IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5866 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 5866 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 17851 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In
R/SPECIAL CIVIL APPLICATION NO. 17851 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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RAJENDRABHAI VASANTLAL SHAH
Versus
SHRI KUNDKUND KAHAN PARAMARTHIK TRUST, SONGADH & ORS.

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Appearance:
MR JA ADESARA FOR ANKIT N MEHTA(7302) for the Petitioner(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 4.6
MR NIKUNJ KANARA APP for the Respondent(s) No. 2
HARSH B SHAH(9324) for the Respondent(s) No. 4.2,4.5
MR SHALIN MEHTA SENIOR COUNSEL WITH MR MONAAL J DAVAWALA(6514) for the Respondent(s) No. 1
MR SN SOPARKAR SENIOR COUNSEL WITH MR VISHAL T. PATEL(6518) for the Respondent(s) No. 3
NOTICE SERVED BY DS for the Respondent(s) No. 4,4.1,4.8
UNSERVED EXPIRED (N) for the Respondent(s) No. 4.4
ZAINAB I BHARMAL(9298) for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 12/06/2026

ORAL JUDGMENT

1. RULE. Learned counsel waives service of notice of rule on behalf of the respective respondents.

2. With the consent of the learned counsel appearing for the respective parties, the present petitions are taken up for hearing and disposal

3. Both these petitions have been arisen out of the same order passed by Joint Charity Commissioner, Bhavnagar below Ex.20 in Judicial Misc. Application No.41/A/10/2020 deciding power of Joint Charity Commissioner to decide the issue and the final judgment and order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.

4. Special Civil Application No. 5866 of 2023 is filed by the petitioner – Rajendrabhai Vasantlal Shah under Articles 226 and 227 of the Constitution of India and under the provisions of the Gujarat Public Trust Act [hereinafter be referred to as "*the Act*"] seeking the following reliefs:-

> *(a) To admit and allow this petition;*
>
> *(b) To issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside order passed by Joint Charity Commissioner, Bhavnagar below Ex.20 in Judicial Misc. Application No.41/A/10/2020 deciding power of Joint Commissioner to decide the issue and further be pleased to quash and set aside the final judgment and order passed by Joint Charity*

Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021 for the reasons stated in the Memo of Petition and in the interest of justice;

(c) *To issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the resolution 10.10.2021 passed by respondent no.3 to implement the impugned order dated 20.7.2021 of the respondent no.2 for the reasons stated in the Memo of Petition and in the interest of justice;*

(d) *Pending admission, hearing and final disposal of the present petition, Your Lordships be pleased to stay the execution, implementation and operation of final judgment and order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.*

(e) *Pending admission, hearing and final disposal of the present petition, Your Lordships be pleased to stay the execution, implementation and operation of the resolution dated 10.10.2021 passed by respondent no.3 deciding implement the order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.*

(f) *Your Lordships may Grant ad-interim relief in terms of prayer clause Para-64(d) & (e) above.*

(g) *Your Lordships may pass such other and further orders as this Honourable Court may deem fit and proper in favour of the petitioners in the interest of justice and circumstances of the case.*

5. Special Civil Application No. 17851 of 2023 is filed by the petitioners – Pravinbhai D. Doshi and Rajendra Vinodray Kamdar under Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

(a) *To admit and allow this petition;*

(b) *To issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari, or writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside order passed by Joint Charity Commissioner, Bhavnagar below Ex.20 in Judicial Misc. Application No.41/A/10/2020 deciding power of Joint Commissioner to decide the issue and further be pleased to quash and set aside the final judgment and order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021 for the reasons stated in the Memo of Petition and in the interest of justice;*

(c) *To issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the resolution dated 10.10.2021 passed by respondent no.3 to implement the impugned order dated 20.7.2021 of the respondent No.2 for the reasons stated in the Memo of Petition and in the interest of justice;*

(d) *Pending admission, hearing and final Your disposal of the present petition, Lordships be pleased to stay the execution, implementation and operation of final judgment Charity and order passed by Joint Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.*

(e) *Pending admission, hearing and final disposal of the present petition, Your Lordships be pleased to stay the execution, implementation and operation of the resolution dated 10.10.2021 passed by respondent no.3 deciding to implement the order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.*

(f) *Your Lordships may Grant ad-interim relief in terms of prayer clause Para-64(d) & (e) above.*

(g) *Your Lordships may pass such other and further orders as this Honourable Court may deem fit and proper in favour of the petitioners in the interest of justice and circumstances of the case.*

6. Since both the petitions are filed against the same award, the facts of Special Civil Application No.5866 of 2023 is considered as a lead matter and both the petitions are being disposed of by this common judgment.

FACTS:

7. Brief facts of Special Civil Application No. 5866 of 2023 are, in nutshell, as under:-

7.1 The petitioner is follower and disciple of Sadguru Dev Shri Kanji Swami at a religious place at Songadh, Taluka Sihor, District Bhavnagar and he is taking active interest in the religious discourses, discussions and in the work of late Sadguru Dev Shri Kanji Swami Maharaj. The respondent No.3 - Trust is registered under the provisions of the Bombay Public Trusts Act, 1950 and the same is established on 25.12.1939 with the sole object to preach and spread the idea, philosophy of Sadguru Dev Shri Kanji Swarni Maharaj and also spread awareness about Jainism. The respondent no.3 Trust also carries out various religious activities and imparts religious education among the followers of Sadguru Dev Shri Kanji Swami Maharaj and holds various religious activities and celebrates various Jain festivals throughout the year. That the petitioner is very actively taking interest in the activities of the respondent no.3 and gives various suggestions to the respondent No.3 for betterment of its management and activities and he was appointed by committee respondent No.3 for creation of Shri Bahubali Jambudwip Jinayatan. The petitioner himself is student of J. J. School of Art, had undertaken the exercise of concept, design of the entire project of Shri Bahubali - Jambudwip Jinayatan and prepared model of the proposed project and according to the concept and design prepared by petitioner, the respondent no.3 decided to undertake the execution of the project as proposed by the petitioner. The entire project of the petitioner, which was accepted by the respondent no.3 has been radically changed at the instance of respondent no.1 by proposing to create an electronic digital museum project.

7.2 That as per the Trust Deed, the Trust has 9 trustees and mode of appointment of trustee has been provided in the Trust Deed in Clause-6 thereof. The minimum number of trustees will be 5 (five) and maximum number of trustees will be 9 (nine). That on account of resignation of two trustees, the respondent no.3 has decided to convene meeting on 27.10.2020 and circulated agenda on 20.10.2020. The said agenda was circulated to all the trustees of the trust and the trustees who were not able to attend the meeting physically had conveyed their consent in writing. Accordingly the respondent no.3 trust passed resolution on 27.10.2020 and agenda has been received by all the trustees of the respondent no.3 trust. That out of 7 trustees, four trustees remained present at the said meeting and remaining three trustees conveyed their written consent and respondent no.3 decided to appoint petitioner and one Shri Harshadbhai Prabhudas Kamdar as trustees of the respondent no.3 and both were appointed as Trustees of respondent No.3. That thereafter Change Report was filed before the Assistant Charity Commissioner, Bhavnagar being Change Report and the petitioner having been appointed as Trustee, is entitled to take part in all the meetings of the and activities of respondent no.3.

7.3 That Judicial Misc. Application No.41/12/2020 filed before the Joint Charity Commissioner by one of the trustees of the respondent no.3 Shri Rajeshbhai Zaveri challenging resolution dated 27.10.2020 passed at the meeting of respondent no.3. The Joint Charity Commissioner, Bhavnagar vide exparte order dated 2.12.2020 stayed the resolution dated 27.10.2020 passed by the respondent no.3 Trust. By virtue of interim order, the original application being Judicial Misc. Application No.41/A/12/2020 filed by Shri Rajesh Zaveri was finally allowed and thereafter the Joint Charity Commissioner, Bhavnagar has allowed Judicial Misc. Application No.41/A/12/2020 by judgment and order dated 29.6.2021.

7.4 That respondent - Trust had also filed application under Sec.41A of the Act being Judicial Misc. Application No.41/A/10/2020, which came to be decided by the Joint Charity Commissioner without giving an opportunity of hearing to the petitioner and passed order under Sec.41A of the Act. The Joint Charity Commissioner, Bhavnagar thereafter vide judgment and order dated 20.7.2021 allowed the Judicial Misc. Application No.41/A/10/2020.

7.5 That the Joint Charity Commissioner has not considered the fact that the respondent no.1 has no locus standi to file application because it is only donor which had agreed to fund the amount for the proposed project, but when the respondent no.3 does not want to continue with the project has cancelled the same and also requested the respondent no.1 vide letter dated. 19.10.2020 to send its bank details so that the respondent no.3 can refund the amount paid by the respondent no.1 towards donation. The Joint Charity Commissioner passed impugned order without hearing petitioner though petitioner was appointed as trustee of respondent no.3 and is person interested and beneficiary of the said trust.

8. Being aggrieved and dissatisfied by the impugned order, the petitioners have preferred the aforesaid petitions.

9. Heard Mr.J. A. Adesara, learned counsel for Mr. Ankit Mehta, learned counsel for the petitioner in both the petitions, Mr.Nikunj Kanara, learned Assistant Government Pleader for respondent No.2, Mr.Harsh Shah, learned counsel for respondents No.4.2 and 4.5, Mr.Shalin Mehta, learned senior counsel with Mr.Monaal J. Davawala, learned counsel for respondent No.1, Mr.S. N. Soparkar, learned senior counsel with Mr.Vishal Patel, learned counsel for respondent No.3 at length.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

10. Mr.Adesara, learned counsel for the petitioners has submitted that the petitioner is the follower of Sadguru Dev Shri Kanji Swami at a religious place at Songadh and he is interest in activities of respondent No.3 and he is beneficiary of activities of respondent No.3 and he was appointed on the committee for creation of Shri Bahubali Jambudwip Jinayatan by respondent No.3. He has submitted that the entire project as designed by the petitioner and accepted by respondent No.3 has been changed at the instance of respondent No.1 by proposing to create an electronic digital museum project, which came to be opposed by the petitioner. He has submitted that one Shri Harshadbhai Prabhudas Kamdar have been appointed as Trustee of respondent No.3 in its meeting and thereafter change report was filed before the Assistant Charity Commissioner and the

petitioner having been appointed as Trustee, he is entitled to take part in all the meetings and activities of respondent No.3. According to Mr.Adesara, learned counsel, Judicial Misc. Application No. 41/12/2020 filed before the Joint Charity Commissioner by one of the trustees of respondent No.3 Shri Rajeshbhai Zaveri challenging the resolution dated 27.10.2020 and also sought for stay of the resolution and the Joint Charity Commissioner vide ex-parte order stayed the resolution passed by respondent No.3. He has submitted that the power exercised by Joint Charity Commissioner is dehors the provisions of the law and the Joint Charity Commissioner has no power to entertain the application under Section 41A of the Act as respondent No.3 has appointed trustees and change report is pending before the Assistant Charity Commissioner and the said order came to be challenged by the petitioner by filing Special Civil Application No.12856 of 2021 before this Court which is pending.

