

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4206 of 2024**

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 4206 of 2024**

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VIJAYKUMAR DAYARAMDAS MAHANT

Versus

BACHUBHAI CHHOTUBHAI PATEL & ORS.

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Appearance:

MR. MEHUL SURESH SHAH, SENIOR ADVOCATE WITH MR ARPIT A
KAPADIA(3974) for the Appellant(s) No. 1

MR. PERCY KAVINA, SENIOR ADVOCATE WITH BHAGIRATH N PATEL(9016)
for the Defendant(s) No. 1,2,3,4,5

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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 20/01/2025

ORAL ORDER

ORDER IN FIRST APPEAL:

[1] The present appeal is filed at the instance of the original
opponent No.3 – the heir and legal representative of erstwhile
deceased – Mahant against the judgment and order dated 29.11.2024
passed by the learned 2nd Additional District Judge, Navsari in Misc.
Civil (Trust) Application No.56 of 2017 under Section 47(4) of the
Gujarat Public Trusts Act, 1950 (hereinafter referred to as “the Act,
1950”).

[2] By the said impugned judgment and order, the learned

District Judge has allowed the application preferred by the present respondent Nos.1 to 5 – original applicants who claim to be appointed as new trustees, pursuant to the Resolution dated 26.1.2016 passed by the Gram Sabha.

[3] Learned senior advocate Mr. Percy Kavina has appeared with Mr. Bhagirath N. Patel, learned advocate on record for respondent Nos.1 to 5 and has objected to the maintainability of the present appeal preferred at the instance of the appellant, mainly on the ground of his *locus standi* to object the order of appointment of respondent Nos.1 to 5 as new trustees. Learned senior advocate appearing for respondent Nos.1 to 5 has, at the outset, pointed out that the present proceedings relates to over three decades litigation, all the erstwhile trustees have expired and the trust survived without any trustees. It is in these peculiar facts that the general body or collection of the beneficiaries who are the local villagers, had unanimously nominated the present respondents to be the new trustees of Narsinh Mandir Trust.

[3.1] At the outset, learned senior advocate had attempted to demonstrate the malafides of the appellant and the skillful way of prolonging the matter. By referring to the events, it was pointed out that the present appellant is also an appellant in First Appeal No.77 of

1979. In the said appeal, the appellants have taken the stand that Narsinh Mandir and all its lands were the private property of his late father, so called Mahant Dayaramdas and on his death, the appellant had succeeded to such properties being his heir and legal representative. The said First Appeal was not proceeded and was ultimately dismissed for default by order dated 02.06.2016 passed by this Court. It was restored and thereafter, it was again dismissed for default on 29.06.2017 and thereafter, 3rd time it was restored on 22.02.2023. It was further pointed out that the appellant, at the stage of restoration, had joined the present respondent Nos.1 to 5 by contending that they are newly appointed trustees of the trust and are therefore necessary and proper parties to be heard for the purpose of restoration of First Appeal. The present respondent Nos.1 to 5 were joined as opponents in such application seeking restoration. However, once the appeal was restored, the very appellant chose not to join the respondents – new trustees as party to the aforesaid proceedings. The respondents were therefore constrained to apply independently by moving appropriate application for joining party in the pending First Appeal No.77 of 1979.

[3.2] By referring to the aforesaid proceedings, learned senior advocate had submitted that the aforesaid application for joining

party being CA No.1 of 2024 filed in First Appeal No.77 of 1979 with CA (for modification / deletion of condition) No.1 of 2023 in First Appeal No.77 of 1979 was heard by this Court and by order dated 22.10.2024, noticing the fact that the substantial proceedings in the nature of application under Section 47 of "the Act, 1950" was pending consideration before the learned District Judge, had directed to expeditiously decide Civil Misc. Application No.56 of 2017 preferred by the present respondents. He had therefore submitted that pursuant to the aforesaid directions, learned District Judge, upon appreciation of the submissions made by the respective parties, has permitted the present respondent Nos.1 to 5 to be appointed as new trustees of the Trust. Now, that the said order is passed, the appellant is asking for stay of the same, even though, no right, title or interest has been derived by the appellant in light of the judgment pronounced by the learned District Judge, which is still pending consideration in the main Appeal which is First Appeal No.77 of 1979. He has therefore submitted that the stand of the appellant is tainted by malafides and the filing of the present appeal is nothing but an abuse of process of the Court.

