

Bombay High Court

Vijay K. Mehta vs Charu K. Mehta on 11 July, 2008

Bench: J.P. Devadhar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3849 OF 2008

1. Vijay K. Mehta,

2. Dr.Amritlal C. Shah

A-791, Bandra Reclamation,  
Bandra (W), Mumbai-400 050. ..Petitioners.

V/s.

1. Charu K. Mehta

2. Rekha H. Sheth

3.

4.

Niket V.Mehta

Sushila V. Mehta

A-791, Bandra Reclamation,  
Bandra (W), Mumbai-400 050.

5. Mithun H. Mehta  
311-312 Chadda Crescent,  
Section-17, Vashi, Navi

Mumbai-400 705.

6. Jatin V. Mehta  
C-203, Nirman Vihar,  
Rajmata Jijabai Road,  
Andheri (W), Mumbai-400 093.

7. Sandeep Rathi,  
61, Alaknanda Road No.10,  
J.V.P.D. Scheme, Juhu,  
Mumbai - 400 049.

8. Sanjay Bhutada,

C-6, Gautam Towers, Gokhale  
Road, Naupada, Thane (W).

9. Kishor K.Mehta,  
Usha Kiran, 18th Floor,  
15 Carmichael Road,  
Mumbai - 400 026.

10. Rajiv K. Mehta,  
Usha Kiran, 23rd Floor,

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15 Carmichael Road,  
Mumbai - 400 026.

11. Prashant K. Mehta,  
Usha Kiran, 18th Floor,

15 Carmichael Road,  
Mumbai - 400 026.

12. Prabodh K. Mehta

13. Rashmi K. Mehta

14. Chetan P. Mehta

15. Nanik Rupani

16. Vijay Choraria

A-791, Bandra Reclamation,  
Bandra (W), Mumbai-400 050.

17. The Joint Charity Commissioner,  
Greater Mumbai Region, Mumbai. ..Respondents.

AND

WRIT PETITION NO.3850 OF 2008

1. Prabodh Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical

Trust, Public Trust, Registered  
under the provisions of the

Bombay. Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.  
And residing at 23, Usha Kiran,

11th floor, 15 Carmichael Road,  
Mumbai - 400 026.

2. Chetan Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical  
Trust, Public Trust, Registered

under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.  
And residing at 23, Usha Kiran,  
11th floor, 15 Carmichael Road,  
Mumbai - 400 026.

3. Nanik Rupani, Trustee,

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Lilavati Kirtilal Mehta Medical  
Trust, Public Trust, Registered  
under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,

Bandra Reclamation, Bandra (W),  
Mumbai 400 050.  
And residing at 5th Floor,

Jehangir Towers, Setal Vad  
Lane, Opp. Jeevan Jyot Bldg.  
Off. Napean Sea Road,  
Mumbai - 400 026.

..Petitioners.

V/s.

1. The State of Maharashtra  
through the office of the  
Government Pleader, High

Court, Bombay.

2. The Joint Charity Commissioner,

Greater Mumbai Region, Mumbai  
having its office at Dharmaday  
Aayakta Bhavan, 83, Annie  
Besant Road, Worli,

Mumbai - 400 018.

3. Lilavati Kirtilal Mehta Medical  
Trust, a public trust,  
Registered under the provisions  
of the Bombay Public Trust Act,

1950. And having its office at  
A-791, Bandra Reclamation,

Bandra (W), Mumbai 400 050.

4. Mrs. Charuben Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical  
Trust, Public Trust, Registered

under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.  
And residing at 15, Usha Kiran,

18th floor, 15 Carmichael Road,  
Mumbai - 400 026.

5. Mr.Kishor Mehta, 15, Usha Kiran,  
18th floor, Carmichael Road,  
Mumbai - 400 026.
6. Mr.Rajiv Mehta, Usha Kiran,  
23rd floor, 15 Carmichael Road,  
Mumbai - 400 026.

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7. Mr.Prashant Mehta, 15, Usha  
Kiran, 18th floor, 15 Carmichael  
Road, Mumbai - 400 026.
8. Mrs. Rekhaben H. Sheth , Trustee,  
Lilavati Kirtilal Mehta Medical  
Trust, Public Trust, Registered

under the provisions of the

Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.