10.1 Mr.Adesara, learned counsel has submitted that the petitioner has challenged the orders passed by the Joint Charity Commissioner dated 20.1.2021 below Exhibit 20 and the order dated 20.7.2021 passed below Exhibit 40 on the ground that the said orders are passed without hearing the petitioner though he was appointed as trustee and participated in the activities of the trust. He has submitted that respondent No.2 has acted against the provisions of law and the orders passed by respondent No.2 are without jurisdiction and while exercising the powers under Section 41A of the Act ignored the other statutory provisions of the Act and, therefore, the order itself is illegal and unjust. He has submitted that respondent No.2 has failed to appreciate the fact that whenever a person gives donation, he is only interested to see that the donation given by him should be applied for the purpose of objects of the trust only and respondent No.3 has decided to drop the project of construction of Dome as it is against the basic principles of Jainism of non-violence. He has submitted that M/s.Design Habitat has not filed any suit or arbitration proceedings till date against the cancellation of the project though the contract entered with Design Habitat provides for arbitration proceedings, however, the respondent No.1 had no locus standi to file application as it is only Donor who agreed to fund the amount for proposed project. He has submitted that the Joint Charity Commissioner has no power under Section 41A of the Act to entertain an application of donor for specific performance of the contract where the donor is not a party. He has also submitted that respondent No.1 is nowhere affected or connected with the termination of agreement executed between respondent No.3, on the contrary, respondent No.1 is making an effort to canvass the case of the Design Habitat, which has accepted its termination and resolution. According to learned counsel for the petitioner, the donor cannot have right to challenge the decision of the donee trust merely by giving donation in the trust and the right of the donor is qua the amount of donation and when the donee has offered to refund the amount of donation, the right of donor, if any extinguishes. He has submitted that the petitioner had filed petition being Special Civil Application No. 1993 of 2011 and allied matters challenging the action of respondent No.3, which came to be disposed on the basis of settlement. He has submitted that respondent No.2 has travelled beyond the scope of the provisions of Section 41A of the Act and, therefore, the order passed by respondent No.2 is without jurisdiction. He has submitted that on 16.10.2020, Nemish Shah was not a trustee of Shri Digamber Jain Swadhyay Mandir Trust against whom reliefs are sought for, but the petitioners are the trustees and said Nemish Shah became a trustee in pursuance to the order passed by the Joint Charity Commissioner in Misc. Scheme Application No. 2 of 2022. He has submitted that the petitioner Rajendra Vinodrai Kamdar has challenged the order dated 21.05.2022 passed by the Joint Charity Commissioner in Misc Scheme Application No.2 of 2022 by filing Special Civil Application No. 15526 of 2022 and one Rajendra Vasantlal Shah has challenged the order dated 21.05.2022 passed by the Joint Charity Commissioner in Misc. Scheme Application No.2 of 2022 by filing Special Civil Application No. 19505 of 2022 before this Court and both the petitions are at present pending for adjudication.

10.2 Mr.Adesara, learned counsel has further submitted that at the relevant time Nemish Shah was the trustee of Kundkund Kahan Parmarthik Trust and he was not a trustee of Digamber Jain Swadhyay Mandir Trust, which was established in the year 1939 and Kundkund Kahan Parmarthik Trust and Digamber Jain Swadhyay Mandir Trust are separate and distinct trust with different registration number and different religious philosophy. According to Mr.Adesara, learned counsel, at the instance of Nemish Shah an unregistered agreement dated 29.06.2017 for an amount of Rs.13.40 Crores was executed by the President of the trust with Design Habit without inviting tenders, without any resolution of the trust and keeping all other trustees in dark and the trust has paid an amount of Rs.56,94,919/- to Design Habit from the account of the trust without passing any resolution.

10.3 Over and above the oral arguments, Mr.Adesara, learned counsel has tendered the written submissions as under:-

1. *That Shree Digamber Jain Swadhyay Mandir Trust,*

Songadh (Regn No.A-902/Bhavnagar) & Shree Kundkund Kahan Paramarthik Trust, Songadh (Regn No. A-1595 / Bhavnagar) are separate & distinct Trust with different religious philosophy.

2. That the petitioners are Trustees of Shree Digamber Jain Swadhyay Mandir Trust, Songadh.

3. That Shree Digamber Jain Swadhyay Mandir Trust, Songadh had started a project of Bahubali - Jambudwip Jinayatan project in the year 2013.

4. That after the work of Bahubali Jambudwip Jinayatan project had progressed considerably and after construction of dome, Mr. Nemish Shantilal Shah who was a Trustee of Shree Kundkund Kahan Paramarthik Trust, Songadh and who is a rich & influential person had decided to put up an Electronic Digital Project in the dome of premises of Shree Digamber Jain Swadhyay Mandir Trust, Songadh & in the year 2017 had come up with an offer to do the project, without mentioning the name of Design Habit, New Delhi.

5. That Mr. Nemish Shantilal Shah who was a Trustee of Shree Kundkund Kahan Paramarthik Trust, Songadh could not have insisted in putting up an Electronic Digital Project in the dome of premises of Shree Digamber Jain Swadhyay Mandir Trust, Songadh, but instead ought to have put up the said Electronic Digital Project in the premises of Shree Kundkund Kahan Paramarthik Trust, Songadh.

6. That as a step in the said direction, at the instance of Mr. Nemish Shantilal Shah, Trustee of Shree Kundkund Kahan Paramarthik Trust, Songadh, the President of Shree Digamber Jain Swadhyay Mandir Trust, Songadh had entered into Unregistered Agreement dtd. 29.6.2017 for Rs. 13.40 Crores for putting up Electronic Digital Project in the dome. This unregistered Agreement dtd. 29.6.2017 was executed by President of Shree Digamber Jain Swadhyay Mandir Trust, Songadh without inviting tenders, without any Resolution of the Trust & by keeping all the trustees in the dark. This unregistered agreement itself is ex-facie illegal.

7. That in pursuance of unregistered Agreement dtd. 29.6.2017, a huge amount of Rs. 56,94,919/- was paid to Design Habit, New Delhi from the account of Shree Digamber Jain Swadhyay Mandir Trust, Songadh, without any

Resolution of the Trust & by keeping all the trustees in the dark. That as per clause 15 of the trust deed any expense exceeding Rs.5000/- is required to be approved in the meeting of trustees, which is not done in the present case.

8. That as all the trustees of Shree Digamber Jain Swadhyay Mandir Trust, Songadh were unaware about execution of unregistered Agreement dtd. 29.6.2017 with Design Habit, New Delhi, they had passed a unanimous resolution dtd. 12.9.2020 for installing idol of Suryakirti Bhagwan in dome.

9. That the marble idol of Suryakirti Bhagwan was prepared at Jaipur & all the preparations were made for installing idol of Suryakirti Bhagwan in the dome.

10. It is pertinent to note that if idol of Suryakirti Bhagwan is installed in the dome, then it was not possible to do the Electronic Digital Project in the dome.

11. That as Shree Kundkund Kahan Paramarthik Trust, Songadh, had filed Judicial Misc. Application No. 41/A/10/2020 u/s. 41A of BPT Act against Shree Digamber Jain Swadhyay Mandir Trust, Songadh, for preventing installation of idol of Suryakirti Bhagwan in dome and as their action was against the interest of Shree Digamber Jain Swadhyay Mandir Trust, Songadh, Shree Digamber Jain Swadhyay Mandir Trust, Songadh had addressed a letter dtd. 29.9.2020 cancelling the work of project given to Shree Kundkund Kahan Paramarthik Trust, Songadh & as Electronic Digital Project would cause large scale Hinsa. This unregistered Agreement dtd. 29.6.2017 was produced for the first time along with Judicial Misc. Application No. 41/A/10/2020 filed on 16.10.2020. It is submitted that breach of agreement between Shree Digamber Jain Swadhyay Mandir Trust, Songadh with Shree Kundkund Kahan Paramarthik Trust, Songadh is a breach of contract and is a Civil Dispute which can be adjudicated only by a competent Civil Court, however, the same cannot be a subject matter of proceedings u/s. 41A of BPT Act, as it does not fall within Sec. 32 to 41 of BPT Act. That the decision of Shree Digamber Jain Swadhyay Mandir Trust, Songadh dtd. 29.9.2020 cancelling the work of project given to Shree Kundkund Kahan Paramarthik Trust, Songadh is not challenged.

12. That as Mr. Nemish Shantilal Shah, Trustee of Shree Kundkund Kahan Paramarthik Trust, Songadh was bent upon putting up an Electronic Digital Project in the dome of premises of Shree Digamber Jain Swadhyay Mandir Trust, Songadh, he had filed Judicial Misc. Application No. 41/A/10/2020 u/s. 41A of BPT Act for preventing Shree Digamber Jain Swadhyay Mandir Trust, Songadh from installing the idol of Suryakirti Bhagwan in dome.

13. The moot question for consideration is whether to installing idol of Suryakirti Bhagwan in dome fall within Sec. 32 to 41 of BPT Act. That the question of installing the idol of Suryakirti Bhagwan in dome does not fall within Sec. 32 to 41 of BPT Act and therefore the Joint Charity Commissioner had no jurisdiction or authority in law to prevent installation of idol of Suryakirti Bhagwan in dome in exercise of powers u/s. 41A of BPT Act and Resolution dtd. 12.9.2020 passed unanimously deserves to be upheld, in the interest of justice. The petitioners beg to rely upon para-5 of the judgment of this Hon'ble Court in the case of Navinchandra Jasani V/s. Pravinchandra Jasani reported in 2003 (1) GLR Page 392 and para-7 of the judgment of this Hon'ble Court in the case of Kantilal Manibhai Patel V/s. Ranchhodbhai Morarbhai Patel & ors reported in 2018 (1) GLR Page 132.

14. That it is shocking to note that by an ex-parte order dtd. 16.10.2020 passed by Joint Charity Commissioner, Bhavnagar in proceedings of Judicial Misc. Application No. 41/A/10/2020 u/s. 41A of BPT Act, whereby the installation of idol of Suryakirti Bhagwan in dome was stayed. This order is ex-facie illegal, without jurisdiction & without any authority of law. That the petitioners are at pains to point out that as on date the idol of Suryakirti Bhagwan is lying in the open outside the premises of Shree Digamber Jain Swadhyay Mandir Trust, Songadh.