[3.3] Learned senior advocate had further submitted that the appellant is neither a trustee or can be termed as an aggrieved person

or any beneficiary of the trust. In fact, by order of Division Bench passed in First Appeal No.803 of 1971 and First Appeal No.222 of 1972, this Court has already held that the Narsinh Mandir is a public trust and that the temple and most of the lands are public trust properties. The aforesaid declaration by the competent Court has attained finality and the only reason to send back the matter to the Trial Court was to decide the limited issue of ownership of few of the properties. Even after remand, as observed by the learned District Judge, in para-6, it is borne out that none of the heirs of the original Mahant including the present appellant have even filed their appearance or participated in the proceedings. Even if the appellant has taken his stand in the main First Appeal that Narsinh Mandir and all its lands are private properties of his father and he has an interest in the property by way of succession, so far present proceedings are concerned, he neither being a beneficiary nor a person who is within the ambit of the trust or its charitable activities, rather his interest is antithetical to the trust. Learned senior advocate had therefore submitted that the present appellant does not belong to the ecosystem of the charitable trust proceedings and he has no *locus standi* as he has no legal grievance which can be permitted to be ventilated in the present appeal.

[3.4] Learned senior advocate had strongly objected to grant of stay against the impugned order pending the appeal by contending that entertaining the appeal at the instance of the appellant would be a gross abuse of process of law as it would be at the hands of a person who is complete stranger to the trust and bring about a hiatus in the trust management including safeguarding its own properties and managing the same. In such a situation, there will be serious prejudice to the trust, the temple and its properties and to the thousands of devotees who have reposed faith in the deity. It is not the case of the appellant that he should be the trustee; rather his aim to prolong the proceedings by objecting to respondent Nos.1 to 5 being permitted to be appointed as new trustees as in absence of any trustee of the Trust, there would be no trustee to take care the interest of the Trust and its properties which would indirectly amount to the appellant having freehand to continue with selling the properties which otherwise belong to the Trust.

[4] Per contra, learned senior advocate Mr. Mehul Suresh Shah appearing for the appellant has objected to the aforesaid submissions of the learned senior advocate for respondent Nos.1 to 5. At the outset, learned senior advocate for the appellant has submitted that at the admission stage of hearing of the appeal and

hearing of interim application for stay, the Court is called upon to examine as to whether there exists a prima-facie case; whether it involves question of law or facts which requires consideration; whether non grant of stay would create an irreversible situation which cannot be compensated in terms of money and to find out the balance of convenience.

[4.1] Learned senior advocate had invited attention of this Court to Section 47 of "the Act, 1950" and had submitted that the District Court is empowered to appoint new trustee or trustees on an application made by any person interested in public trust or by the Charity Commissioner in various eventuality including when the erstwhile trustee disclaims or dies. It was further submitted that sub-section (2) of Section 47 of "the Act, 1950" carves out an explanation not to entertain an application if a new trustee has been appointed during the period prescribed in accordance with instrument scheme, order or decree of the Court or custom or usage of the term. It was further submitted that as per sub-section (3) of Section 47, the Court is under an obligation to make an inquiry. Such inquiry is contemplated to examine whether the Charity Commissioner or any other person can be appointed as the trustee to fill up the vacancy. It was further submitted that in appointing the trustee under sub-

section (3) of Section 47, the Court is further required to take into consideration the wishes of the author of the trust; wishes of the person, if any, empowered to appoint a new trustee; the question whether the appointment will promote or impede the execution of the trust; interest of the public or the section of the public who have interest in the trust and also to examine the custom and usage of the trust.