And residing at Keshwalla Co-  
Op. Hsg. Soc., Opp. Sripat  
Nagar, Garden View, 13th Floor,  
Napeansea Road, Mumbai-400 006.

9. Mr.Sandeep Rathi, 61,  
Alakhnanda Gulmohar Cross  
Road No.10, JVPD Scheme,

Juhu, Mumbai - 400 049.

10. Mrs. Sushila Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical

Trust, Public Trust, Registered  
under the provisions of the  
Bombay. Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.

And residing at 91, Maker Tower  
"L" GT Somani Marg, Cuffe

Parade, Mumbai - 400 050.

11. Mr.Mithun H. Mehta, 311/312,  
Chaddha Crescent, Sector 17,  
Vashi, Navi Mumbai-400 705.

12. Mr.Jatin Mehta, C-203,

Nariman Vihar, Rajmata  
Jijabai Road, Pump House,  
Andheri(E), Mumbai-400 093.

13. Dr.Amrutlal C. Shah, Trustee,  
Lilavati Kirtilal Mehta Medical  
Trust, Public Trust, Registered  
under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),  
Mumbai 400 050.  
And residing at C/1/2 Lloyds  
Gardens, Appasahen Marathe

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Marg,Prabhadevi, Mumbai-400 025.

14. Mr.Sanjay Bhutada, C-6, Gautam  
Towers, Gokhale Road, Naupada,  
Thane (W) - 400 602.

15. Mr.Niket Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical

Trust, Public Trust, Registered  
under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),

Mumbai 400 050.  
And residing at 12th Floor,  
Lilavati Hospital & Research  
Centre, Bandra Reclamation,  
Bandra (W), Mumbai-400 050.

16. Mr. Vijay K. Mehta, Managing  
Trustee, Lilavati Kirtilal

Mehta Medical Trust, Public Trust,  
Registered under the provisions  
of the Bombay Public Trust Act,  
1950. And having its office at

A-791, Bandra Reclamation,  
Bandra (W), Mumbai 400 050.  
And residing at 91, Maker  
Tower "L", Cuffee Parade,  
Mumbai - 400 005.

17. Rashmi Mehta, Trustee,  
Lilavati Kirtilal Mehta Medical

Trust, Public Trust, Registered  
under the provisions of the  
Bombay Public Trust Act, 1950.  
And having its office at A-791,  
Bandra Reclamation, Bandra (W),

Mumbai 400 050.  
And residing at 24, Usha Kiran,  
12th floor, 15 Carmichael Road,  
Mumbai - 400 026.

18. Vijay Choraria, Trustee,



Ms.Rajni Iyer, senior Advocate with Mr.Nooruddin  
Dhilla & Mr.Shane Sapeco i/by M/s.Hariani & Co. for

respondent No.6 in W.P. No.3849/08 & for respondent  
No.10 in W.P. No.3850/08.

Mr.Mahesh Jethmalani with Mr.Shane Sapeco i/by M/s.

Hariani & Co. for respondent No.5 in W.P.  
No.3849/08 & for respondent No.9 in W.P.  
No.3850/08.

Mr.S.U.Kamdar with S.C. Naidu, Siddhant Ingale and  
Saurab Kulkarni i/b. C.R. Naidu & Co. for

respondent Nos.17 & 18 in W.P.3850/08.

Mr.J.P. Sen with Mr.Pranav Badheka i/by M/s.  
Hariani & Co. for respondent No.7 in W.P.  
No.3849/08 & for respondent No.11 in W.P. No.11 in  
W.P. No.3850/08.

Mr.Subhash Jha with Ms.Renu Singh & Ms.Rejashri Rane  
i/by Dinesh Tiwari for respondent No.15 in W.P.  
No.3849/08 & for respondent No.3 in W.P.  
No.3850/08.

Mr.Sameer Patil, AGP for respondent Nos.1 and 2 in

W.P. No.3850 of 2008.

CORAM : J.P. DEVADHAR, J.