15. That it is all the more shocking to note that by a final order dtd. 20.7.2021, the ex-parte interim relief granted on 16.10.2020 for preventing installation of idol of Suryakirti Bhagwan in dome was confirmed by Joint Charity Commissioner, Bhavnagar by granting para 19(A) of the main application is ex-facie illegal & bad in law.

16. That so far as Electronic Digital Project is concerned, an unregistered Agreement dtd. 29.6.2017 was executed illegally by President of Shree Digamber Jain Swadhyay

Mandir Trust, Songadh without inviting tenders, without any resolution of the trust & by keeping all the trustees in the dark. That knowing fully well that an unregistered Agreement dtd. 29.6.2017 was executed with Design Habit, New Delhi, Shree Kundkund Kahan Paramarthik Trust, Songadh has addressed a letter dtd. 9.7.2017 for doing the project, without mentioning the name of Design Habit, New Delhi. This unregistered Agreement dtd. 29.6.2017 was produced for the first time along with Judicial Misc. Application No. 41/A/10/2020 filed on 16.10.2020. That as there was breach of terms of unregistered Agreement dtd. 29.6.2017 and as there was no progress of work despite payment of Rs. 56,94,919/- by Shree Digamber Jain Swadhyay Mandir Trust, Songadh to Design Habit, New Delhi, the Trust had cancelled the unregistered Agreement dtd. 29.6.2017 by sending E-mail dtd. 19.10.2020. That vide letter dtd. 17.11.2020 & 11.12.2020 addressed by Shree Digamber Jain Swadhyay Mandir Trust, Songadh to Design Habit, New Delhi, it was specifically stated that their trust has not received master plan, interpretive plan and Narrative plan & they have not acted as per terms & conditions of the agreement. That even the conditions mentioned in the letter dtd. 26.8.2018 addressed by Shree Digamber Jain Swadhyay Mandir Trust, Songadh to Shree Kundkund Kahan Paramarthik Trust, Songadh are not fulfilled nor any material is produced on record to show that the conditions mentioned in the letter dtd. 26.8.2018 are fulfilled. The trust had declined to make further payment of Rs. 41,50,650/- demanded by Design Habit, New Delhi but had asked Design Habit, New Delhi to refund the amount of Rs. 56,94,919/- paid to them. That the decision to cancel unregistered Agreement dtd. 29.6.2017 is not challenged by Design Habit, New Delhi before competent court.

17. Shree Kundkund Kahan Paramarthik Trust, Songadh had stated that an amount of Rs. 56,94,919/- was paid by them to Shree Digamber Jain Swadhyay Mandir Trust, Songadh. That Shree Digamber Jain Swadhyay Mandir Trust, Songadh had addressed a letter dtd. 19.10.2020 to Nemishbhai Shah, Trustee of Shree Kundkund Kahan Paramarthik Trust, Songadh, wherein it was specifically stated that though no refund is received from Design Habit, New Delhi, if they provide bank details, the amount of Rs. 56,94,919/- would be refunded in 1 day.

18. It is interesting to note that though unregistered

Agreement dtd. 29.6.2017 with Design Habit, New Delhi is cancelled by Shree Digamber Jain Swadhyay Mandir Trust, Songadh & though cancellation of unregistered Agreement dtd. 29.6.2017 is not challenged by Design Habit, New Delhi before a competent Civil Court, it is pertinent to note that in proceedings of Judicial Misc. Application No. 41/A/10/2020 filed u/s. 41A of BPT Act, though Design Habit, New Delhi is not even joined as a party, Shree Kundkund Kahan Paramarthik Trust, Songadh has prayed that Shree Digamber Jain Swadhyay Mandir Trust, Songadh must act strictly be as per unregistered Agreement dtd. 29.6.2017 with Design Habit, New Delhi, without making any changes. That nothing is produced on record to show that Design Habit had authorized Shree Kundkund Kahan Paramarthik Trust, Songadh to file proceedings on their behalf. That even otherwise challenge to cancellation of unregistered Agreement dtd. 29.6.2017 with Design Habit, New Delhi is a Civil Dispute which can be adjudicated only by a Civil Court, however, the same cannot be a subject matter of proceedings u/s. 41A of BPT Act, as it does not fall within Sec. 32 to 41 of BPT Act. Thus, prayer that Shree Digamber Jain Swadhyay Mandir Trust, Songadh must act strictly be as per unregistered Agreement dtd. 29.6.2017 with Design Habit, New Delhi, without making any changes is completely misconceived & not tenable in the eye of law & deserves to be rejected. Thus, the final order dtd. 20.7.2021 passed by Joint Charity 6

Commissioner, Bhavnagar by granting para 19(C) of the main application is ex-facie illegal & bad in law.

19. That the ratio of judgment reported in (2019) 15 SCC 303 & 1996(3) GLR 307 are not applicable to the facts of this case, as the said judgments are on entirely different facts. In the present case the Joint Charity Commissioner, Bhavnagar had no jurisdiction, power or authority to pass the impugned orders u/s. 41A of BPT Act.

20. That in the present matter the main challenge are orders passed by Joint Charity Commissioner, Bhavnagar u/s. 41A of BPT Act and Resolution of the trust dtd. 10.10.2021 is in context of implementing order of Joint Charity Commissioner, Bhavnagar passed in Judicial Misc. Application No. 41/A/10/2020. 1 That even in the Resolution of the trust dtd. 10.10.2021 it is stated that the trust will abide by the decision of this Hon'ble Court.

21. It is submitted that this Hon'ble Court may kindly take into consideration the pleadings in the main matter as well as Civil Application at the time of adjudication of the present proceedings.

22. That the figures of the expenses produced by the respondents do not match with the report of auditor produced by the petitioners at the time of hearing of the above matter.

23. That in view of the oral submissions advanced on behalf of the petitioners & in view of what is stated in the foregoing paras, the present petition deserves to be allowed with costs, in the interest of justice.

10.4 Mr.Adesara, learned counsel has relied upon the decision of this Court in the case of **Navinchandra Jasani Vs. Pravinchandra Jasani** reported in **2003 (1) GLR 392** wherein this Court has held and observed in para 5 as under:-

*"**5.** Before I consider the alternative contention of Mr.Nanavati regarding the merits of the case, it is necessary to examine the first contention of Mr.Nanavati on the question of jurisdiction of Joint Charity Commissioner under Sec. 41A of the Act. In case of "Syedna Mohamed B. V/s. Charity Commissioner, Gujarat State, and Others" (Supra), the Division Bench of this Court, after taking into consideration the provisions of Sec. 69 of the Act while construing Sec. 41A of the Act, has observed as under:*

"A quick glance at these provisions to which all religious trust are subject makes it clear beyond any doubt that the three matters which S. 41A provide for - (a) proper administration of a public trust, (b) proper accounting of its income and (c) due appropriation and application of the income to the objects and for the purposes of the trust are abbreviated expressions of those very matters which Ss. 32 to 41 provide for. The only purpose which, therefore, S.41A serves is to issue directions in respect of matters falling under Ss.32 to 41. It is, therefore, merely an enabling and ancillary provision intended to make the implementation and enforcement of the provisions of Ss.32 to 41 more

effectively."

However, the Division Bench at para 41 has observed as under:

"So far as the nature of directions contemplated by S.41A is concerned, on analysing its contents and comparing them with the provisions of Ss.32 to 41 of the Act, there is little doubt that they are administrative in character. They are intended to be issued for better and more efficient administration of a public trust. No question of adjudication of any controversy, dispute or lis arises thereunder. The object of S.41A is to streamline the administration of public trusts and to ensure more effective implementation and enforcement of the provisions of the Act. Since they are not quasi-judicial directions, the question of complying with principles of natural justice does not arise."

Further at para 42 the Division Bench has observed as under:

"A general direction which may be necessary to be issued to all public trusts will not ordinarily be left to the desertion of the Charity Commissioner. Its very nature will require it to be made the subject-matter of a statutory rule under the said Act. Issuance of such a direction can hardly be left to the human weakness of the Charity Commissioner. S.41A contemplates cases of individual trusts which may be suffering on account of the human weaknesses or lapses of the trustees. S.41A is to be brought into play where some exceptional, unforeseen, unexpected or peculiar situation has arisen in the administration of a public trust which is required to be cured by a remedial direction or where circumstances have arisen foreboding such a situation which requires a preventive measure in the form of a direction."

10.5 Mr.Adesara, learned counsel has also relied upon the decision in the case of **Kantilal Manibhai Patel Vs. Ranchhodbhai Morarbhai Patel and others** reported in **2018 (1) GLR 132** wherein this Court has held and observed in para - 7 as under:-

*"**7.** It may be true that the Charity Commissioner has got pervasive powers under Section 41A of the Act over the*

> *administration of a Trust but these powers are essentially designed and are intended for regulating the administration of the trust, and are meant to exercise control in the administrative sphere. Where the functioning of the trust falters or it travels beyond Trust Deed, application under Section 41 would lie and thereunder the Charity Commissioner is empowered to issue the remedial and preventive directions for ensuring efficient administration of the trust. While exercising powers under Section 41, the Charity Commissioner is required to act within such bounds, and cannot enter into the adjudicatory arena. The Charity Commissioner would not be justified in entering into the realm of adjudication in the name of securing better administration of the trust. He cannot proceed to decide a lis under the guise of exercising administrative control of the Trust. The Charity Commissioner has to guard himself that he does not travel into the prohibited territory of decision making process and to issue directions deciding a dispute for pronouncing upon the rights of the parties, for, the line of demarcation between the two functions often becomes thin and slippery".*

10.6 Mr.Adesara, learned counsel has submitted that in view of the aforesaid facts and the decisions, the petition deserves to be allowed and the impugned orders deserves to be quashed and set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1:

11. Mr.Mehta, learned senior counsel for respondent – Shri Digamber Jain Swadhyay Mandir Trust has objected both the petitions and referred the affidavit-in-reply and the additional affidavit-in-reply filed on behalf of Shri Digamber Jain Swadhyay Mandir Trust and has submitted that the trustees in its meeting dated 10.02.2013, has already passed a resolution appointing a committee, empowering it to take all the decisions regarding the project and therefore, the president was well within its right to execute agreements and there is an estopple qua the petitioner as the petitioner has approved the resolution and hence are refrained from

questioning the authority of the president. It is submitted that the order impugned in the main petition having been accepted and acted upon by the respondent no. 4 trust, is binding upon the petitioner as well as other trustees and hence the main petition and the present application is not maintainable. It is further submitted that resolution dated 12.09.2020 of the trust has been cancelled and therefore, does not remain in force.

