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Presented on : 09/10/1989
Registered on : 09/10/1989
Decided on : 23/03/2026
Duration : 36Y 05M 14D

IN THE COURT OF DISTRICT JUDGE-1, WASHIM.

(Presided over by J. P. Zapate)

Misc. Civil Application No.44/1989

Exh.160

[CNR No.MHWS010000021989]

1. Gulabsa Pandusa Kanhed (Dead)
Through : L.Rs. son
- 1A] Suresh Gulabsa Kanhed
Age : 85 years, Occu.: Business
R/o. Near Maut Carmel School,
Old Radhakisan Plot, Akola,
Tq.Dist.Akola.
2. Anandrao Narayan Mantkar
Age : 73 Years, Occu.: Retired Teacher
R/o. Shirpur, Tq.Malegaon, Dist Washim.
3. Dhanyakumar Motiram Belokar
Age : 40 Years, Occu.: Agriculturist
R/o. Shirpur, Tq.Malegaon, Dist Washim.
4. Liladhar Panjaji Jain ((Dead)
Through : L.Rs. son
- 4A] Anil Liladhar (Jain) Satpute
Age : 71 years, Occu.: Business
R/o.Dangarpur Near Dnyaneshwar Temple,
Shirpur Jain, Tq. Malegaon Dist. Washim. ...Applicants/Appellants

VERSUS

1. Ravindralal Harakchand Gujrathi
Age : 50 years
R/o.Khamgaon, Dist. Buldhana.

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2. Nemichand L. Kothari
Age : 52 years, Occu.: Trader,
R/o.Amalner, Dist. Jalgaon.
3. Seth Nanubhai J. Zaveri
Age : 67 years, Occu.: Jeweller
R/o. Mahatma Gandhi Road,
Bombay-1.
4. Motilal Virchand Gujrathi
Age : 52 years, Occu.: Business
R/o.Amalner, Dist. Jalgaon.
5. Kantilal Virchand Shah
Age : 50 years,
R/o. Malegaon Dhulia, Dist. Nasik.
6. Sumatilal Ratanchand Patni
Age : 52 years, Occu.: Cultivator
R/o. Yeole, Nasik.
7. Manilal Harachand Gujrathi (Dead)
Through : L.Rs.
- 7i) Smt. Motibai Manilal Gujrathi
Age : Nil, Occu.: Household work
R/o. Ward no.1, Telhara.
- ii) [As record is old name is invisible.]
- iii) Sau. Pramila Ashokumar Patni
Age : 45 years,
R/o.Shankarseth Road, 265 Ghorpadde Peth,
Near Archi Garage, Ulhas, Bungalow,
Poona.
- iv) Sau. Vijayabai Subhaschandra Shah
Age : 35 years

C/o. Subhaschandra Virchand Shah
(322 Kailaschandra Housing Society,
Mehendra Nagar, Malad (East)
Bombay 64.

8. Sakarchand Premchand Shah
Age : 50 Years, Occu.: Business
R/o.Akola, Tq. Dist. Akola.
9. Yadaorao Dajiba Shrivane
Age : 85 years, Occu.: Freedom Fighter-Pensiner,
R/o. P.W.D.Quarters No.13, room no. 103,
Police line, Gitti Khadan Road, Nagpur.
10. Devidas Sakharam Mandge
Age : 70 years, Occu.: Retired Teacher,
R/o. Shirpur, Tq.Malegaon, Dist. Washim
11. Sundarasa Deomansa Kanhed
Age : 70 years, Occu.: Agriculturist
R/o. Shirpur, Tq.Malegaon, Dist. Washim.
12. Premchand Kundalsa Mahajan
Age : 40 years, Occu.: Cloth merchant
R/o. Shirpur, Tq.Malegaon, Dist. Washim.
13. The Charity Commissioner
Maharashtra State, 83 Annie Besent Road,
Worli, Bombay-18.

... Opponents/Respondents

Application under Section 72 of Bombay Public Trust Act

Shri.Sudhir D.More, Advocate for Applicants/appellants
Shri. K.B.Deshpande & Shri. N.K.Kaloo, Advocate for Opponents/
respondents

J U D G M E N T

(Delivered on 23rd day of March 2026)

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This is an application preferred under Section 72 of Bombay Public Trust Act against the Judgment and Order passed by Jt. Charity Commissioner in First Appeal No.34/1973 dated 24/02/1975.

2. Brief facts of the proceeding are as under :

That the parties preferred inquiry application under Section 22A of Bombay Public Trust Act. Assistant Charity Commissioner passed order against which First Appeal No.34/1973 was preferred before Jt. Charity Commissioner, Maharashtra State dismissed the appeal. Being aggrieved with above judgment present appeal came to be preferred in the year 1989. Written notes of argument are filed by respondent below Exh.117.

