherein, it is held that, if the trustees fail to carry out the object of the Trust Act, it would amount to a breach of trust and any person having interest in the trust has a right to approach the competent authority for appropriate directions as the nature of the case may require. Under Section 34 of the Indian Trust Act corresponding to Section 56-A of the Bombay Public Trust Act, the trustees are empowered to apply to the Court of competent jurisdiction for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property or income thereof. This is a power coupled with the duty that in case of any difficulty in the management or administration of the trust, a trustee may seek the opinion or advice of the Court. Similarly, under Section 55 of the Bombay Public Trusts Act, the trustees may under the directions of the Charity Commissioner, obtain appropriate directions from the Court of competent jurisdiction. The Competent Court, before exercising the

jurisdiction would certainly consider whether it should exercise such jurisdiction or should relegate the parties to the special Machinery provided under the Bombay Public Trusts Act for redress of their grievances.

8.2.1 Similar principle has been laid down in the case of Lallubhai Girdhallal Parikh Vs. Acharya Shri Vrijbhshanlalji Balkrishnalaji, 1967 GLR 42.

8.2.2 Thus, keeping in mind the ratio laid down in the above referred case, it becomes clear that, it was not possible for the applicant Trust to enter into any settlement which may adversely affect the right of the properties owned and possessed by the public trust but *de hors* the settled principle of law, settlement was arrived between the parties and because of that now a public charitable trust is under an legal obligation to hand over the owner and possession of the Plot No.39 in favour of the legal heirs of Lavjibhai Ranchhodbhai Luhar.

8.3 As long as the ratio, relied upon by the Ld. Advocate for the applicant that is, Tribhuvandas (*supra*), the facts before the Hon'ble Supreme Court were as under :

8.3.1 In March 1950 the trustees mortgaged a house belonging to the trust to one Saheba to secure repayment of Rs. 5,000. An action instituted by the mortgagee against the

trustees to enforce the mortgage was compromised, and it was decreed that the trustees do pay Rs. 3,910 due under the mortgage by monthly installments of Rs. 100 each and in default of three installments the entire amount remaining unpaid shall become due and recoverable from the mortgagee property. The trustees did not pay the installments due under the decree, and in an application for execution by the mortgagee (the mortgaged property was put up for sale and the bid of the appellant was accepted for Rs. 5,000 by the executing Court. The trustees thereafter applied under Order 21 Rule 89 of the Code of Civil Procedure for setting aside the sale and deposited Rs.250 being 5 % of the purchase-money for payment to the appellant and Rs.6 for payment to the mortgagee, claiming that in consideration of the latter amount the mortgagee had agreed to "give to them six months' for payment of the mortgage amount", and had agreed, in the meantime to abandon the application for execution. The Executing Court passed an order disposing of the execution application and directed that Rs.250 out of the amount deposited, by the trustees be paid over to the appellant. In appeal against that order by the appellant, the District Court reversed the above order *inter alia* holding that since the trustees had failed to comply with the requirements of Rule 89 of Order 21 Code of Civil Procedure, the executing Court had no jurisdiction to set aside the sale. The Hon'ble High Court in exercise of powers under Section 115 of the Code of Civil Procedure set aside the order of the District Court. Hon'ble High Court has held that sale of the mortgaged property which

belonged to a public trust. without the sanction of the Charity Commissioner being prohibited b Section 36 of the Bombay Public Trusts Act, was invalid, and on that view remanded the case to the District Court "for decision on all the points correctly arising out of the matter". Against that order, appeal had been preferred with special leave, before the Hon'ble Supreme Court.

8.3.2 I have carefully perused the entire ratio, laid down by the Hon'ble Supreme Court in the case of **Tribhuvandas** (*supra*) wherein, the Hon'ble Supreme Court after noting the above referred facts, has held that when the suit property is put up for sale under order of the Executing Court, then in that circumstance, the sanction of the Charity Commissioner as envisaged under section 36 of the Bombay Public Trust Act was not required and the same would not be hit by the principle that without joining the Charity Commissioner as one of the parties defendants, no adverse order could be passed relating to the immovable properties of the trust. In fact in the above referred ratio, it is nowhere held that, the parties are not prohibited from entering into any consent decree concerning the immovable properties of the public trust. In fact in the it is held

8.4 As noted hereinabove, the Hon'ble Gujarat High Court has not only in the cases of A P Shah (*supra*) and **Lallubhai Girdhallal Parikh** (*supra*), but in series of other judgments have consistently held that, no settlement

can be allowed in a suit which may adversely affect the right attached to the properties owned by the public trust.

8.5 Since, there is a clear prohibition with respect to entering into the consent terms with the third-party which may likely to affect adversely to the rights, attached to the immovable properties, owned and possessed by the public trust, I do not find it fit to accept any of the arguments, advanced on behalf of the applicant – Trust.

8.6 This Court has put a specific query upon the lawyer, appearing for the applicant – Trust that how come the public trust is so keen to see to it that, the plot No.39 is given to the legal heirs of original donor. In response thereto, the Ld. Advocate for the applicant – Trust submitted that the trust had filed a *pursis* below Ex.32 in RCS No.588/2021 and agreed that it shall follow the provisions, contained under the Public Trust Act, 1950 and, therefore, in view of the said *pursis*, the applicant – Trust was required to move an application under section-22(4) of the Act, as the applicant – Trust was left with no other choice, but to move an application under section-22(4) of the Act *inter alia* seeking for the Change Report.

8.6.1 The above referred contention is also not acceptable because, if we carefully peruse the *pursis*, submitted by the applicant – Trust at Exh.32 in RCS

No.588/2021, it is specifically mentioned in the said *pursis* by the present applicant and the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar that they shall not transfer the suit property and shall follow the provisions, contained under the Gujarat Public Trust Act, 1950. It was never agreed by the present applicant and the legal heirs of deceased Lavjibhai Ranchhodbhai Luhar that the present applicant and deceased Lavjibhai Ranchhodbhai Luhar would be entitled to move an application under section-22(4) of the Act *inter alia* seeking Change Report. Thus, the stand of the applicant – Trust is not acceptable and deserves to be rejected.

8.7 In view of the above referred discussion, I do not find it fit to interfere with the impugned order dated 15-12-2020, passed by the Ld. Assistant Charity Commissioner, Bhavnagar in Change Report No.335/2020 and the impugned order dated 06-10-2025, passed by the Ld. Joint Charity Commissioner, Bhavnagar in Appeal No.49/2024 and, therefore, I answer the point No.2 in the negative and for point No.2, I pass the following order :

**: ORDER :**

1. The present Application is here by dismissed.
2. The impugned order dated 15-12-2020, passed by the Ld. Assistant Charity Commissioner, Bhavnagar in Change Report No.335/2020 and the impugned order dated 06-10-2025, passed by the Ld. Joint Charity Commissioner,

Bhavnagar in Appeal No.49/2024, are hereby confirmed.

3. No order as to costs.
4. R & P be sent back to the Office of the Ld. Charity Commissioner, Bhavnagar alongwith a copy of this order.

Pronounced and signed in the open Court on today  
18<sup>th</sup> day of April, 2026.

Place: Bhavnagar  
Date : 18-04-2026

( H. S. MULIA )  
Principal District Judge  
Bhavnagar  
(Code : GJ00915)

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Yasin Kalvatar