11.1 Mr.Mehta, learned senior counsel is submitted that the work of the project has been going on and the phase of the project of Dome has begun and the resolution dated 10.10.2021, is in force whereby respondent no. 1 has to undertake the project. It is submitted that respondent no. 1 granted project work vide resolution dated 10.10.2021 and, therefore, any interference this Court is unwarranted and uncalled for. It is submitted that the work is in progress and the project of respondent no. 1 has also progressed, therefore, it is not correct to state that the work was not being done from 2017 till 2026 and has commenced suddenly.

11.2 It is further submitted that the project of Dome has not reached its execution stage earlier, therefore, it cannot be said that the project has commenced suddenly in 2026. The respondent no.4 trust has received donations from respondent no.1 trust and had made huge expenditures in various years to the tune of Rs.4,25,25,284/- for dome project. It is submitted that the petitioners filed the present petition challenging the order dated 20.07.2021 after a period of 2 years and have mad misleading statements before this Court regarding the work having commenced recently.

11.3 Mr.Mehta, learned counsel has submitted that since the inception of the project all the accounts of the trust are audited as per the provisions of the Bombay Public Trust Act, 1950 and The Bombay Public Trust (Gujarat) Rules, 1961 and the same after audited, has been submitted before the office of the competent authority in compliance of the provisions of the Law and there are no negative remarks by the auditor of the accounts.

11.4 Mr.Mehta, learned senior counsel has further submitted that on 20.08.2013, the trust resolved to form sub-committees and to open a separate bank account for the project to undergo a soil test of the site and in the said meeting all the persons including the petitioners were present and approved the same. He has submitted that on 29.08.2015, it was resolved that because of the litigation against the trust the project was delayed for almost 4 years. Thereafter, on 25.12.2016 it was resolved that since the cost of the project is a huge one and to overcome the same a committee be formed and approach Shri Nemish Shah trustee of respondent no. 1 for the same. In the said meeting all the persons including the petitioners were present and approved the same.

11.5 It is submitted that there was an assurance from Nemish Shah trustee of respondent no. 1 to undertake entire expenses and the maintenance expenses in future from his personal funds and his various trusts and all the committee members and trustees including the petitioners had agreed for preliminary feasibility and design concept. It is further submitted that the trust wanted to develop Jain Museum to propagate the Jain Religion and to attract Jain Community to visit the trust and the constructed area of the museum was estimated to be 11000 square meters with approximate cost of Rs. 14,000/- per square meter and therefore, the trust appointed M/s.

Design Habit Pvt. Ltd as Design Consultant to conceptualize and provide outline and preliminary design services to finalize the Master Design for the Project and an agreement executed with the Design Consultant is only related to designing of the Project.

11.6 It is submitted that thereafter, respondent no. 1 filed an application under Section 41A of the Act before respondent no. 2 for necessary reliefs and interim application and the Joint Charity Commissioner passed interim order passed for not implementing the resolution dated 12.09.2020. Thereafter, final order came to be passed by the Joint Charity Commissioner allowing the application of respondent no. 1 and the trustees resolved that the order dated 20.07.2021 need not be challenged further and it was accepted by the trust. In the meeting dated 12.08.2022, the trustees resolved that the project needs to be completed at the earliest and all throughout the work was ongoing and the said meetings are also attended by the petitioners.

11.7 It is further submitted that another illusion being created by the petitioners before this Court by misleading statements is in respect of the work commencing all of a sudden after a period 1 of 8 years. The work has been progressing gradually and is an ongoing work and hence it cannot be said that the work has commenced suddenly after 8 years. At no point in time it can be said that the work was not in progress and, therefore, the petitioners have made misleading and incorrect statements before this Court just to create a prejudice.

11.8 Mr.Mehta, learned senior counsel has submitted that the trust has from time to time passed resolutions taking account of the progress of work undertaken in respect of the project and also currently the trust periodically holds meeting in respect of the progress of the project.

11.9 Over and above the oral arguments, Mr.Mehta, learned senior counsel has tendered the written submissions as under:-

That the petition itself is not maintainable since the petitioners have filed the present petition challenging the order dated 20.7.2021 after a period of more than 2 years i.e. on 7.10.2023 and have been making misleading statements before this Hon'ble Court since they constitute a disgruntled faction within the Respondent No. 3 Trust, with the Trust, by majority, having resolved on 10.10.2021, to continue with the Bahubali Dome Project as per earlier resolutions passed on 10.2.2013 and 25.12.2016. A concise list of dates and events is as under:

That the Respondent No. 3 Trust had undertaken the project of constructing Jambudweep Bahubali consisting of 130 Bhagwan and installation of Bahubali Bhagwan on hill with museum a project which consisted of erection of idol of Bahubali Bhagwan to propagate the Digambar Jain religion and preachings of Guru Shri Kanji Swami.

That in a resolution dated 10.2.2013 passed by the Respondent No. 3 Trust, a committee was formed of Shri Hasmukh Vora, Shri Jitubhai Shah, Shri Navinbhai Shah and Shri Vikasbhai Shah empowering them completely to take decisions for the furtherance of the project. In the said meeting all the persons including the petitioners were present and approved the same.

That in its meeting dated 25.12.2016, the Respondent No. 3 resolved that the cost of the project was huge and to overcome the same, a committee be formed to approach Shri Nemish Shah viz. trustee of Respondent No. 1 Trust for the same. In the said meeting, all the persons including the petitioners were present and approved the resolution.

That Shri Nemish Shah as trustee of Respondent No. 1 Trust assured to undertake entire expenses as well as maintenance of the entire project in future from his personal trust/s. Thereafter, Design Habit gave presentation regarding the audio-video project wherein all the committee members *and trustees including the petitioners were overwhelmed and agreed for preliminary feasibility and design concept. Accordingly, an agreement was entered into between the President of the Respondent No. 3 Trust and Design Habit.*

That on 26.8.2018, the Respondent No. 3 Trust wrote a letter to the Respondent No. 1 Trust acknowledging and accepting the Dome Project. The said letter bore the signature of ALL 9 TRUSTEES including that of the petitioners.

That on 29.9.2020, the Respondent No. 3 Trust wrote a letter to the Respondent No. 1 Trust unilaterally cancelling the entrustment of audio-video exhibition on account of "JIV HINSA" which is signed by only 2 trustees.

That immediately on 1.10.2020, the Respondent No. 1 Trust wrote a letter to the Respondent No. 3 Trust objecting to the unilateral cancellation and also showed its displeasure regarding the cancellation of the entrustment of the project and requested to reconsider the same as interest of both the trusts was being jeopardised with the said action.

That the Respondent No. 1 Trust filed Section 41-A Application before the Respondent No. 2 for necessary reliefs wherein on 16.10.2020, interim order was passed by Respondent No. 2 directing not to implement the resolution dated 12.9.2020. On 20.7.2021, final order came to be passed by the Respondent No. 2 allowing the application of Respondent No. 1 Trust holding that the acts of the Respondent No. 3 Trust were not in its interest as well as that of the Respondent No. 1 Trust with directions to the trustees to take appropriate remedial actions.

That the trustees accordingly resolved on 14.8.2021 that the order dated 20.7.2021 need not be challenged further and be accepted by the Respondent No. 3 Trust. Thereafter, another meeting was convened on 10.10.2021, where the trust cancelled resolution dated 12.9.2020 and resolved to go ahead with its earlier resolution of entrusting the work to Respondent No. 1 Trust. It is in such circumstances that the present petition/s has been filed.

That inspite of Mr. Rajendra V. Shah filing the petition before this Hon'ble Court on 22.10.2021 (Sr. No. 26 hereinabove), it was not expedited since there would have been questions about his locus to pursue any proceedings and the same remain pending in mediation even as on date in SCA No.

12856 of 2021. The office objections were only removed on 31.3.2023 after multiple restoration proceedings and the matter came to be registered as SCA No. 5866 of 2023 on 31.3.2023 (Sr. No. 28 hereinabove). Hence, Mr. Rajendra V. Shah is riding on the shoulders of other 2 trustees viz. the petitioners' herein who eventually filed the present SCA No. 17851 of 2023 only on 7.10.2023 i.e. more than 2 years after the impugned order was passed by the Respondent No. 2.

That under Article 226/227 of the Constitution of India, it is entirely upon this Hon'ble Court whether it wishes to exercise its discretion and entertain a writ petition filed with such malafide intent and in such stark facts and circumstances.

That inspite of repeated and pointed queries to the counsel of the petitioners as to how the impugned order was illegal, no answer was forthcoming and the directions of the Respondent No. 2 in the impugned order are only to the Respondent No. 3 Trust to perform its duties and adhere to the resolutions passed previously. Forget illegality, the petitioners have not even been able to point out that the view taken by the Respondent No. 2 in the impugned order is an impossible view (as propounded by the Hon'ble Supreme Court from time to time for exercise of discretionary jurisdiction by Hon'ble High Courts under Article 226/227) and which would never be taken by any prudent or reasonable man.

That, on the contrary, the Respondent No. 2 has rightly exercised its powers under Section 41-A of the Act and issuing directions to the Respondent No. 3 Trust to adhere to the unanimous resolutions passed on 10.2.2013 and 25.12.2016 and not pass resolutions for cancellation unilaterally/arbitrarily since it was not in the larger interest of the beneficiaries of the Trust as well as followers of Pujya Shri Kanji Swami.

That the petition is even otherwise not maintainable since the petitioners have taken a shortcut and sought to challenge an order passed by the Joint Charity Commissioner directly under Article 226/227 before this Hon'ble Court instead of going through the proper mechanism under the Act viz. challenging it before the Charity Commissioner and come before this Hon'ble Court through correct hierarchy.

That the Respondent No. 3 Trust, by majority, having *accepted the order dated 20.7.2021 and deciding not to challenge it further, the petitioners' have no independent right to challenge the same before this Hon'ble Court since, as trustees, they are bound by the resolutions passed by the Trust.*

That in any case, the petitioners' have already given their approval for the entire project, including for the audio-video part of it, and cannot now be permitted to renege on their own actions, especially when such large sums of money (Rs. 5.58 crores) have been spent basis the donations (Rs. 6.83 crores) made by the Respondent No. 1 Trust. The Respondent No. 3 Trust has not spent their own money and it is entirely being funded through the donations made by the Respondent No. 1 Trust through Mr. Nemish Shah.

Under such facts and circumstances, the petition/s deserved to be dismissed with exemplary costs to ensure that the petitioners' and/or Mr. Rajendra V. Shah refrain from making such attempts in future.