[4.2] By referring to the scope of the aforesaid provisions, learned senior advocate had submitted that no such inquiry is undertaken by the learned District Judge before approving the appointment of present respondent Nos.1 to 5 as new trustees of the Trust. According to learned senior advocate, as per the provisions of appointment, as contemplated under the scheme, i.e. the appointment of the trustee at the instance of the Charity Commissioner is fulfilled, the learned District Judge ought not to have entertained such application without any verification of the genuineness of the alleged resolution of the so-called Gram Sabha of local village people. It was pointed out that the written statements have been filed by the Asst. Charity Commissioner as well as Charity Commissioner raising serious objection against the appointment of the present respondent Nos.1 to 5 as Trustees. In such circumstances,

learned District Judge was expected to comply with the mandatory provisions of issuance of 'Public Notice' for inviting objections from the public at large including the beneficiaries of the trust who would have otherwise pointed out the correct facts.

[4.3] Learned senior advocate had further pointed out that what is brought on record in the name of the so-called resolution of the Gram Sabha is a mere xerox copy. The original document is not placed on record for appreciation. It was therefore submitted that in absence of any witness being examined, such a document could not have been read as an evidence in absence of such document being proved. It was further pointed out that no other witnesses have been examined by the original applicant and the learned District Judge has believed the averments made in the application to be a gospel truth to arrive at such a conclusion. According to the learned senior advocate, as per the information received by the appellant, out of five persons nominated to be appointed as trustees by the so-called Gram Sabha, three of such original applicants are residing abroad. By referring to aforesaid circumstances, learned senior advocate had pointed out that there is a complete lack of any inquiry being conducted by the learned District Judge before passing the impugned order of appointing the present respondent Nos.1 to 5 as new trustees of the Trust. While

referring to the operative part of the impugned order, learned senior advocate had submitted that respondent Nos.1 to 5 have been approved to be new trustees of the Trust and therefore, it is not an order of appointment of the present respondent Nos.1 to 5 as new trustees as contemplated under Section 47 of "the Act, 1950".

[4.4] On the issue of maintainability of the appeal at the instance of the present appellant, learned senior advocate had submitted that in past, the respondents had raised such objection of *locus standi* in the aforesaid proceedings and the matter had travelled up to the High Court by way of Writ Petition. This Court vide order dated 17.03.2020, upon hearing the learned advocates for the respective parties and considering the material available on record, had allowed the petition and thereby, directing the present appellant to be joined as party respondent in the original proceedings being Civil Misc. (Trust) Application No.56 of 2017. It was therefore submitted that the present appellants being party to the original proceedings are proper party to agitate their grievance against the manner in which no inquiry has been conducted by the learned District Judge before approving present respondent Nos.1 to 5 to be the new trustees of the Trust.

[4.5] While referring to the provisions of the law as prescribed

under Section 47 of “the Act, 1950”, learned senior advocate had pointed out that the legislature did not intend to limit the filing of the appeal at the instance of the aggrieved person only.

[4.6] Learned senior advocate had relied upon the following decisions to substantiate his submissions.

[4.7] Reliance was placed on the decision of the Hon’ble Supreme Court in the case of **Life Insurance Corporation of India and Another Vs. Ram Pal Singh Bisen** reported in **(2010) 4 SCC 491**, wherein the Hon’ble Supreme Court after taking into consideration Section 61 to 65 as well as 67 and 73 of the Evidence Act, 1872, has held that mere filing and exhibiting of a document in Court does not amount to proof of its contents. The Court further held that the document not having been produced as required under the Evidence Act, cannot be relied upon by the Court. He had therefore submitted that in absence of any witness being examined to verify the contents of the documents, it cannot be accepted as evidence. Learned senior advocate had also relied upon the decision of this Court in the case of **Mehta Pradipkumar Masukhlal Vs. Mehta Panachand Thakarshi Jain Vidhyarthi Bhavan Trust**, reported in **1999 GUJHC 13582**, to contend that while undertaking inquiry under Section 47 of “the Act, 1950”, the learned District Judge was expected to consider the

scheme of the Act and not the interest of the person in the trust which he is claiming. It was a case where the person was nominated as trustee by one of the trustees but other trustees have not accepted the agenda. Learned senior advocate had therefore pointed out that once the objections were raised by the Asst. Charity Commissioner and the Charity Commissioner, in absence of any of the trustees being on record, the learned District Judge has committed material irregularity in exercising of his jurisdiction and such proceedings cannot be said to be a bonafide proceedings.