3. It is argued by Ld.advocate Shri.More for applicant that Assistant Charity Commissioner gave 15 days date and proceed on leave. Therefore, applicant did not attend the Court but Assistant Charity Commissioner joined duty and without inquiry as contemplated under Section 22A of Bombay Public Trust Act passed impugned order. Rules of natural justice are not followed and opportunity of hearing was not given to applicant. Hence, they are praying for setting aside the impugned order and remanding the matter for fresh trial. All the respondents are reported dead. But inquiry and judgment is relating to trust property. Therefore, matter shall not be abated.

4. Ld. advocate Shri.More relied on following rulling :

Smt. Mamta W/O Vijay Vaidya And Others vs. Smt. Kusumtai Baburao Zade And Others, Writ Petition No.0808/2019 dated 11th September 2019 in which it is held that, "[Before the Act](#) of 1950 came to be amended by the [Maharashtra Act](#) No.55 of 2017 w.e.f. 10th October 2017, application under [Section 72\(1\)](#) of the Act of 1950 would lie before the District Court from decision of Charity Commissioner under [Section 70](#) of the Act of 1950. As per

Section 76 of the Act of 1950, provisions of the Code of Civil Procedure, 1908 applied to all the proceedings before the Court. Section 2 (4) of the Act of 1950, (before its amendment by Maharashtra Act No.55 of 2017, dated 01/09/2017) defined "Court" to mean, in the Greater Bombay, the City Civil Court and elsewhere, the District Court . Thus, the provisions of the Code of Civil Procedure applied to the proceedings under the Act of 1950 before the District Court. Hence, the powers conferred by Order 41 Rule 23 and Rule 23-A of the Code of Civil Procedure were available to the District Court while Judgment 14 wp808.19+3.odt exercising jurisdiction under Section 72(1) and Section 72(2) of the Act of 1950.”

“ In the judgment given by the Full Bench in the case of Prabhakar Sambhu Chaudhary (Supra), Section 76 of the Act of 1950 is referred and it is noted that because of Section 76 of the Act of 1950, provisions of the Code of Civil Procedure, 1908 apply to the proceedings before the Court i.e. the District Court.”

“ Of course, whatever is recorded by the Full Bench in paragraph No.31 of the judgment delivered in the case of Prabhakar Sambhu Choudhary (supra) on the point of power of the District Court to remand the matter, is not in relation to the point of reference which the Full Bench considered. However, as the Full Bench has recorded its conclusions on the point after examining the relevant provisions, in my view, it would be binding on this Court.”

“ On merits, I find that the learned District Judge has found that the material/evidence on record is not sufficient for recording the definite finding about the service of notice (Exh.26) which was alleged to have been issued to the trustees, inviting them for the meeting scheduled on 14th May 2013 in which 18 new members came to be enrolled as claimed by the trustees, in respect of whose election Change Report No.1440 of 2013 is filed. According to the trustees, in respect of whose election Change Report No.1581 of 2013 is filed, there are only 20 members of the public trust out of whom three members died and only 17 members were alive in May 2013. In these facts, legality of induction of 18 new members is required to be adjudicated and the learned

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District Judge has rightly remanded the matter to the Deputy Charity Commissioner for fresh decision.”

5. I have gone through the impugned order passed by Assistant Charity Commissioner and Jt. Charity Commissioner. Both the orders does not reflect whether opportunity of hearing was given or not. Prima-facie it reveals that inquiry contemplated under Section 22 and 22A was not conducted as per mandatory provisions of Law. Dispute is pending since 1972. So till today near-about 70 years have been elapsed but it has been reached upto multiplicity of proceeding. RCS No.06/1961, 07/1961, 218/1961 are stayed by Hon'ble High Court. My Ld. Predecessor on 12/08/2003 stayed this proceeding till decision of civil suit RCS No.06/1961, 07/1961, 218/1961. When those suits are stayed then question arise for how many years this proceeding has to be kept in abeyance because issue involved in this suit are different and pending before the competent Court. But it may be re-open because it is relating to Shri.Antariksha Parshwanth Swami Digambari Jain Sansthan, Shirpur proposed trust property. Trust is legal person and no effect of abetting proceeding will result due to death of trustee. Order dated 12/08/2003 is vacated and matter is heard. In view of the above referred rulling (cited supra) such matters can be remanded. So in my view when rules of natural justice are not followed it is expedient to offer opportunity of hearing to applicant. So, I pass following order :

ORDER

- 1] Order dated 24/02/1975 & 03/05/1961 [Jt. Charity Commissioner and Assistant Charity Commissioner] is hereby set aside.
- 2] Record and proceeding in Inquiry No.698/1970, 2055/1961 remanded to Ld. Assistant Charity Commissioner. So issue notice to trust and give opportunity of hearing to both parties.

- 3] Ld. Assistant Charity Commissioner shall abide by any order of Hon'ble Supreme Court about stay.

Date: 23/03/2026

[J.P Zapate]
District Judge -1, Washim.

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CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.K.Pawar, Stenographer (Grade-I)
Name of Court :- District Judge-1 and Additional Sessions Judge, Washim.
Date of Judgment/ Order :- 23/03/2026
Judgment/Order signed by the Presiding Officer on :- 04/04/2026
Judgment/Order uploaded on :- 30/05/2026