11.10 In support of his submissions, Mr.Mehta, learned senior counsel has relied upon the decision of this Court in the case of **Acharyashree Mahaprabhujini Ranavaswala Bethak Mandir Trust, Godhra and others Vs. Chokshi Ratilal Chandulal and others** reported in **1996 (3) GLR 307**.

11.11 Mr.Mehta, learned senior counsel has urged that in view of the aforesaid facts, the present petitions being meritless deserve to be dismissed.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3:

12. Mr.Soparkar, learned senior counsel has submitted that so far as the maintainability of the petitions is concerned, the petitions are not maintainable and if the petitioners aggrieved, they have to approach to the Joint Charity Commissioner, who has appellate jurisdiction and the petitioners cannot challenge such decisions by

way of present petitions.

12.1 Mr.Soparkar, learned senior counsel has submitted that respondent no. 3 in the present petitions is trustee of respondent no. 4 trust. It is submitted that at the outset, the petitioners filed the present petition/s challenging the order dated 20.07.2021 after a period of 2 years i.e. on 07.10.2023 and have been making misleading statements before this Court being disgruntled fraction despite by majority it is resolved on 10.10.2021, to continue with the project as per earlier resolutions.

12.2 Mr.Soparkar, learned senior counsel has submitted that the present petition/s is not maintainable in light of the law laid down by the Hon'ble Supreme Court in case reported in **Ramkrishna Missions and another Vs. Kago Kunya and Others** reported in **2019 16 SCC 303** where it is held that a writ will not lie against the public charitable trust. He has submitted that the challenge to the resolution in the petition is not maintainable and the challenge to the order impugned in the petition/s becomes academic.

12.3 Mr.Soparkar, learned senior counsel has submitted that as far as power under Section 41A of the Act is concerned, this Court has propounded in the case of Acharyashree Mahaprabhujini Ranaswala Bethak Mandir Trust, Godhra (supra) that irrespective of reference of any provision of the Act of 1950, the charity commissioner has wide supervisory power over a public trust to issue any direction of remedial or preventive nature to perform the duty in a certain manner or to refrain from performing one or the other duty in certain compelling circumstances, which calls for interference, to secure objectives of the public trust by a bona fide and efficient administration, with limitation that he shall not exercise the powers which have been conferred on any other authority under the Act of 1950.

12.4 Mr.Soparkar, learned senior counsel has also submitted that the trust has undertaken the project of constructing Jambudweep Bahubali Jambudweep consisting of 130 Bhagwan and installing Bahubali bhagwan on Hill with museum exhibition beneath Bahubaliji and Project which consists of erection of Idol of Bahubali Bhagwan and further to propagate the Digambar Jain religion and preachings of Guru Shri Kanjiawami an exhibition is also being constructed. The said project is in furtherance of the objectives of the trust as provided in the scheme.

12.5 It is submitted that the project namely Jambudeep Bahubali Project whereby several structures are to be erected such as the Mountain on which Lord Shri Bahubali is Birajmaan, A Jambudweep structure where other Gods are Birajmaan, A Dome i.e. the area underneath the Mountain, where the rich varied heritage and the principles of Jain religion is to be exhibited and several other constructions are to be undertaken are all part of the Jambudeep Bahubali Project. He has submitted that in resolution dated 10.02.2013, a committee was formed of Shri Hasmukh Vora, Shri Jitubhai Shah, Shri Navinbhai Shah and Shri Vikasbhai Shah empowering them completely to take decisions for the furtherance of the project. In the said meeting all the persons including the petitioners were present and approved the same.

12.6 It is further submitted that on 25.12.2016 it was resolved that since the cost of the project is a huge one and to overcome the same a committee be formed and approach Shri Nemish Shah trustee of respondent No.1 for the same. In the said meeting all the persons including the petitioners were present and approved the same. It is submitted that there was an assurance from Shri Nemish Shah trustee of respondent no. 1 to undertake entire expenses and the maintenance expenses in future from his personal funds and his various trusts and thereafter, Design Habit gave presentation regarding the Audio-Video Project at the office of the trust. All the committee members and trustees including the petitioners were overwhelmed and had agreed for preliminary feasibility and design concept. Thereafter an agreement was entered into between the President of the Trust and Service agency.

12.7 It is also submitted that the correct position qua the agreement is that the constructed area of the museum was estimated to be 11000 square feet with approximate budget of Rs. 14,000/- per square feet and, therefore, the trust appointed M/s. Design Habit Pvt. Ltd as Design Consultant to conceptualized design services to finalize the Master Design for the Project, the Agreement consists of Terms and Conditions of Appointment, Scope of Services, Deliverables and their Designing Fee. Design Consultant was to Design the Project in four stages i.e. Master Plan, Interpretive Plan, Narrative Plan & Final Design.

12.8 It is also submitted that by letter dated 09.07.2017, respondent No.1 requested the work of dome in the project to itself for putting up audio-video project creating an exhibition of the rich and varied heritage of Jain Religion and preachings of Guru Shri Kanjiswami and also to undertake its expenses and maintenance. It is submitted that on 26.08.2018 the trust wrote a letter to respondent No.1

acknowledging and accepting the Dome Project bears the signature of all 9 trustees including the petitioners and therefore, the petitioners are estopped from taking a contrary stand.

12.9 It is submitted that in the meeting dated 17.02.2019, the letter dated 26.08.2018 whereby the creating an exhibition of the rich and varied heritage of Jain Religion and preachings of Guru Shri Kanjiswami was given to respondent No.1 SKKPT was put to vote and the same was approved by the majority. He has submitted that thereafter, in the meeting dated 14.07.2019, the trustees read the minutes of the meeting dated 17.02.2019 and ratified the same and on 12.09.2020, a resolution regarding the installation of idol of Suryakirti Bhagwan was passed.

12.10 It is submitted that on 29.09.2020, the trust wrote a letter to the respondent No.1 cancelling the entrustment of audio-video exhibition on account of jiv hinsa signed by only 2 trustees petitioners herein and in response thereof, on 01.10.2020, respondent no. 1 wrote a letter to the trust objecting the unilateral cancellation and also showing its displeasure regarding the cancellation of the entrustment and requested to reconsider the same as interest of both the trust was being jeopardize with the said action.

12.11 It is submitted that thereafter, respondent No. 1 filed an application under Section 41A before the Joint Charity Commissioner for necessary reliefs and interim application and interim order came to be passed by the Joint Charity Commissioner in JMA 41/10/2020, not to implement the resolution dated 12.09.2020 and thereafter on 20.07.2021, final order came to be passed by the Joint Charity Commissioner allowing the application of respondent no. 1, holding that the acts of the trust complained off was not in the interest of the trust and respondent No.1 directing the trustees of the trust to take remedial actions.

12.12 It is submitted that the trustees resolved that the final order need not be challenged further and it was accepted by the trust. Thereafter, another meeting was convened wherein the trust cancelled the resolution dated 12.09.2020 and resolved to go ahead with its earlier resolution of entrusting the work to respondent no. 1. That the trust by majority having accepted the order dated 20.07.2021 and decided not to challenge the same further, the petitioners do not have an independent right to challenge the same as they being trustees are bound by the resolutions of the trust.

12.13 It is further submitted that another illusion which is being created by the petitioners before this Court by advancing misleading statement is in respect of the work commencing all of a sudden after a period of 8 years. It is submitted that the said statement is completely false and incorrect and the project is an ongoing project and the trust has incurred expenditure regarding the same and it is clear that the work has been progressing gradually and is an ongoing work and hence it is completely out of place to state that the work has commenced suddenly after 8 years. It is also submitted that the respondent trust has received donations regarding the same from respondent No. 1 and therefore, at no point in time, it can be stated that the work was not in progress and therefore, the petitioners have made misleading and incorrect statements before this Court just to create a prejudice and gain bounty.

12.14 The trust owning to its objects and as a part of the project, has also seated (Birajmaan) a huge of idol of Lord Shri Bahubali, and had a grand celebration spanning over a from 19.01.2024 to 26.01.2024 regarding Pratishtha of the same which was attended by more than 18000-20000 persons from all over the world. Thereafter the work is going on till date.

12.15 In support of his submissions, he has relied upon the decision of the Hon'ble Supreme Court in the case of **Ramakrishna Mission and another Vs. Kago Kunya and others** reported in **(2019) 16 SCC 303**.

12.16 Mr.Soparkar, learned senior counsel has urged that considering the aforesaid aspect, the petitions being meritless deserve to be dismissed.

ANALYSIS:

13. The petitioners have filed the petitions under Articles 226 and 227 of the Constitution of India and on perusal of the contentions raised in the petitions and the impugned order passed by the Joint Charity Commissioner, Bhavnagar below Ex.20 in Judicial Misc. Application No.41/A/10/2020 deciding power of Joint Charity Commissioner to decide the issue and the final judgment and order passed by Joint Charity Commissioner, Bhavnagar below Ex.40 in Judicial Misc. Application No.41/A/10/2020 dated 20.7.2021.

(a) Whether the Court can exercise the jurisdiction under Article 226 of the Constitution of India only for supervisory and not extraordinary jurisdiction and the Court has to look into whether the authority has committed any error while passing the impugned order or not.

(b) Whether the authority has committed any error while passing the impugned order and whether there is any irregularity and illegality committed in the impugned order passed by Joint Charity Commissioner or not.

(c) Whether the Court can go into facts of the case as it was decided by the Joint Charity Commissioner after going to the record and examining the record, whether it is open for this Court to go into factual aspect while exercising the jurisdiction under Article 227 of the Constitution of India or not.

(d) Whether the petitioners have any locus standi to file such petition challenging the impugned order as they are the trustees of respondents No.3 and 4, who have accepted the order passed by the Joint Charity Commissioner or not.