Lastly, learned senior advocate had placed reliance upon the judgment delivered by the Hon'ble Supreme Court in the case of **Pandit Vasudev Vyas (Dead) Thr. Lrs. Vs. Board of Mgmt., S.S.J.S. Peeth & Ors.,** reported in **AIR Online 2006 SC 570.**

[4.8] By referring to the aforesaid judgment, learned senior advocate had argued that the question as regards the appointment of the trustee is a matter of great importance considering the provisions of "the Act, 1950." The Charity Commissioner as well as Appellate Courts are under obligation to make all endeavors to give effect to the desire of the founding trustees. He had therefore submitted that the learned District Judge was expected to take into consideration the relevant clause incorporated in the scheme for the purpose of

determination of question as regards the appointment of the trustees before exploring the jurisdiction under Section 47 of “the Act, 1950”. In absence of any such exercise being undertaken by the learned District Judge, the passing of the order of approval to the nomination of respondent Nos.1 to 5 as new trustees is nothing but amount to usurping jurisdiction of the learned Charity Commissioner who was otherwise under the scheme conferred with the powers to appoint the trustee in absence of any trustee of the trust.

[4.9] As regards the submission made by learned senior advocate on the aspect of objecting stay to the impugned order, learned senior advocate had submitted that at least a *prima facie* case is made out as serious question of facts and law has been raised for consideration in the present appeal and appeal deserves admission. Learned senior advocate had further submitted that pursuant to the impugned order, notice has been issued by the learned Charity Commissioner fixing the hearing for the purpose of making appropriate entry in the PTR of the Trust. It was pointed out that all throughout no entry has been maintained in the PTR of the Trust and in absence of any stay against the impugned order, the Charity Commissioner may proceed to enter the name of respondent Nos.1 to 5 as trustees of the Trust, which would further manifest into mis-

management of the various trust properties at the instance of the present respondent Nos.1 to 5 who are otherwise actually not interested about the welfare of the trust.

[4.10] Learned senior advocate had also referred to the relevant observations of this Court as recorded in an order dated 22.10.2024 to contend that even this Court while considering the application of the respondents for joining party, had held that such status is required to be recognized as provided by the statutory provisions and it is only upon such recognition being conferred, relevant entries are required to be maintained in the PTR.

[4.11] Learned senior advocate had seriously objected to the contention raised by the learned senior advocate Mr. Kavina for the respondent Nos.1 to 5, that the attempt is to prolong the hearing of the main First Appeal of 1979. It was pointed out that in fact at every occasion, appellant has participated in the proceedings and has shown his readiness to proceed with the hearing of the present appeal with the main First Appeal of 1979, however, has urged to stay the impugned order.

[5] In rejoinder, learned senior advocate Mr. Kavina, appearing for respondent Nos.1 to 5 had seriously objected to the

submissions made by the learned advocate for the appellant and has contended that merely because this Court in writ petition had directed the present appellant to be joined as opponent in the proceedings before learned District Judge would not confer a right to file an appeal and cannot be treated as conclusive of issue of locus to file the appeal. Learned senior advocate had once again reiterated that any person who is interested to become a trustee and /or his intent is to prevent someone to be appointed as trustee can at the most be treated as aggrieved person. The appellant under the umbrella of dispute related to few of the properties of the trust and who at one stage denied the existence of the trust, cannot be permitted to apply for appeal as it would amount to abuse of process of Court. Ultimately, the desire of the local villagers who are the ultimately beneficiaries of the trust, is required to be respected and after waiting for so many years, the trust has been given new trustees. As regards the submissions made by the learned senior advocate about no name of the trustees having been entered in the PTR, learned senior advocate Mr. Kavina had pointed out that all throughout these years the matter was under litigation and it, because of the pendency of the appeal and the interim orders, had prevented the learned Charity Commissioner to examine the issue of appointment.

[5.1] While referring to the averments made in the restoration application, it was pointed out that the appellants are estopped from raising dispute of the present respondent Nos.1 to 5 being appointed as trustees as they have in fact clearly admitted in their application for restoration of the status of the present respondents to be trustees. It was further submitted that the Charity Commissioner is party to the original proceedings and the matter is subjudice before the learned District Judge since the year 2017. For the reasons best known, the learned Charity Commissioner, all throughout, has not taken any steps, as envisaged under the scheme. In such circumstances, no fault can be found with the approach of the learned District Judge in proceedings with the inquiry under Section 47 of the Act. It was further pointed out that even the present appellant did not object to executing the scheme, the present respondents being new trustees are known to the learned Charity Commissioner as well. Once again addressing on the issue of locus, learned senior advocate had submitted that the Court may be mindful of the facts that before considering the alleged irregularities as pointed out by senior advocate for the appellant, the Court may take into consideration the issue of locus. The learned senior advocate had placed reliance upon the Constitutional Bench judgment of the Hon'ble Supreme Court in the case of **Adi Pherozshah Gandhi Vs. H.M.Seervai, Advocate**

General of Maharashtra, Bombay reported in **(1970) 2 SCC 484** as well as of the Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.** reported in **(2012) 4 SCC 407**, wherein in the facts of the case, the Supreme Court refused to entertain the case of the applicant by holding that person cannot be treated as an aggrieved person. Learned senior advocate had therefore, submitted that as rightly held by the Hon'ble Supreme Court to acquire a legal right, there has to be a legal injury. It is only when the appellant is able to satisfy this Court that he suffers from a legal injury which gives him a *standi* to file an appeal, in absence thereof this Court may not entertain the appeal at his instance.

[6.] In light of the submissions made by learned advocate for the respective parties, the preliminary objection which falls for consideration is as to whether the applicant has any *locus standi* to maintain this appeal challenging the appointment of new trustees under section 47 of the Gujarat Public trust act?

[7.] At the outset, it would be appropriate to look into the legal principle relied upon by learned senior advocate In case of **Adi Pherozshah Gandhi v. H.M. Seervai [AIR 1971 SC 385]**. The Hon'ble Supreme Court expressed itself while dealing with the expression 'any

person aggrieved' used in Section 37 of the Advocates' Act, 1981. In that case, the petitioner - Adi Pheroazshah Gandhi was an advocate and was called upon by the Bar Council of State of Maharashtra to show cause in respect of alleged misconduct. The Disciplinary Committee of the State Bar Council was satisfied with the explanation tendered by the petitioner that he was not guilty of any professional misconduct, pursuant to which it dropped the proceedings. The Advocate General of State of Maharashtra felt aggrieved by the decision of the Disciplinary Committee of the State Bar Council and appealed before the Bar Council of India. It was in such context the Supreme Court held that the Advocate General could not be said to have grievance in a legal sense in respect of the order of the Bar Council of Maharashtra.

[8.] It is by now well settled that right to appeal is a statutory right and cannot be claimed as an inherent right by any person unless it is statutorily provided.

[9.] In case of **Shin-Etsu Chemical co. Ltd. v. M/s. Aksh Optifibre Ltd. and another** reported in **AIR 2005 Supreme Court 3766**, it was observed that it is well settled in law that an appeal is a creature of statute and a right to appeal inheres in no one.

[10.] The question therefore raised by respondents for

consideration is whether the appellant can be said to have derived *locus standi* to be treated as aggrieved person to confer the right to appeal. The term aggrieved person has been considered in various decisions by the Hon'ble Supreme Court.

[11.] In the case of **Bar Council of Maharashtra v. M.V. Dabhokar & ors. (1975) 2 SCC 702**, the Apex Court has observed as under:

“27. The words 'person aggrieved' are found in several statutes. The meaning of the words 'person aggrieved' will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words 'person aggrieved' correspond to the requirement of locus standi which arises in relation to judicial remedies.

28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved'. Again a person is

aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality.”

[12.] In light of the above settled legal position the term person aggrieved thus must be construed in the context in which the provisions of the statute under consideration have been made. Hence, in order to appreciate the scope of appeal provided under section 47, it would be appropriate to examine in light of the scheme of the Act of 1950, which mainly concerns to regulate the management and administration of public trust.

[13.] Before examining the issue it would be appropriate to examine the relevant provision to appreciate the controversy raised. section 47 of the Bombay Public Trust Act, 1950 thus provides as :

“47. Power of Court to appoint new trustee or trustees, as the case may be.

Any person interested in a public trust or the Charity Commissioner may apply to the Court for the appointment of a new trustee, when a trustee of

such trust-

(a) disclaims or dies;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or Deputy or Assistant Charity Commissioner or the office authorised by the State Government in this behalf;

(c) leaves India for the purposes of residing abroad;

(d) is declared an insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Court unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the trust; or

(h) in any of the cases mentioned in Chapter III is not available to administer the trust.

(2) No such application shall be entertained,-

1. unless the trustee who on account of any of the reasons mentioned in clauses (a) to (h) of sub-section (1) is not fit or available to administer the trust is the sole trustee or unless by the vacation of office by one or more trustees on account of any of the said reasons the minimum number of trustees required by the instrument, scheme, order or decree of the Court or usage or custom of the trust for the administration of the trust is reduced;

2. (i) until the expiration of a period of three months from the date on which the trustee is not so fit or available to administer the trust; and

(ii) if a new trustee has been appointed in the said office during the said period in accordance with the instrument, scheme, order or decree of the Court, or custom or usage of the trust.

(3) The Court after making an inquiry [may by order appoint] *[These words were substituted for the words 'may appoint' by Bombay 28 of 1953, Section 7 (1).]* the Charity Commissioner or any other person as the trustee to fill up the vacancy.

(4) In appointing the trustee under sub-section (3) the Court shall have regard-

1. to the wishes of the author of the trust;
2. to the wishes of the person, if any, empowered to appoint a new trustee;

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust;

(5) Where the Charity Commissioner is appointed a trustee, he shall be the sole trustee.

(6) The [order] of the Court under sub-section (3) shall be deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court.”

[14.] Thus, plain reading of the aforesaid provision clearly confers power upon the Court to appoint new trustees in case of the eventualities enumerated under sub section (1) of section 47. Further, any person interested in a Public Trust can apply to the Court to appoint new trustees.

[15.] The further reading of sub section (6) of the Act of 1950 which provides order passed under sub section (3) to be treated as decree and further provides remedy of appeal to the High Court. The provision does not confine the aforesaid remedy to any aggrieved person as it clarifies in other provisions of appeal under section 72 of the Act of 1950. Neither the order passed by the Court under section 47 is subject to challenge in appeal under section 72 (4) of the Act of 1950.

[16.] Looking to the scope of inquiry envisaged under sub section (4) of section 47 of the Act, the learned District Judge was expected while sitting in the proceedings under section 47 of Bombay Public Trust Act, 1950 to take care to safeguard interest of the trust as

such. Without undertaking enquiry in it's true perspective and proper evaluation of evidence, learned Court has proceeded to pass the impugned order. The learned District Judge was not expected to merely act on dotted lines of the alleged resolution of the Gram Sabha. The least as expected was to browse the contents of the application , the veracity of the resolution passed by the Gram Sabha and the names of such contenders. In fact the due regards to the scheme of the trust was equally important. The reading of Section 47(2) contemplates a hearing to be given to the parties and making such enquiry as may deem fit, then the court may appoint any person as trustee. Sub-clause (3) of section 47 contemplate precautionary measures to be taken for such exercise. Clause (a) deals with wishes of the authors of that trust; clause (b) speaks of wishes of the persons, if any, empowered to appoint new trust; clause (c) contemplate to the question, whether appointment will promote or impede the execution of the trust; clause (d), to the interest of the public or section of public, who have interest in the trust; clause (e), to the custom and usage of the trust.

[17.] In the case of **National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others** reported in **AIR 2002 Supreme Court 3350**, it was observed that the right of appeal is not an inherent

right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. It was further observed that the view that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no court or tribunal can confer such right, it being one of limitation or extension of jurisdiction.

[18.] In case of **Superintending Engineer and others v. B. Subba Reddy** reported in **AIR 1999 Supreme Court 1747**, it was observed that appeal is a substantive right. It is a creation of statute. Right to appeal does not exist unless it is specifically conferred.]

[19.] In case of **Gujarat Agro Industries Co. Ltd v. Municipal Corporation of the City of Ahmedabad and others** reported in **(1999) 4 Supreme Court Cases 468**, it was observed that :

“.....Right of appeal which is statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil

nature unless the suit is barred by statute. However, in regard to an appeal, position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well.”

[20.] By applying aforesaid legal principles, in the present case, looking to the aforesaid legal provisions it cannot be stated that the decision rendered by the District Court is materially adverse to the appellant. As the appellant is not deprived of any vested rights or anything which was legally due to the appellant. None of the legal rights of the appellant are violated or breached.

[21.] However, this court cannot ignore the fact that the erstwhile Mahant of the Public Trust and also the deceased father of the applicant, at relevant time had pursued proceedings claiming the trust to be his private deity and the properties of the trust to be his private properties. Though the issue of existence of public trust has attended finality in view of judgment and order of District judge being upheld by the Division Bench of this court, however, the issue of trust properties after being remanded and decided against the applicant are pending consideration in appeal viz. First Appeal no. 77 of 1979. The respondent proposed trustees claiming to be trustees having

interest in trust, have applied to be joined as parties to the aforesaid proceedings. Admittedly, the applicant was though initially objected to be joined as party to the original proceedings, however as noted in the order dated 17.03.2020, passed by this Court in special civil application no. 13591 of 2018 , was joined as party respondent. Upon being joined as party to the proceedings, the applicant has tendered written objections of the respondents proposed trustees to be joined as trustees. Thus, the appellant as party to the proceedings has raised contentious issues about veracity of the trustees as well as the resolution of Gram Sabha nominating the respondents as new trustees. The same being not considered in proper perspective, the appellant in my opinion has earned the status of aggrieved person. As noted earlier the right of appeal inheres from statutory provision itself and the expressive language of the provision of section 47 does not restrict the right of appeal to aggrieved person as it appears under section 72 of the Act of 1950, the appellant once joined as part to proceedings and being heard has right to appeal if the objections raised by him has not been dealt with properly. Since a question of law has been raised for consideration, the present appeal at the instance of the appellant is held maintainable. The preliminary objection raised by learned Senior Advocate for the respondents is therefore rejected. This court finds that the nature of enquiry contemplated under

section 47, confers jurisdiction of *parens patriae* upon the Court and thus any objections received for appointing trustees of the trust should stand scrutiny in terms and are therefore to be examined properly. Any failure in this regard confers the High Court to invoke its appellate jurisdiction. Resultantly, the Appeal is **admitted**.

ORDER IN CIVIL APPLICATION (FOR STAY) NO. 1 of 2024:

Issue Rule returnable on **3rd February, 2025**. For the reasons recorded, prima facie this court finds that the Court has failed to undertake enquiry in terms of sub section (4) of section 47 of the Act. Such lack of proper enquiry goes to the root of the matter vis-a- vis respondents to be permitted to be joined as new trustees of trust. Since, the appeal is admitted, by ad interim relief there shall be stay against the impugned judgment and order of the Court till the next date of hearing. In the meanwhile, the learned Assistant Charity Commissioner, Navsari is directed to submit a report as regards the veracity of the resolution of Gram Sabha dated 26.1.2016 as well as the credentials of the proposed trustees on the next date of hearing.

(NISHA M. THAKORE,J)

LALJI/ SUYASH SRIVASTAVA