DATED : 11TH JULY, 2008.

JUDGMENT :

1. These two writ petitions are filed by the trustees of Lilavati Kirtilal Mehta Medical Trust ('Trust' for short), which is duly registered under the Bombay Public Trust Act, 1950 ('B.P.T. Act for short). Since both the petitions challenge the decision of the Joint Charity Commissioner ('Jt.

C.C.' for short) dated 3-6-2008, both the petitions are heard together finally at the stage of admission and disposed of by this common judgment.

2. The impugned order dated 3-6-2008 is an interim order passed by the Jt. C.C. in an application

filed by a permanent trustee of the Trust under Section 41-D of the B.P.T. Act. The

said application was filed seeking removal of nine

trustees of the Trust inter alia on the ground that

the said trustees during the period from 2001 to

2006 had siphoned off the Trust funds running into

several crores of rupees and further they have

committed act of malfeasance, misfeasance, breach of Trust, gross negligence etc. which are detrimental to the interest of the Trust. After considering the allegations made in the complaint as also the reply filed by the said trustees, the Jt. C.C. on being prima facie satisfied, framed charges against the said nine trustees and by the impugned interim order directed that pending final decision on the application, the trustees shall not take any policy decision and shall not enter into any financial transaction with regard to the Trust without the approval of the two Administrators, appointed by the Apex Court / this Court in an earlier proceedings for administering the day-to-day running of the Hospital & Research Institute.

3. Writ Petition No.3849 of 2008 is filed by two trustees against whom various charges are framed. These trustees challenge the interim order of Jt. C.C. dated 3-6-2008 mainly on the ground that the

said order has been passed without giving reasonable opportunity of hearing to the petitioners. Writ Petition No.3850 of 2008 is filed by three trustees, who are neither parties to the proceedings before the Jt. C.C. nor there are any allegations made against them. Their grievance is that in gross violation of the principles of natural justice, the Jt. C.C. has restrained them from functioning as trustees.

4. The Trust was brought into existence under a Trust Deed dated 5-7-1978 settled by Shri Kirtilal Manilal Mehta (now deceased). The Trust runs a super-speciality hospital known as 'Lilavati Hospital & Research Centre' at Bandra, Mumbai. It appears that the trustees while running a super-speciality hospital, have also acquired super-speciality in litigating amongst themselves as is evident from large number of cases filed in various Courts which are pending before the Apex Court, this Court, Bombay City Civil & Sessions Court and the Court of Additional Chief Metropolitan Magistrate, Mumbai. The inter-se dispute amongst the trustees is so bitter that the Apex Court in one of the proceedings considered it proper, in public interest, to appoint two Administrators to look after the day to day functioning of the Hospital run by the Trust.

The bitter fight amongst the trustees of the Trust which commenced in the year 2005-2006 is apparently to gain control over the cash rich hospital. It may be noted that in the year 1997-98 the Trust income was of Rs.23.47 crores and expenditure was Rs.28.83 crores, whereas, in the year 2006-07 the Trust income was Rs.196.17 crores and expenditure was Rs.168.92 crores. It may also be noted that the Joint C.C. after framing the charges against the 9 trustees, declined to hand over the management of the Trust to Mrs.Charu Mehta

- the applicant, because in the past she was also found to have indulged in activities which are detrimental to the interest of the Trust. It is unfortunate that these trustees, instead of establishing themselves to be worthy trustees of a Public Charitable Trust which was established by the Settlor with a noble cause, are bitterly fighting to gain control over the renowned super-speciality Hospital.

5. The dispute in the present case commenced on 10-11-2006, when Mrs.Charu Mehta, one of the permanent trustees of the Trust filed an application under Section 41-D of the B.P.T. Act seeking removal of the nine trustees inter alia on the ground that during the period from 2001 to 2006, these trustees had committed various acts of malfeasance, misfeasance, breach of trust, gross negligence, misappropriation of Trust funds etc. After considering the allegations made in the application and the reply filed by the said trustees, the Jt. C.C. framed 8 charges against the nine trustees. During the course of hearing, a plea was raised as to whether it would be proper to decide the application without hearing all the trustees. By the impugned interim order dated 3-6-2008, the Jt. C.C. held that all the trustees need neither be made parties nor heard because the inquiry is restricted only in respect of nine trustees referred to in the 41-D application.

However, in the operative part of the impugned interim order, the Jt. C.C. has restrained all the trustees from taking any policy decision and enter into any financial transactions relating to the Trust, unless they take prior approval from the Administrators already appointed to supervise day to day running of the hospital.

6. Mr.Aney, learned senior Advocate appearing on behalf of the petitioners in W.P. No.3850 of 2008 submitted that the impugned order is ex-facie bad in law, because, firstly, the Jt. C.C. was aware of the fact that the three petitioners in Writ Petition No.3850 of 2008 were appointed as trustees and that they were in fact functioning as trustees.

Having declined to make the petitioners as party to the proceedings and having declined to hear the petitioners on the ground that the inquiry is restricted in respect of nine trustees against whom charges have been framed, the Joint C.C. could not have passed the impugned order restraining the petitioner-trustees from functioning as trustees.

Secondly, when the Apex Court as well as this Court had specifically ordered that the administrators appointed to look after the day to day running of the Hospital shall follow the direction given by the trustees, the Jt. C.C. who being a lower authority could not have reversed the said orders by directing that the trustees shall follow the directions given by the two Administrators. Thirdly, under Section 41-D of the B.P.T. Act, the Jt. C.C. could appoint a fit person to perform the function of the Trust only when the charged trustees were suspended and as per the instrument of trust the remaining trustees could not function unless the vacancies created on account of suspension / removal are filled. In the present case, neither the charged trustees are suspended / removed nor the Joint C.C.

has considered the question as to whether the trustees other than the charged trustees could function as trustees under the instrument of Trust.

In the present case, the Trust Deed provides that minimum three trustees must be there to perform the functions of the Trust. As the three petitioner-trustees were admittedly functioning as trustees, the Joint C.C. could not have passed the impugned order without considering the claim of three petitioner-trustees.

7. Mr.Kamdar, learned counsel appearing on behalf of some of the Respondent - trustees while adopting the arguments of Mr.Aney, submitted that the impugned order suffers from non-application of mind because, by the impugned order the Joint C.C.

has purported to restrain the trustees from functioning as trustees who were not parties to the proceedings and against whom no allegations were made. Moreover, the impugned order which purports to nullify the order of the Apex Court as well as this Court is wholly unsustainable in law. The Apex Court had specifically ordered that the Administrators shall obey the directions of the Board of trustees, whereas, the Joint C.C. has ordered that the trustees shall obey the directions of the Administrators. The Joint C.C. being a subordinate authority could not have modified or nullified the order of the Apex Court / High Court.

He submitted

that assuming that such a course

was

necessary then the Joint C.C.

ought to have applied

to the Apex Court / High Court and sought appropriate modification of the orders. Mr.Kamdar further submitted that most of the charges levelled against the trustees before the Jt. C.C. are also

directly and substantially raised in High Court Suit No.1224 of 2008 which is still pending and the Court had declined to grant reliefs in the said suit.

Therefore, on the principles analogous to the principles of res-judicata, the Jt. C.C. could not have dealt with the very same allegations, which are subject matter of suit pending in the High Court.

8. Mr.Madon, learned Senior Advocate appearing on behalf of the two charged trustees who have filed Writ Petition No.3849 of 2008 submitted that the impugned order suffers from patent illegality and the said order has been passed by totally ignoring the facts on record. He submitted that the charges of mismanagement or misappropriation of funds of the Trust levelled against the trustees is devoid of any substance, because, after the petitioners took over the affairs of the trust, the income of the trust has increased manifold. He submitted that Mrs.Charu Mehta - a permanent trustee has been initiating proceedings one after the other with ulterior motives against the trustees who are efficiently managing the affairs of the Trust. In all those cases filed by Mrs.Charu Mehta the Courts have declined to accept the allegations made by her against the managing trustees. He submitted that after framing the charges, the trustees ought to have been given an opportunity to deal with the charges before passing the impugned order.

Referring to some of the charges framed against the trustees, Mr.Madon, sought to establish from the facts and figures on record, that the charges framed against the trustees are totally frivolous. He submitted that since the Joint C.C. has failed to give an opportunity to the trustees to deal with the charges framed against them, the impugned order is liable to be quashed and set aside. In this connection, he relied upon a Judgment of this Court in the case of Asaram V/s. State of Maharashtra report in 2002(3) All M.R. 555.

9. Strong reliance was placed by the counsel for the petitioners on a decision of this Court in the case of Chembur Trombay Education Society & Others V/s. V.K.Marathe and others reported in 2002 (3) Bom. C.R. 161 which is approved by a Division Bench of this Court in the case of Ganesh M. Thawre V/s. Central Hindu Military Education Society reported in 2007 (5) Bom C.R. 680. In those cases, it is held that a trustee appointed under a Trust is entitled to function as a trustee from the date of the resolution and not from the date on which his appointment is approved under section 22 of the Act.

Accordingly, Mr. Madon submitted that the impugned order which suffers from serious infirmities is liable to be quashed and set aside.

10. Mr. Chinoy, learned senior Advocate appearing on behalf of the Respondents, on the other hand, submitted that the charges framed against the trustees are so grave that the said trustees deserve to be suspended forthwith. However, the Jt. C.C.

has taken a lenient view and held that till final decision is taken for removal of the charged trustees, the Board of trustees shall not take any policy decision or enter into financial transactions without the prior approval of the administrators who are looking after the day to day running of the hospital. Mr. Chinoy referred to each of the charges framed by the Joint C.C. to demonstrate as how the trustees over the years mismanaged and misappropriated the Trust funds running into several crores of Rupees. He submitted that since the impugned order is an interim order and the Jt.

C.C. has already fixed the date for final disposal of the application, it is just and proper that the petitioners be directed to raise all those contentions before the Joint C.C. and no order be passed in these two Writ Petitions.

11. Dealing with the contention of the petitioners that the impugned order has been passed in gross violation of the principles of natural justice, Mr. Chinoy submitted that there is no merit in the above contention, because, the impugned order has been passed after hearing the concerned parties at least on 10 occasions. Mr. Chinoy submitted that while the charges were grave, the reply filed by the trustees was totally vague. As the charges were not emphatically denied and there was only vague and casual reply, the Jt. C.C. was justified in framing the charges against the trustees and till a final decision was taken for their removal / suspension, in the interest of the Trust, direct that the trustees shall not take any policy decision or enter into financial transactions relating to the Trust without the prior approval of the Administrators already appointed by the Apex Court in an earlier proceedings. This interim order is totally fair and need not be interfered with in exercise of writ jurisdiction.

12. Relying upon two unreported decisions of this Court, one by a learned Single Judge in the case of Rt. Revd. Baiju Fulji Gavit & Others V/s.

Pujari, (Writ Petition No.3991/03 decided on 1-9-2003) and another, by a Division Bench of this Court in the case of Gulabsingh Dipa Chauhan V/s.

Joint C.C., (Special C.A. No.1912 of 1976 decided on 18-12-1978), Mr. Chinoy submitted that in law only those trustees whose names are approved and recorded in Schedule I of the B.P.T. Act can be considered as trustees. The newly appointed trustees cannot be called as trustees in law unless their name is approved and entered in Schedule I of the B.P.T.

Act. As the names of the three petitioner-trustees as well as two other trustees have not been approved and do not appear in Schedule I of the B.P.T. Act, the Joint C.C. was justified in not treating them as trustees in law.

13. Mr.Chinoy further submitted that the fact that the change report regarding newly appointed trustees is pending for approval under Section 22 of the B.P.T. Act would not make them trustees in law.

Therefore, when almost all the trustees whose name appear in Schedule I were charged with serious offences, the Jt. C.C. was justified in holding that till final decision could be taken for removal / suspension of the said trustees, it is necessary in public interest to direct that the decision of the trustees are subject to prior approval of the administrators appointed by the Apex Court.

14. Relying upon two decisions of the apex Court in the case of Church of North India V/s.

Lavajibhai Ratanjibhai reported in AIR 2005 SC 2544 and also in the case of Managing Committee, Khalsa Middle School & Anr. V/s. Mohinder Kaur reported in 1993 Supp (4) SCC 26, Mr.Chinoy submitted that the B.P.T. Act inter alia provides for finality to the order passed by the Charity Commissioner under Section 22(3) of the B.P.T. Act. When the legislature in its wisdom has provided that the entries made in Schedule I are final and conclusive, it is crystal clear that only those persons whose name appear in Schedule I are recognized as trustees in law. Therefore, a trustee appointed under the Trust may be factually performing duties as a trustee but in law he can be recognized as a trustee only when his name is approved after scrutiny and entered in Schedule I. In the present case, since almost all the trustees whose names appear in Schedule I are charged with serious offences like siphoning of crores of Rupees of the Trust, the Joint C.C. was justified in passing the impugned order without considering the claim of the trustees whose names do not appear in Schedule I.

15. Relying upon a decision of a learned Single Judge of this Court in the case of Hargovindas Shivilal V/s. M.J. Chaudhari and others reported in 2007 (2) Bom C.R. 343, Mr.Chinoy submitted that unless a change report is accepted by the Charity Commissioner and reflected in the Schedule I, the newly appointed trustees cannot be called as the current trustees. In the present case, admittedly the change report regarding the appointment of the petitioner-trustees is still pending and, therefore, these trustees cannot be considered as current trustees. Consequently, while passing the impugned order, the Joint C.C. was not required in law to hear the trustees whose names do not appear in Schedule I. Mr.Chinoy submitted that entrusting the Administrators with a superior responsibility in addition to the responsibility imposed by the Courts, cannot be construed to mean that by the impugned order, the Joint C.C. has sought to nullify the order of the Apex Court / High Court.

Accordingly, Mr.Chinoy submitted that there is no merit in the above petitions and the same are liable to be dismissed in limine.

16. I have  
ig carefully considered the rival  
submissions.

17. The basic question to be considered in these two writ petitions is, where serious charges are framed against some of the trustees of a Trust in an application filed under Section 41-D of the B.P.T.

Act, whether restraining the remaining trustees from functioning as trustees without hearing them would be in violation of the principles of natural justice ? In other words, the question is, where the application made under Section 41-D of the B.P.T.

Act is restricted to some of the trustees and against whom serious charges are framed, then, is it open to the Joint C.C. to restrain the remaining trustees from functioning as trustees without giving an opportunity of hearing to those trustees ?

18. Sections 2(18), 22(1), 22(3) and Section 41-D(4) of the B.P.T. Act, which are relevant for the present case, read thus :

"S.2.

S.2. Definitions

(1) to (17) -----

(18) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;"

"S.22  
S.22 Change

(1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

(1A) -----  
(2) -----

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeals or applications were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive."

"S. 41D. Suspension, removal and dismissal of trustees :

(1) -----

ig -----  
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(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee, or where there are more than one trustee and the remaining trustees, according to the instrument of the trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the functions of the trust, and such person shall hold the office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) -----

(6) -----

(7) ----- "

19. The words 'where any change occurs in any of the entries recorded in the register' in Section 22 of the B.P.T. Act clearly suggests that the changes already effected by the Trust have to be reported within 90 days of its occurrence so that those changes which have already taken place are recorded in the register of public trusts. Section

22 further provides that any proposed change can also be recorded in the register. Thus, Section 22 of the B.P.T. Act contemplates recording of changes which have already taken place as well as the changes proposed by the Trust. In the present case, after appointing the petitioner-trustees the change reports were filed so as to record their name in the register. Admittedly, during the pendency of the change report, the trustees appointed under the Trust have been functioning as trustees. Therefore, without hearing those trustees, the Joint C.C.

could not have restrained them from functioning as trustees.

20. Moreover, in the present case, neither the application made under Section 41-D of the B.P.T.

Act was directed against all the trustees nor there are any allegations made against some trustees who are functioning as trustees pending acceptance of their change report. Therefore, while taking action against the charged trustees, the Jt. C.C. could not have penalised the other trustees against whom there are no allegations made and no application was filed for their removal / suspension. In para 50 of the impugned order, the Joint C.C. has specifically recorded that the inquiry is restricted to the averments made in the application and since allegations are not against the three petitioner-trustees in that application, the petitioners need not be made parties and need not be heard. However, in the operative part of the order at para 145, the Joint C.C. has purported to restrain the charged trustees as well as the petitioner-trustees from functioning as trustees.

Since there was no inquiry against these three  
petitioner-trustees and two other trustees, the  
impugned order passed without hearing the said  
trustees must be held to have been passed in gross

violation of the principles of natural justice.

21. Section 41-D of the B.P.T. Act provides that after suspending, removing or dismissing any trustee, the Charity Commissioner may appoint a fit person to perform the function of a trust only if the remaining trustees cannot perform the function of the trust in accordance with the instrument of trust. In the present case, neither the charged trustees have been suspended / removed / dismissed nor there is any finding as to why the remaining trustees cannot continue to function as trustees in accordance with the instrument of trust. As per the Trust Deed dated 5-7-1978 minimum three trustees are required to perform the functions of the trust.

Since the three petitioner trustees were in fact performing their duties as trustees, while exercising power under Section 41-D of the B.P.T.

Act, the Joint C.C. ought to have considered as to whether these trustees can be allowed to continue to perform the function of the Trust. Failure on the part of the Joint C.C. to look into this aspect of the matter has led to miscarriage of justice.

22. The argument advanced on behalf of the respondents

that since the names of the three petitioner trustees do not appear in Schedule I of the B.P.T. Act, they cannot be considered as trustees is without any merit, because, firstly the Joint C.C. has not recorded any finding to the

effect that the trustees whose names do not appear

in Schedule I of the B.P.T. Act cannot be considered as trustees. Secondly, even on merits

the arguments of the respondents is unsustainable, because, what Section 22 contemplates is that the changes already effected by the Trust will attain

finality from the date it is entered in the

register, but that does not mean that till the

changes are recorded in the register the trustees so appointed cannot function as trustees. Suppose in a given case, a trustee has died and in his place a new trustee is appointed and a change report filed to that effect is pending. In such a case, can it be said that the dead trustee continues to be a trustee and the new trustee cannot be said to be a trustee till the change reported is accepted and recorded in the register ? Certainly not.

Therefore, the order under Section 22 (3) of the B.P.T. Act merely gives finality to the changes already effected by the Trust and that order does not make the changes effective from that date. This is also the view expressed by the learned Single Judge in the ig case of Chembur Trombay Education (supra) and endorsed by the Division Bench of this Court in the case of Ganesh M. Thawre (supra).

23. Strong reliance was placed by the respondents, on a Division Bench judgment of this Court in the case of Gulabsingh Dipa Chauhan (supra) in support of their contention that only those trustees whose name appear in Schedule I are entitled to function as trustees of the Trust. In that case, the finding recorded by the Joint C.C.

was that the entire Board of trustees were aiding and abetting Mr.Jadhav, President of the Trust who was indulging in activities which was not only detrimental to the Trust but were of criminal nature. Moreover, the petitioners in that case had not denied in the writ petition the charges that the Board of trustees, which obviously included the petitioners, were involved in the activities which were detrimental to the trust. In that context, while rejecting the claim of the petitioners that they should be given notice for being heard under Section 41-D proceedings, this Court held that the petitioners who are found to be aiding and abetting the President of the Trust in the acts of commissions and omissions so that the trust suffer serious losses are not entitled to notice, moreso when their names do not appear in Schedule I. The ratio of the said judgment is that the trustees who are aiding and abetting the president of the trust in misappropriating the funds of the trust are not entitled to any notice under Section 41-D proceedings. It is pertinent to note that this Court did not find fault with the petitioners functioning as trustees during the pendency of the change report, but the Court found fault with their activities which were detrimental to the interest of the Trust and accordingly approved the action of the Joint C.C. in appointing a fit person to perform the functions of the Trust, without hearing the petitioners therein. In the present case, there is no allegation made against the petitioner-trustees and there is no finding recorded by the Joint C.C.

that the petitioners cannot be allowed to function as trustees. Thus, the aforesaid Division Bench decision of this Court in fact supports the case of the petitioners that the persons appointed as trustees can function as trustees during the pendency of the change report.

24. Strong reliance was also placed by the counsel for the respondents on the decision of this Court in the case of Rt. Revd. Baiju Fulji Gavit (supra). In that case, the current trustees had initiated proceedings under Section 36 of the B.P.T.

Act seeking permission of the Charity Commissioner to part with the Trust property. In that proceedings, the petitioners who are not trustees of the Trust took out an application as interested persons to oppose the sanction under Section 36 of the B.P.T. Act. While allowing the said application, the Joint C.C. did not permit the petitioners therein to file written statement.

Challenging the said order, a writ petition was filed in this Court. While holding that the question as to who are the real trustees was not an issue raised in the petition, the learned Single Judge held that the core issue to be considered in the said writ petition was whether the proposed transaction was in the interest, benefit or protection of the Trust. It is in that context, the learned Single Judge without going into the question as to who are the real trustees, held that he would go on the basis of the change report which already exists on record. The said decision does not lay down any proposition of law that the trustees appointed under the Trust cannot function as trustees till the change report to that effect is recorded in the register of public trusts.

Therefore, the findings recorded by the learned Single Judge to the effect that the proceedings under Section 36 will have to proceed on the basis of the change report which already exists on record would have no bearing on the facts of the present case.

25. Similarly, the ratio laid down by the Apex Court in the case of Managing Committee, Khalsa Middle School (supra) and the decision in the case of Church of North India (supra) on which strong reliance has been placed by the respondents, are also not applicable to the facts of the present case. There can be no dispute with the proposition laid down by the Apex Court in the aforesaid cases that the orders passed under Section 22(3) of the B.P.T. Act and entries made in the register pursuant to the said order are binding and conclusive and any alteration in the entries can be made only in accordance with law. The finality attached to the order passed under Section 22(3) of the Act cannot be stretched to such an extent so as to hold that the trustees appointed by the Trust cannot function as trustees unless and until their names are recorded in the register as per the order passed under Section 22 (3) of the Act. As noted earlier, the order under Section 22 (3) of the B.P.T. Act merely gives finality to the changes already effected by the Trust and the said order does not make changes effective from the date of the said order.

26. The decision of this Court in the case of Hargovinddas Shivilal & Co. (supra) also does not support the case of the respondents, because in that case in a civil proceeding Decree was passed against the trust and in execution, it was contended that by the time the decree was passed against the Trust only two of the trustees had remained and, therefore, the decree was a nullity. While upholding the decree, this Court observed that when the suit was initially instituted, all trustees who were then borne on record of the Charity Commissioner were impleaded and, therefore, it is impossible to hold that the decree was a nullity merely because certain changes had subsequently taken place in the constitution of the Trust and the trustees as per the change report duly approved by the Charity Commissioner were brought on record in the said Suit. Thus, in the above case, the Court was not considering the issue as to whether the trustees appointed by the Trust can perform the duties as a trustee till their appointment is approved under Section 22 (3) of the B.P.T. Act and hence the said decision has no bearing on the facts of the present case.

27. For all the aforesaid reasons, it is clear that the impugned interim order passed by the Joint C.C. cannot be sustained as the same is passed in gross violation of the principles of natural justice. Once it is held that the impugned order is unsustainable in law, it is not necessary to deal with other contentions raised by the petitioners.

28. In the result, the impugned interim order dated 3-6-2008 is quashed and set aside. The Joint C.C. is directed to pass fresh order in accordance with law.

29. Both the writ petitions are disposed of accordingly. No costs.

30. At this stage, the learned counsel for the contesting respondents seek stay of the operation of this order. I see no reason to stay the operation of this order, as the impugned order is passed in violation of principles of natural justice.

Application rejected.

(J.P. Devadhar, J.)