FINDINGS AND CONCLUSION:

14. On perusal of the material placed on record, it appears that the petitioners are the trustees of respondent No.3 and respondent No.3 held the meeting and passed the resolution whereby formed 4 members committee and empowering them for the complete Jambudweep Bahubali Project, the committee consisting of members namely Hasmukhbhai Vora, Jitubhai Shah, Navinbhai P. Shah and Vikasbhai Shah and the said committee with the meeting of the trust, passed a resolution on 25.12.2016 to meet Nemish Shah for the purpose of donation towards Jambudweep and Bahubali Project, who is to be a member of respondent No.1 and to ensure the project is to be completed with ease and without hurdle and hindrance. The committee has resolved the said project to be meeting with Nemish Shah and after meeting, Nemish Shah was ready and willing to

sponsor the full project from his personal funds and his family trust. Nemish Shah has given power presentation with the Design Habit team for the Dome Electronic Project at Songadh and all the trustees and with the team of Design Habit for undergoing project of constructing a Dome Electronic Project at Songadh including audio and visible kiosk to be placed in Jambudweep and Bahubali Project and after all members of the trustees agreed to go ahead with Design Habit for preliminary feasibility, design concept and virtuality of the project as introduced to the Design Habit. The preliminary quotation was prepared by the Design Habit on 29.06.2017, which was given to respondent No.1. The respondent No.1 wrote a letter to respondents No.3 and 4 seeking full sponsorship of the project which was found from the letter written by respondent No.1 at page No.269 of the petition. The respondents No.3 and 4 have replied to accept the proposal of respondent No.1 vide letter dated 09.07.2017 bearing signature of six trustees which is produced at page No.270. On 26.08.2018, respondent No.3 – trust issued a letter bearing all nine trustees' signature and provided detailed confirmation with the electronic digital project and adjudication was entrusted to respondent No.1 with full support and authority and three members committee namely Hiten Sheth, Akshay Doshi and Br. Kokilaben was granted full power and authority to prepare design the theme of the project. Thereafter, the trust meeting was held on 27.01.2019 discussed with regard to the project as it was incomplete and were deferred to the next meeting which was scheduled on 17.02.2019 in which five trustees of respondent No.1 agreed to go ahead with the project and four trustees have not consented for the said project; the present petitioners are amongst those four persons who have disagreed with the meeting and have not consented to the project.

Though the project was delayed, respondent No.1 resolved to cancel the dome project and installed an idol instead of going with the project namely Jambudweep Bahubali Project by 7 by 1 vote. It is also evident from the record that respondent No.1 has also called for cancellation of the decision made by the trust in the earlier meeting and respondent No.3 has written a letter to respondent No.1 to cancel the project signed by two trustees namely Pravinbhai Doshi and Rajendra Kamdar. Thereafter, respondent No.1 has further entered into communication with respondent No.3 requesting to reconsider and redecide the decision made in the earlier meeting with a caution that in case if respondent No.3 is not re-decide or re-consider with regard to the project, respondent No.1 will file appropriate proceeding and initiate legal action. In the meantime, the different temples of the State have also requested respondent No.3 to go ahead with the project and ultimately, since there is no hint to the request respondent No.1 approached respondent No.2 by way of filing an application under Section 41A of the Act and sought relief as claimed in the application. The respondent No.2, after examining plethora of documents and considering the pleadings and hearing the parties, initially granted interim relief in favour of respondent No.3 staying implementation, execution and operation of the resolution passed in the meeting dated 12.09.2020, meaning thereby that the earlier resolution passed in favour of respondent No.1 came into force and thereby respondent No.1 had gone with the project. The respondent No.3 sent a letter for refund of amount paid by respondent No.1 and respondent No.1 had filed an application with the police for the alleged offence of cheating etc. Thereafter, numerous hearing were taken place before the Joint Charity Commissioner and ultimately, final order came to be passed by the Joint Charity Commissioner below Exhibit 40 which is challenged in these petitions. The Joint Charity Commissioner has recorded the findings and reasons from para – 9 onward.

15. While disposing of the application, the Joint Charity Commissioner has passed the following final order:-

> *"The interim relief granted during the tenure of the predecessor in the said application work, para (a) (b) is extended permanently along with the relief granted in para (c) which is the decision taken by the respondent No. 3/1, 3/3 and 3/4 to the applicant trust to discuss with the experts and even though the work of the project assigned to it is in progress, the applicant trust has not been given any opportunity to inform or submit any information. The work and method of suddenly cancelling the permission given to the project for the purpose of Bhagwan Shree Bahubaliji, which has been going on for more than three years, is not in the interest of public institutions. If the work of the prestige of Bhagwan Shree Bahubaliji is completed as soon as possible, then the trustees of that work belong to the same society. With his faith and devotion remaining intact, the followers of Param Pujyashri Gurudev Kanji Swami, along with the instructions to the surviving members of the society to complete the project work of Bhagwanshree Bahubaliji so that the beneficiaries of the same community, the desired benefits, are obtained as intended, and the application is approved as the grant sought in the said application is deemed to be in the interest of the public institution.*"

16. The respondents No.3 and 4 have decided not to challenge the decision of the Joint Charity Commissioner and they have accepted the decision of the Joint Charity Commissioner. Though the said decision was rendered by the Joint Charity Commissioner on 20.07.2021, for a period of two years, the petitioners have not chosen to challenge the impugned order passed by the Joint Charity Commissioner and rightly stated that they are not party to the

proceedings and there is no fundamental rights violated as mentioned by the petitioners in the petitions. Even both the trusts are of the same caste and very same State and same religion and, therefore, in the interest of devotee at large they are decided to go with the project and now it is on going project. The amount incurred for the project borne by respondent No.1 with the help of donation from their community people and they are undertaking project. The Joint Charity Commissioner has, after examining the legal provisions of Section 41A of the Act and after considering the submissions of all the concern, passed the impugned order. This Court is of the opinion that there is no any illegality or infirmity as alleged by the Joint Charity Commissioner. While examining the provisions of Section 41A of the Act, the decisions of this Court and the Hon'ble Supreme Court more particularly the observation No.5 made by this Court in the case of ***Navinchandra Jasani*** (supra) emphasized upon by learned counsel for the petitioners, this Court has no doubt about the same, but now it is well settled and it is time and again reiterated by this Court and the Hon'ble Supreme Court. That the powers under Section 41A of the Act not only limited to the supervisory power over the public trust as provided under sub-Clauses (a) and (4) of Sec. 69 of the Act. While conjoint reading of both the provisions, it appears that the Charity Commissioner has supervisory power over the public trust for the better and more efficient and clean administration of the trust and the said power is however circumscribed by use of the expression "subject to the provisions of the Act". Thus the Charity Commissioner will not have the power in the field which has been vested in different authority under the Act. The question of adjudication of any controversy or dispute shall be outside the purview of the Charity Commissioner under Section 41-A. However, this Court in

Acharyashree Mahaprabhujini Ranavaswala Bethak Mandir Trust, Godhra (supra) has held and observed in para 12 as under:-

> *"**12.** Thus, from the aforesaid discussion it emerges that irrespective of reference of any provision of the Act of 1950, the Charity Commissioner has wide supervisory power over a public trust to issue any direction of remedial or preventive nature to perform the duty in a certain manner or to refrain from performing one or the other duty in certain compelling circumstances, which calls for interference, to secure objective of the public trust by a bona fide and efficient administration, with the limitation that he shall not exercise of the powers which have been conferred on any other authority under the Act of 1950."*

17. So far as the nature of directions contemplated by Sec. 41-A is concerned, on analysing and comparing with the provisions of Secs. 32 to 41 of the Act, that it is an administrative in nature and character for the purpose of better and more efficient management and administration of trust and no question of adjudicating any controversy, dispute or lis arises thereunder. However, while reading of Section 41A, it is not limited to that extent only but it can be an obligatory on the Joint Charity Commissioner. That if the trustees are not acting in accordance with law then as per enforcement of the Act, the person can file an application under Section 41 and the same is decided by the authority for even enforcement also. So far as the contention raised by the petitioners that the Joint Charity Commissioner has exceeded jurisdiction which is not vested with him and the order was passed without jurisdiction is concerned, the same is not tenable in the eyes of law.

18. So far as maintainability of the writ petition under Article 226 of the Constitution is concerned, the Hon'ble Supreme Court in the case of **Ramakrishna Mission** (supra) has held that writ cannot be issued

against the private authority including the trust. Therefore, under such circumstances, the petition is mainly under Article 227 where this Court has to exercise jurisdiction to the fact that whether the authority has, while passing the order, committed any illegality and irregularity or not; whether there is any patent illegality or not. Only in that circumstances, the petition can be entertained and interfered with the order passed by the authority. This Court does not find any illegality and infirmity in the impugned order passed by the Joint Charity Commissioner and, therefore, the Joint Charity Commissioner has rightly shown that respondent No.3 has not challenged the order passed by respondent No.2 while directing the parties to complete the project.

19. In the case of **R*amakrishna Mission*** (supra), the Hon'ble Supreme Court has held and observed in paras 17, 18, 34, 35, 36 and 37 as under:-

> *"17. The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution.*
>
> *18. The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Sri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto "Atmano Mokshartham Jagad Hitaya Cha". The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Sri Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form. Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up development and general welfare activities for the benefit of the*

underprivileged/ backward/ tribal people of society without any discrimination. These activities are voluntary, charitable and nonprofit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the state in its sovereign capacity nor do they partake of the nature of a public duty.

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K K Saksena (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the Hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.

36. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article.

37. For the reasons that we have adduced above, we hold that neither the Ramakrishna Mission, nor the hospital would constitute an authority within the meaning of Article 226 of the Constitution.

20. Even referring to the decision of this Court in the case of

Kantilal Manibhai Patel (supra) as relied upon by learned counsel for the petitioners, it is clear that the power is not only restricted to the supervisory power but includes that the object and purpose of the trust also to be looked into and time and again the Charity Commissioner has to pass necessary direction to the trust. It is observed in this decision that under Section 41, the Charity Commissioner is empowered to issue the remedial and preventive directions for ensuring efficient administration of the trust. However, as alleged by the petitioners that respondent No.2 is not justified in entering into the realm of adjudication in the name of securing better administration of the trust and he cannot proceed to decide a lis under the guise of exercising administrative control of the Trust. In fact conjoint reading of Section 41A of the Act, it appears that for Section 32 to 41, it is well within the power that the Joint Charity Commissioner to pass order and there is no any illegality and infirmity in the impugned order.

21. While exercising the jurisdiction under Article 227 of the Constitution of India, the Hon'ble Supreme Court had laid down the principles in the case of ***Nandi Infrastructure Corridor Enterprises Ltd and another Vs. Gurappa Naidu and others*** rendered in Civil Appeal No. 1354 of 2013 dated 30.04.2026 summarized for exercise the power under Article 227 of the Constitution. The Hon'ble Supreme Court has observed that the scope and ambit of the power of the High Court under Article 227 of the Constitution has been the subject matter of consideration before this Court in several judgments. The Hon'ble Supreme Court has laid down the principles in the matter under Article 227 that the power of superintendence is not to be exercised unless there has been an (a)

unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. After complying the said principle, the Hon'ble Supreme Court has quashed the order passed by the High Court that the High Court has exceeded its jurisdiction which is not vested under Article 227 of the Constitution of India.

22. In the case of ***Gurappa Naidu*** (supra), the Hon'ble Supreme Court has held and observed in paras – 35 and 36 as under:-

> *35. In short, the principles laid down in the above matters is as follows:*
>
> *a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*
>
> *b) It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent*

on the face of the record.

c) The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.

36. Applying the aforesaid principles to the facts of the present case, we are of the considered view that the High Court has exceeded the jurisdiction vested in it under Article 227 of the Constitution of India. We say so for the following reasons:

36.1.Firstly, the power of superintendence under Article 227 of the Constitution can be exercised where there is an unwarranted assumption of jurisdiction by a court not vested with such jurisdiction, or in cases of gross abuse of jurisdiction. In the present case, it is evident from the record that the Executing Court was duly vested with jurisdiction to deal with the matter, and no case of gross abuse of jurisdiction is made out. On this ground, the High Court could not to have exercised its jurisdiction under Article 227.

36.2.Secondly, the power of superintendence may be invoked where there is an unjustifiable refusal to exercise jurisdiction vested in a court. In the present case, the Executing Court did exercise the jurisdiction conferred upon it. Consequently, no occasion arose for the High Court to invoke its jurisdiction under Article 227 of the Constitution on this ground.

36.3.Thirdly, the High Court, while exercising jurisdiction under Article 227 of the Constitution, could not have acted as an appellate court or substitute its own judgment for that of the subordinate court to correct an error which was not apparent on the face of the record. In the present case, while considering the petition filed by N.I.C.E. under Article 227, the High Court ought to have borne in mind that this Court, in the earlier round of litigation, had specifically directed the Executing Court to determine the guideline value of the property and accordingly the Executing Court had determined the value of the land. In our considered opinion, the High Court travelled beyond the limits of its jurisdiction *under Article 227 while adjudicating the writ petition filed by N.I.C.E. and we say so for the following reasons:*

36.3.1. While exercising its jurisdiction under Article 227 of the Constitution, the High Court had a limited scope of interference with the order passed by the Executing Court. What the High Court has done in the present matter is precisely what may be characterised as acting in the capacity of an Appellate Court, which is impermissible in the exercise of supervisory jurisdiction under Article 227. Firstly, while exercising jurisdiction under Article 227, the High Court belatedly impleaded the State Government to resolve an issue relating to the interpretation of the manner in which the guideline value was to be determined. In our considered opinion, such impleadment ought not to have been resorted to, for the reason that the lis throughout was between private parties and arose solely out of a compromise decree.

36.3.2. Secondly, the High Court, in effect, called upon the State Government to file an affidavit seeking clarification on the interpretation of the notification. Although the High Court ultimately rejected the report submitted by the State, it nonetheless accepted the State's clarification with regard to the interpretation of the notification and proceeded to act upon the same. In substance, the High Court permitted the State to interpret its own notification and thereby influence a lis exclusively between private parties. The State was thus placed in the position of being a rule-maker, interpreter, and adjudicator of its own notification simultaneously, all while the High Court was exercising its jurisdiction under Article 227 of the Constitution. Such an approach, in our considered view, is impermissible. The executive cannot be allowed to explain away or reinterpret a statutory instrument during the course of litigation to the prejudice of one of the parties.

36.3.3. Thirdly, the High Court accepted the interpretation advanced by the State solely on the ground that an alternative interpretation of the notification was possible. By doing so, the High Court substituted its own view for that of the Executing Court, thereby exhibiting the conduct of an Appellate Court rather than that of a court exercising supervisory jurisdiction under Article 227 of the Constitution.

36.3.4. Fourthly, at the very least, the interpretation, adopted by the Executing Court constituted a plausible and reasonable view. In such circumstances, the High Court could not, in exercise of its supervisory jurisdiction under

Article 227 of the Constitution, supplant that view with another interpretation, merely because such an alternative view was also possible. By exercising jurisdiction under Article 227 solely to demonstrate that another view was possible, the High Court, in effect, acted as an appellate court, which is impermissible in law.

36.4.Therefore, in our considered opinion, the High Court, while exercising its jurisdiction under Article 227 of the Constitution, travelled beyond the limits of the narrow and circumscribed scrutiny permissible under the said provision, in direct contravention of the principles set out in paragraph 35 of this judgment."

23. When the interim order was passed below Exhibit 20, at that time, the Court has granted the relief in favour of the respondents rejecting the application and the petitioners have not approached this Court immediately and after more than two years on 06.09.2023 and the same was registered on 07.10.2023. After the contentions raised by the respondents in the affidavit-in-reply, the petitioners have tried to explain that the earlier decision was challenged by one of the trustees and that petition was under objection and from which, the petitioners have come to their knowledge and thereafter immediately they have filed the petitions is not justifiable delay which is caused in preferred the present petitions. As per the observations made by the Joint Charity Commissioner in para 9 onward, respondent No.2 has considered the purpose and object of the trust and after examining such details, concerned Trust has come to the conclusion that the impugned order passed by the Joint Charity Commissioner is in consonance with the facts and arguments of all concerns. In the petition filed by respondent No.1, the petitioners were the party to the proceedings being respondents No.2 and 5, so the order passed by the Joint Charity Commissioner is well within the knowledge of the petitioners, however, they have chosen to remain silent for two years

and, thereafter, they have preferred the petitions and, therefore, on the ground of delay, laches and acquiescence. It is also to be noted here that during the course of hearing, the petitioners unable to produce any relevant material with regard to the fact that respondents No.3 and 4 were not taking any interest in just and proper administration of the trust and there was no explanation. So far as the explanation is concerned, it is incurred and bear by respondent No.1 only with the help of public donation and it is also in consonance with the purpose and object of the trust and for that, community people only. After considering the said aspects, the Joint Charity Commissioner has passed the impugned order, for which, this Court does not find any irregularity and illegality in the impugned order. On perusal of the materials produced on record and the findings and reasoning assigned by the Joint Charity Commissioner in the impugned order, this Court is of the opinion that there is no infirmity and illegality in the order. As observed by the Hon'ble Supreme Court in the recent decision that while exercising the jurisdiction under Article 227 of the Constitution, I am of the opinion that I am not sitting over the appeal over the decision of respondent No.2.

24. The respondent No.1 has approached the Joint Charity Commissioner by filing an application under Section 41A of the Act challenging the action of respondent No.3 to cancel the resolution without giving any opportunity to present respondent No.1. Therefore, under such circumstances, the Joint Charity Commissioner has rightly dealt with the aspects while deciding the application.

25. At this juncture, it is relevant herein to refer to the decision of

the Division Bench of this Court in the case of **Pavankumar Jain V/s. Priyavadan Ambalal Patel** reported in **2016 (1) GLR 242**, wherein similar arguments were canvassed by the learned counsel for the appellant as argued by Mr.Adesara, learned counsel and considering such arguments and facts, the Court has observed that under Section 41A of the Act, the Charity Commissioner has having wide discretion in exercise of power and it is not restricted to the direction with respect to and / or which will fall under Sections 32 to 41 of the Trust Act. That when it has been found by the Joint Charity Commissioner that resolution passed by the Trust was not in conformity with the provision of the Trust deed and when it has been found that by passing such a resolution the trustees have not acted as per the provision of the Trust Deed and the directions have been issued for proper administration and management of the Trust and directions have been issued directing the Trustees / Trust to Administer and Manage the Trust as per the provision of the Trust Deed. It was also observed by the Division Bench of this Court in paras 8 and 9 in the said decision which reads as under:-

> *"**8.** It cannot be disputed that the administration and management of the Trust can always be as per the provisions contained in the Trust Deed and in accordance with provisions of the Act and Rules. Therefore, considering the provision of Section 41 A of the Trust Act whenever it is found by the Charity Commissioner that the Trust and / or its Trustees are not managing the affairs of the Trust as per the provision contained in Trust Deed and / or as per the provisions of the Act and Rules, the Charity Commissioner can in exercise of powers under Section 41 A of the Act issue direction for appropriate administration and management of the Trust. However, it is the case of the appellants relying upon the decision of the Division Bench of this Court in the case of Syedna Mohamed Burhanuddin (supra) that even while exercising the powers under Section 41 A of the Trust Act, the Charity Commissioner can issue direction only in*

respect of the matter falling under Sections 32 to 41 of the Trust Act. However, considering the aforesaid decision of the Division Bench in detail and the observations made by the Division Bench with respect to question posed before the Division Bench in the case of Syedna Mohamed Burhanuddin (supra), we are of the opinion that as such there is no absolute proposition of law laid down by the Division Bench in the said decision that in exercise of powers conferred under Section 41 A of the Trust Act, the Charity Commissioner can issue the direction in respect of the matters falling under Sections 32 to 41 of the Trust Act only.

In the case before the Division Bench while challenging the certain directions issued by the Charity Commissioner, Gujarat State, under Section 41 A of the Trust Act, vires of Section 41 A of the Trust Act also were challenged on the ground that it violates Articles 25 and 26 of the Constitution of India. Before the Division Bench the petitioner challenged the constitutional validity of Section 41 A of the Trust Act mainly on the following grounds / contentions:-

(1). Section 41 A of the Bombay Trusts Act, 1950, in so far as it applies to trusts of religious denominations, is ultra vires 25 and 26 of the Constitution.

(2). Section 41 A is not ultra vires Arts. 25 and 26, the impugned directions are wholly beyond the purview of Section 41A and are in conflict with Arts. 25 and 26.

(3). Such directions cannot be issued without hearing the party affected thereby either on the ground of principles of Natural Justice if they are quasi- judicial or on the ground of principles of Fair Play if they are purely executive or administrative in character.

While dealing with the aforesaid contentions, the this Court also noted / considered sub-section (1) of Section 41 A of the Trust Act and firstly observed that sub-section (1) of Section 41 A of the Trust Act empowers the Charity Commissioner to issue direction only for the following purpose and no others. (A) Proper administration of a public trust (B) Proper accounting of its income (C) Due appropriation and application of the income to the objects and for the purpose of trust.

While dealing with the contention on behalf of the petitioners that Section 41 A of the Trust Act impinge upon any *fundamental right of a person or religious denomination and is suffers from constitutional infirmity, the Court observed that Section 41 A of the Trust Act is merely enabling and ancillary provision intended to make implementation and enforcement of provisions of Sections 32 to 41 more effective. It is to be noted that There was no controversy before the Division Bench that whether the powers of the Charity Commissioner to issue direction shall confine in respect of matters falling under Sections 32 to 41 only. It will be misreading of decision of the Division Bench if it is read like that. On the contrary, in the aforesaid decision, it is further observed that by enacting Section 41 A, the Legislature has not introduced any new principle which is not there elsewhere but has merely filled in the lacuna for effective implementation of the provision of Act.*

8.1. Even it could not have been the intention of the Legislature to restrict the powers of the Charity Commissioner while issuing the direction under Section 41 A of the Trust Act in respect of matters under Sections 32 to 41 of the Act only. If the legislature had intended to restrict the exercise of the Charity Commissioner's powers under Section 41A to only matters contained in Sections 32-41, there was absolutely no reason for the Legislature to have provided under Section 41A the categories of situations under which the powers can be exercised. The fact that Section 41 A enumerates the situations in which powers can be exercised i.e. to ensure that such Trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the Trust, itself shows that Section 41A is a provision that stands by itself and that directions can be given under Section 41A as long the same are given for the matters specified in the said provision i.e in Section 41A. If such a restrictive meaning as sought to be contended on behalf of the appellants is accepted, it will negate that part of the Section 41 A which confers power upon Charity Commissioner to issue direction from time to time, to ensure that such trust is properly administered, however subject to provision of the Trust Act. The presence of the words "Subject to other provisions of this Act, the Charity Commissioner may issue." can only mean that the Charity Commissioner cannot issue directions that may violate or run contrary to some other provision of the Act and can never mean that Section 41A is restricted to the matters contained in Sections 32-41 only.

8.2. As observed herein above, there was no controversy before the Division Bench in the aforesaid decision that whether the powers of the Charity Commissioner to issue direction under Section 41 A of the Trust Act, shall be restricted to matters in respect of Sections 32 to 41 only. Therefore, if the judgment of the Division Bench in the case of Syedna Mohamed Burhanuddin (supra) if read as a whole and its true prospective, as such it does not hold that Section 41 A is restricted to Sections 32 to 41 only. As such, in the aforesaid decision, the Division Bench has not restricted the powers under Section 41 A of the Trust Act to the matters contained in Sections 32 to 41 of the Trust Act only. As per the catena of decision of the Hon'ble Supreme Court, more particularly in the case of Zee Telefilms Limited v. Union of India reported in AIR 2005 SC 2677 ((para 275-278)); in the case of Natural Resources Allocation, In Re Special Reference No. 1 of 2012, reported in (2012) 10 SCC 1 (para 73) and in the case of Mehboob Dawood Shaikh v. State of Maharashtra reported in (2004) 2 SCC 362 (para 12), a judgment is to be read as a whole and that it is not a precedent for a question that was not before the Court.

Under the circumstances and for the reasons stated above, we are of the opinion that the Division Bench in the case of Syedna Mohamed Burhanuddin (supra) does not hold that powers conferred under Section 41 A of the Trust Act to issue direction by the Charity Commissioner is restricted to Sections 32 to 41 of the Trust Act only.

9. *On the contrary, in the case of Navsari Taluka Halpati Shikshan Prachar Sangh (supra) after considering the aforesaid decision of the Division Bench in the case of Syedna Mohamed Burhanuddin (supra), more particularly, the observations made in para 41 and 42 in decision of Syedna Mohamed Burhanuddin (supra), it is held that the Charity Commissioner can exercise the powers under Section 41 A of the Act in connection with the matters falling under Act for proper Administration of the Trust and are not restricted to the matters the falling under Sections 32 to 41 of the Act only. It is further observed and held by the Division Bench in the said decision the power of the Charity Commissioner to issue directions to ensure that the Trust is properly administered is by itself very nature a wide power. It is further observed that Administration of Trust would mean administration by a body which under the Trust Deed is required to be administered the same. It is further observed that in absence of proper elected body as required* *under the Trust Deed, a proper Administration of the Trust cannot be ensured. It is further observed that the Administration of the Trust would include various aspects, which would fall under the provisions of the Act and in absence of a properly constituted administrative body, the affairs of the Trust can hardly be conducted in furtherance of its objects. Thereafter, it is held that the direction to hold election of the trustee in consonance with the terms of the Trust Deed would clearly fall within the ambit of Section 41-A of the Act. It is required to be noted that after the aforesaid decision of the Division Bench in the case of Navsari Taluka Halpati Shikshan Prachar Sangh (supra), in the following decisions, the learned Single Judges of this Court have categorically observed and held that in exercise of powers under Section 41 A of the Act, the Charity Commissioner can issue direction for better administration of trust.*

(a) Acharyashree M. R. B. Mandir Trust v. C. R. Chandulal, 1997 (1) GLH 16 (Single Judge) (para 5, 8, 11, 12 and 13)

(b). Devkrushnadasji Guru Dharmadasji v. State of Gujarat, 2008 (1) GLH 427 (Single Judge) (para 13-16, 18-24)

(c). Balvantbhai Jinabhai Dhami v. Shantilal Kantibhai Ratanpara, SCA No. 9819 of 2009 and other cognate matters (Single Judge) (para 18.1, 18.2, 23, 23.1, 29-31)

(d). Ratilal Hansraj Gajjar v. Kamleshbhai Narsibhai Kharechha, 2011 (0) GLHEL-HC 224834 (Single Judge) (pg. 9-11)

(e). Shree Laxminarayan Dev Temple Board v. Jasubhai Bhailalbhai Patel, SCA no. 4069 of 2012 (Single Judge) (para 14-15)

(f). Gopinath Dev Mandir Trust v. State of Gujarat, SCA No. 11706 of 2012 (pg. 31-35). It may be noted that this judgment has been confirmed by the Division Bench in LPA No. 479 of 2013 (para 9-11).”

26. In the case of ***Pavankumar Jain*** (supra), this Court has observed that restricted meaning as canvassed on behalf of the appellant that in exercise of powers under Section 41 A of the Trust

Act, the Charity Commissioner can issue the directions only in respect of the matters under Sections 32 to 41 of the Act is not tenable in the eyes of law. The Legislature has never intended to confer such narrow powers to the Charity Commissioner. The Charity Commissioner can issue the directions in exercise of powers under Section 41 A of the Act with respect to (A) Proper administration of a public trust (B) Proper accounting of its income (C) Due appropriation and application of the income to the objects and for the purpose of trust however, subject to provisions of the Act and Rules how even as observed in the case of Syedna Mohamed Burhanuddin (supra) and other decisions, while issuing direction under Section 41 A of the Act Charity Commissioner has no adjudicatory powers and cannot decide lis between the parties. Therefore, subject to the aforesaid rider, for administration of the Trust, the Charity Commissioner can issue the directions to the Trust / Trust Deed and can issue the directions to them to act as per the scheme of the Trust or provision of the Trust Deed and / or Trust Act. The said contention was negatived by the Division Bench of this Court in the above referred decision.

27. It is profitable to refer to one another decision of this Court in the case of ***Dhansukhbhai Laalubhai Patel Vs. Nitinbhai Gunvantbhai Patel*** rendered in Special Civil Application No.18696 of 2015 and allied petitions dated 06.04.2018. The Court has occasion dealt with section of the Act more particularly the provisions of Section 41A of the Act. The Court has observed in paras 11 and 12 as under:-

> *11. So far as the merits of the petitions are concerned, it cannot be gainsaid that the Charity Commissioner has powers under Section 41A of the said Act to issue directions,*

subject to the provisions of the said Act to any trustee of the public trust or any person connected therewith to ensure that such trust is property administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust. As observed by the Division Bench of this Court in the case of Syedna Mohamed Burhanuddin versus Charity Commissioner reported in (1992) 1 GLH 331, Section 41-A of the Trust Act is enabling provision intended to make implementation and enforcement of the provisions of Section 32 to 41 more effective. Of course, in case of Pavankumar Jain and Others Vs. Priyavadan Ambalal Patel and others (supra), relied upon by the Mr. Thakore, it is observed inter alia that powers of Charity Commissioner under Section 41-A are not restricted to the matters contained in Section 32 to 41, and that the words 'subject to other provisions of this Act' contained in Section 41-A would mean that the Charity Commissioner cannot issue directions that may violate or run contrary to the other provisions of the Act.

12. In the instant cases, the Joint Charity Commissioner has rightly considered the scope and powers of Section 41-A of the said Act and rejected the Judicial Misc. Applications filed by the applicants holding inter alia that the prayers of declaration and permanent injunction in respect of the lands in question, which were adjudicating in nature could not be granted under Section 41-A and that the injunction of permanent nature as prayed for also could not be issued under Section 41-A of the said Act. Though, it was sought to be submitted by the learned Senior Advocate Mr. Thakore that the lease deed dated 09.06.2010 executed by the trustees in favour of the respondent Rameshbhai Sakaria was in contravention of Section 36 of the Act and illegal, the said submission does not deserve any consideration at this stage when the registration of the trust itself has been cancelled, and the alleged trustees are no more the trustees in the said trust. Even otherwise, the petitions involving highly disputed questions of facts and that too at the instance of the petitioners whose own locus standi is doubtful, do not deserve any further consideration and deserve to be dismissed.”

28. Though the present petitioners are aware with the facts of on going project since 2016 and they were the parties to the resolution

passed by respondent No.3, however, they have chosen to remain silent and after almost two years, they have preferred these petitions with a view to frustrate the object and purpose of the Jambudweep Bahubali Project and caused obstacle in the project as the majority of the trustees have agreed to go ahead with the project and more particularly when the expenditure bear by respondent No.1 and the payment of Rs.56,00,000/- Lakh and odd amount was already paid by respondent No.1. Therefore, there is no question that respondent No.3 against whom, the petitioners raised the complaint is completely with an ill-intention and ill-motive and there is no illegality on the part of respondent No.3 as it was noticed by the Joint Charity Commissioner. Thus, it is clear that the present petitioners are in any how wanted to stale the project initiated by respondent No.1, but in fact, respondent No.3 is the beneficiary of the project and whatever donation and income incurred from the said project will be given to respondent No.3. Under these circumstances, the Joint Charity Commissioner has rightly passed the impugned order under Section 41A of the Act. After considering the above referred facts and on perusal of the record, I am prima facie satisfied that there is no any illegality and perversity in the order passed by the Joint Charity Commissioner nor the order is without jurisdiction as it was observed by the Division Bench of this Court in the aforestated decision that the power under Section 41A of the Act is not restricted or it cannot be led in consonance with the application and the prayer made therein is required to be considered. Therefore, in my opinion, the Joint Charity Commissioner has passed the impugned order in consonance with the provision of Section 41A of the Act and there is no any illegality and infirmity in the order.

29. In the result, the petitions stand dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated forthwith. There shall be no order as to costs. Pending civil applications shall stand dismissed in view of the order passed in the main petitions.

(HEMANT M. PRACHCHHAK,J)

FURTHER ORDER

Mr.J. A. Adesara, learned counsel for the petitioners submits that this order be stayed for a period of four weeks to enable the petitioners to avail appropriate opportunity against which the otherside has raised an objection. The request is hereby turned down.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL