

## **Church Of North Of India vs Lavajibhai Ratanjibhai & Ors on 3 May, 2005**

**Equivalent citations: AIR 2005 SUPREME COURT 2544, 2005 (10) SCC 760, 2005 AIR SCW 2738, 2005 (6) SRJ 459, 2005 (4) SCALE 633, 2005 (4) SLT 705, (2005) 5 JT 202 (SC), 2005 (2) UJ (SC) 945, (2005) 4 SCJ 594, (2005) 4 SUPREME 387, (2005) 4 SCALE 633, (2005) 3 GCD 1799 (SC)**

**Author: S.B. Sinha**

**Bench: B.P. Singh, S.B. Sinha**

CASE NO.:

Appeal (civil) 9419 of 2003

PETITIONER:

Church of North of India

RESPONDENT:

Lavajibhai Ratanjibhai & Ors.

DATE OF JUDGMENT: 03/05/2005

BENCH:

B.P. Singh & S.B. Sinha

JUDGMENT:

**J U D G M E N T** With I.A. Nos. 5 to 10 of 2005 (Application for impleading party) S.B. SINHA, J :

**INTRODUCTION** The extent of bar of jurisdiction of Civil Court under Section 80 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as 'the BPT Act') is the question involved in this appeal which arises out of a judgment and order dated 21.03.2003 passed by the High Court of Gujarat at Ahmedabad in S.A. No.303 of 1986.

**BACKGROUND FACT:**

The basic fact of the matter is not much in dispute.

In or about 1895, some American Missionaries established a religious institution (Church) at Valsad for propagation of protestant faith of Christian religion and to establish and manage the churches for the people professing that faith. The object of the 'Brethren Church' was to propagate the work of the church of the brethren in western India in order to reveal Christ by means of evangelistic, educational, medical,

literary, industrial school, social and charitable activities leading to the establishment of the kingdom of God. A Continuation Committee is said to have been appointed in the year 1930 by the representatives of the Brethren Church and other churches in a Round Table Conference held in New Delhi with a view to consider the modalities and other details for amalgamation of churches. The Committee is said to have worked out a broad basis for the unification of churches which was accepted by the participant churches whereupon a new committee came into being in the year 1951. The First District Church of the Brethren in India (Brethren Church) was registered as a religious society under the Societies Registration Act, 1860 bearing Registration No.1202/44; the object whereof was to promote the work of the church of the brethren in Western India with the same object wherefor the church was established. Another Round Table Conference is said to have been held in the year 1951 at New Delhi resulting in appointment of a new committee known as 'Negotiating Committee' in order to continue deliberations for the union of churches; five other associations were included in the Committee, namely, The Council of the Baptist Churches in North India, The Church of India, Pakistan, Burma and Ceylon, The Methodist Church (British and Australian Conference), The Methodist Church in Southern Asia and The United Church of Northern India. The Brethren Church (First District Church of the Brethren) was registered as a public trust in Gujarat bearing No.E-643, Bharuch in terms of the BPT Act. The Negotiating Committee made its final recommendations which came to be known as the '4th Plan of the Union' which was published in a book entitled 'Plan of Church Union in North India and Pakistan'; the principal recommendation of the Committee being that all the six uniting churches should be dissolved and united to become one church to be known as "The Church of Northern India" (hereinafter referred to as "the CNI) which should be the legal continuation and successor of the united churches and all the properties, assets, obligations etc. thereof would vest in or devolve on CNI. The booklet of the 4th Plan is said to have been circulated to the governing bodies of the uniting churches with a view to enable them to deliberate thereover and to take appropriate decision in that behalf.

On or about 17.02.1970, a Resolution bearing No.70/08 is said to have been passed by the majority of members for effecting the dissolution as a society under the Societies Registration Act, 1860. The Negotiating Committee thereafter on or about 29.11.1970 took a decision to formally inaugurate the CNI at Nagpur. The Brethren Church allegedly placed the said Resolution No.70/08 at the altar wherein it was explicitly affirmed that the CNI shall be deemed to be the legal continuation and successor of the brethren church and the rights, titles, claims, estates and the interests of the church together with its privileges and obligations shall vest in the CNI as its legal heir on or from the date of inauguration. The Church of North India Trust Association was registered as a company under the Companies Act, 1956, in the year 1976. The original defendant Nos. 1 to 4 who were said to be initially part of the CNI and were parties to the resolution dated 17.02.1970 raised a contention that the Brethren Church continued to exist.

They started obstructing the functioning of the CNI, and in particular the worship in churches, and asserted that the First Brethren Church had not been dissolved and continued and they represented the same.

The original plaintiffs, namely, Ambelal Okarial Patel, Shantilal Lakshmichand Purani, Bishop T.L. Christachari and Samuel Nagarji Bhagat (since deceased) said to be the former office bearers of the Brethren Church filed a suit in the Court of the Civil Judge, Senior Division, Bharuch, marked as Civil Suit No.72 of 1979.

The CNI was impleaded as defendant No. 5 therein, although no relief thereagainst was claimed contending that it was a necessary and/or a proper party. The Brethren Church were not made parties in the said suit. It is stated at the Bar that the said churches were impleaded at a later stage of the proceedings but the said applications were later on dismissed. The original defendant No. 4 in his written statement filed in the said suit took a categorical stand that there had been no dissolution of the Brethren Church and their separate entity was not lost. According to the said defendant they were temporarily suspended till it was revived again and, thus, they were entitled to work for and on behalf of the Brethren Church. In the said proceedings, certain interim orders were passed wherewith we are not concerned. However, with a view to complete the narration of facts, we may notice that the CNI filed an application for its registration before the Charity Commissioner in terms of the provisions of the BPT Act, which was granted by an order dated 12.5.1980 with effect from 19.11.1971. The CNI thereafter filed a change report before the Charity Commissioner on or about 15.1.1981. Admittedly, the said application has not yet been disposed of.

While things stood thus, the Charity Commissioner was impleaded as a party in the suit and in its written statement a plea was raised that the jurisdiction of the Civil Court was barred in terms of Section 80 of the BPT Act contending :

"4. In view of provisions of Bombay Public Trusts Act, 1950. The question whether or not a trust of particular property is the property of such trust, is to be decided exclusively by the Deputy or Assistant Charity Commissioner appointed under the Act, the Assistant Charity of the Brethren "as a public trust at No. E-643 (Bharuch) under the Bombay Public Trusts Act, 1950. The decision of the Assistant Charity Commissioner, Bharuch unless set aside as provided under the Act, is final and conclusive. It is further submitted that the jurisdiction of the Hon'ble Court is also barred under Section 80 of the Act. The plaintiffs are, therefore, not entitled to the reliefs as prayed for by them. The suit, deserves to be dismissed."

#### PROCEEDINGS:

The learned Civil Judge by judgment and decree dated 31.3.1984 decreed the suit; findings in support whereof would be noticed a little later.

An appeal was preferred thereagainst on or about 4.5.1984 by the original defendants in the Court of the District Judge, Bharuch, which was marked as RCA No.72 of 1984.

By judgment and decree dated 11.8.1986, the said appeal was allowed whereagainst the CNI (Appellant herein) preferred a Second Appeal before the Gujarat High Court, which was marked as Second Appeal No.303 of 1986. On or about 29.3.2002, the Charity Commissioner is said to have filed a detailed affidavit in support of the Change Report No.665/81. By reason of the impugned judgment and order dated 21.3.2003, the said Second Appeal was dismissed.

Hence the Appellant is before us.

#### CONTENTIONS:

Mr. C.A. Sundaram, the learned Senior Counsel appearing on behalf of the Appellant would submit that the Court of First Appeal as also the High Court committed a manifest error in passing the impugned judgments insofar they failed to take into consideration the scope and purport of the suit. According to the learned counsel, the learned Trial Judge had rightly decreed the suit having taken into consideration the fact that the matter relating to formation of churches and their merger in the name of the CNI was not a matter which could be determined by the Charity Commissioner in exercise of his powers under the BPT Act. The learned counsel would contend that the society and the trust are two separate entities. The Society being not a juristic person although cannot own any property but manage the affairs of the trust which would be the owner of the property. According to the learned counsel the Court of First Appeal and the High Court misdirected themselves in passing the impugned judgments insofar as they proceeded on the premise that having regard to the fact that properties belonging to the Brethren Church were registered in the books maintained by the Charity Commissioner under Section 17 of the Act, any church affected thereby would fall within his jurisdiction and consequently the dissolution of the society and managing of the churches and consequently their merger would also come within the purview of the provisions of the BPT Act.

Mr. Sundaram would submit that a society registered under the Societies Registration Act, 1860 and a trust registered under the BPT Act are two different entities. Whereas the activities and the dealings of the latter may fall within the exclusive jurisdiction of the authorities specified under the BPT Act, the activities of the society would be governed by the Societies Registration Act, 1860. The Civil Court, therefore, according to Mr. Sundaram, had the requisite jurisdiction to deal with the question as to whether the resolution adopted in the year 1970 resulting in dissolution and the merger of the churches was valid. Such a dispute, Mr. Sundaram would argue, is beyond the jurisdiction of the Charity Commissioner. The learned counsel would urge that once the dissolution of the Brethren Church and consequent merger in the Appellant is held to be valid, in terms of the Section 26 of the BPT Act, the Charity Commissioner is enjoined with a duty to make necessary changes in the books maintained under Section 17 of the BPT Act. Sections 31, 50, 51, 79 and 80 of the BPT Act, according to Mr. Sundaram, do not clothe the Charity Commissioner or

any other authority thereunder to determine a question as regard the validity of a resolution of a society and/or its merger.

Mr. K. Ramamoorthy, the learned Senior Counsel appearing on behalf the Brethren Church supporting the Appellant would contend that administration of a religious property must be understood in its proper context. According to the learned counsel, administration of a property belonging to trust may not have anything to do with the actual possession or dealing with the administration thereof.

The learned counsel would draw our attention to the judgments in State of Madras vs. Kunnakudi Melamatam and Another [AIR 1965 SC 1570]; Chiranjilal Shrilal Goenka (deceased) Through L.Rs. vs. Jasjit Singh and Others [(1993) 2 SCC 507] and Rajasthan State Road Transport Corporation and Another vs. Krishna Kant and Others [(1995) 5 SCC 75] and contended that in various situations, the Civil Court and the Probate Court alone have been held to have exclusive jurisdiction and not the Charity Commissioner. According to the learned counsel, the Charity Commissioner being a creature of statute must exercise its jurisdiction within the four-corners thereof and the matters which do not come within the purview of the BPT Act must necessarily be left to the jurisdiction of the Civil Court. According to the learned counsel the provisions of Section 50 of the BPT Act do not show that requirements contained therein must be carried out even in a case where the Charity Commissioner may not have any jurisdiction.

As regard interpretation of Section 31 of the BPT Act, the learned counsel would contend that the provision thereof bars hearing and decision in the suit and not the institution thereof. Although in the year 1979, the Appellant herein was not registered but as before hearing of the suit was taken up, it became registered in the year 1980, the Civil Judge had the jurisdiction to hear and decide the said suit even it involved dealing with the trust property.

Mr. Huzefa Ahmadi, the learned counsel appearing on behalf of the contesting Respondents, on the other hand, would submit that for the purpose of determining the question as to whether the suit before the Civil Court was maintainable or not, the averments made in the plaint must be read as a whole and substratum thereof must be noticed. As adjudication was sought for in relation to administration and possession of the properties of a trust; the suit was not maintainable. It was pointed out that the true identity of the Appellant had not been disclosed, i.e., as to whether it is a trust registered under the BPT Act, or a company registered under the Indian Companies Act, 1956.

The learned counsel submitted that although a distinction is sought to be made between the activities of a society which runs the administration of a trust and a trust which owns the property, no such distinction was made in the proceedings before the courts below. Drawing our attention to certain grounds taken in the Special Leave

Petition, Mr. Ahmadi would urge, that in fact the finding of the High Court to the effect that the society and the trust are two separate entities had been questioned. Taking us through the plaint, the learned counsel would contend that plaintiffs as also the learned Trial Judge proceeded on the basis that the trust had ceased to exist and wherever the expression "Brethren Church" has been used in the judgment, the learned Trial Court referred to it as a trust and not as a society.

Mr. Ahmadi would contend that the learned Trial Court proceeded on the basis that there existed inconsistencies between the provisions of the Societies Registration Act which is a Parliamentary Act and the BPT Act, which is a State Act and relying on or on the basis of clause (2) of Article 254 of the Constitution of India, it came to the decision that the former shall prevail over the latter. It is in that context, issues were decided and not on the basis that the society and the trust are two separate entities. We were taken through the relevant paragraphs of the BPT Act and in particular Sections 2(10), 2(13), 13(b), 17, 18, 19, 20, 21, 22, 31, 36, 50, 51, 74, 79 and 80 by Mr. Ahmadi to show that the said provisions clearly indicate that the BPT Act is a self-contained code and deals with all questions governing a trust and the properties held by it. It was urged that the provisions of Section 26 thereof must be read in that context. The learned counsel would submit that the provisions of Section 26 of the BPT Act, in the facts and circumstances of the case, would have no application where a suit was expressly barred which regulates management of a trust, as the BPT Act created a specialized machinery to determine the issues governing the same.

Drawing our attention to the prayer (b) of the plaint, Mr. Ahmadi would argue that the same would squarely fall within the purview of Sections 50 and 51 of the BPT Act and, thus, would be barred as no permission of the Chief Commissioner was sought for and obtained.

The learned counsel would contend that the plea that the suit related to the affairs of the society is merely a ruse or a camouflage. It was argued that the society itself is a religious trust and, thus, both stand on the same footing and in that view of the matter, the suit will not be maintainable.

The learned counsel would further submit that a finding of fact had been arrived at by the Court of Appeal that the Brethren Church had not ceased to exist, this Court should not interfere therewith.

Mr. M.N. Shroff, the learned counsel appearing on behalf of the Charity Commissioner, adopted the submission of Mr. Ahmadi and would further contend that the substantial issue before the learned Civil Judge was as to whether the Brethren Church which was registered as trust had ceased to exist and/or stood dissolved or not.

**SOCIETIES REGISTRATION ACT, 1860** The Societies Registration Act was enacted, as it was found expedient that provisions should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education and for charitable purposes.

Section 2 of the Societies Registration Act provides for memorandum of association which, inter alia, must contain the name of the society and the objects of the society. A society which is formed for charitable purpose may also carry on its activities. The words 'charitable purposes' includes religious purposes. Section 4 provides for annual list of managing body to be filed stating names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

In terms of Section 5, the property of a society both movable and immovable, if not vested in the trustees, would be deemed to have vested, for the time being, in the governing body of such society. A suit by or against the society is to be filed in the name of the President, Chairman or Principal Secretary or trustees of such society as may be determined by the rules and regulations thereof.

Section 13 of Societies Registration Act provides for dissolution of societies and adjustment of their affairs. It reads as under:

"13. Provision for dissolution of societies and adjustment of their affairs Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the said society applicable thereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Assent required Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy, at a general meeting convened for the purpose:

Government consent Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration."

**BOMBAY PUBLIC TRUSTS ACT** The BPT Act, on the other hand, was enacted to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay.

Section 2 is the interpretation clause. Section 2 (10) defines "person having interest" to include in the case of a society registered under the Societies Registration Act, 1860 any member of such society. Section 2(13) defines "public trust" to mean "an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or

any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. A "trustee" has been defined to mean a person in whom either alone or in association with other persons, the trust property is vested and includes a manager.

Section 3 provides for establishment of the office of the Charity Commissioner for the purpose of superintending the administration as also carrying out the provisions of the Act subject to such general or special orders as the State Government may impose. Section 3A provides for the appointment of Joint Charity Commissioners. Section 5 provides for the appointment of Deputy and Assistant Charity Commissioners.

Section 9 occurring in Chapter III of the Act defines charitable purposes inter alia to include relief of poverty or distress, education, medical relief and the advancement of any other object of general public utility but would not include a purpose which relates exclusively to sports, or exclusively to religious teaching or worship. Section 10 contains a non- obstante clause in terms whereof a public trust shall not be void only on the ground that the persons or objects for the benefit of whom or which it is created are unascertained or unascertainable. Section 11 provides that the public trust created for purposes some of which are charitable or religious and some of which are not shall be void in respect to the charitable or religious purpose only on the ground that it is void with respect to the non- charitable or non-religious purpose.

Section 13 reads as under:

"13. If any public trust is created for a specific object of a charitable or religious nature or for the benefit of a society or institution constituted for a charitable or religious purpose, such trust shall not be deemed to be void only on the ground

(a) that the performance of the specific object for which the trust was created has become impossible or impracticable, or

(b) that the society or institution does not exist or has ceased to exist, notwithstanding the fact that there was no intent for the appropriation of the trust property for a general charitable or religious purpose."

Chapter IV of the Act provides for registration of public trusts. The said Chapter makes the registration of public trust compulsory. Section 17 ordains keeping and maintenance of such books, indices and other registers as may be prescribed in every Public Trusts Registration Office or Joint Public Trusts Registration Office. Such books, indices and registers would contain such particulars as may be prescribed. Section 18 imposes a duty upon the trustee of a public trust to make an application for the registration of the public trust in writing and would contain such particulars as mentioned in Sub-section (5) of Section 18. Clause (iii) of Sub-section (5) of Section 18 provides that the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof shall be stated as and when such application for registration of the trust is filed. Section 19 provides for an Inquiry for registration for the purpose of



ascertaining:

- "(i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction,
- (iv) the names and addresses of the trustees and manager of such trust,
- (v) the mode of succession to the office of the trustee of such trust,
- (vi) the origin, nature and object of such trust,
- (vii) the amount of gross average annual income and expenditure of such trust, and
- (viii) any other particulars as may be prescribed under sub-section (5) of section 18."

Section 20 provides for recording of the findings by the Deputy or Assistant Charity Commissioner on completion of an inquiry provided for under Section 19. On completion of such an inquiry in accordance with the findings, the Deputy or Assistant Charity Commissioner is enjoined with the duty to make entry in such register in terms of Section 21 of the Act; Sub-section (2) thereof provides that such entries shall be final and conclusive. Section 22 provides for the change which may occur in any of the entries recorded in the register kept under Section 17 to make an appropriate application within 90 days from the date of the occurrence of such change. Sub-section (1A) of Section 22 reads thus:

"(1A) Where the change to be reported under sub-

section (1) relates to any immovable property, the trustee shall, alongwith the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the sub-registrar referred to in sub-section (7) of section 18."

Sub-section (2) of Section 22 empowers a Deputy or Assistant Charity Commissioner to hold an inquiry for the purpose of verifying the correctness of the entries in the register kept under Section 17 or ascertaining whether any change has occurred in any of the particulars recorded therein. In the event, a change is found to have occurred in any of the entries recorded in the register kept under Section 17, the Deputy or Assistant Charity Commissioner is required to record a finding with the reasons therefor to that effect. Such an order is appealable to the Charity Commissioner. By reason of changes which have been found to have occurred, the entries in the register are required to be amended. Such amendment on the occurrence of change is final and conclusive. Section 22A empowers the Deputy or Assistant Charity Commissioner to hold further inquiry. Section 30 creates

a legal fiction as regard notice on the part of a person acquiring immovable property of the relevant particulars relating to such trust entered in the register in relation to any property belonging to a public trust. Section 31 creates a bar to hear or decide suits in the following terms:

"31(1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court.

(2) The provisions of sub-section (1) shall apply to a claim of set off or other proceeding to enforce a right on behalf of such public trust."

Chapter V provides for the Accounts and Audit. Section 36 bars alienation of immovable property of public trust without the previous sanction of the Charity Commissioner. In the event, such previous sanction is not granted, an appeal thereagainst is maintainable before the Gujarat Revenue Tribunal.

Chapter VI provides for the control of the charitable or religious trusts and for the said purpose in terms of Section 37 the Charity Commissioner is empowered to:

"(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust and any books of accounts or documents in the possession, or under the control, of the trustees or any person on behalf of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust;"

Sub-section (2) of Section 37 enjoins a duty upon every trustee to afford all reasonable facilities to any officer exercising any of the powers under sub-section (1). Section 41A empowers the Charity Commissioner to issue directions to the trustee and other persons to ensure that 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.

Chapter VII provides for the functions and powers of Charity Commissioner other than those referred to in the other Chapters. Section 47 provides for the appointment of a new trustee when one or the other conditions specified therein is satisfied. Section 50 provides for suits relating to public trusts which reads as under:

"50. In any case

(i) where it is alleged that there is a breach of a public trust,

(ii) where a direction is required to recover possession of a property belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from any person including a person holding adversely to the public trust, or

(iii) where the direction of the court is deemed necessary for the administration of any public trust, the Charity Commissioner after making such enquiry as he thinks necessary or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs

(a) an order for the recovery of the possession of such property or proceeds thereof,

(b) the removal of any trustee or manager,

(c) the appointment of a new trustee or manager, (cc) vesting any property in a trustee,

(d) a direction for taking accounts and making certain inquiries,

(e) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,

(f) a direction authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged,

(g) the settlement of a scheme or variations or alterations in a scheme already settled, or

(h) granting such further or other relief as the nature of the case may require;

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof:

Provided further that the Charity Commissioner may, instead of instituting a suit, make an application to the Court for a variation or alteration in a scheme already settled."

Sections 51, 79 and 80 read as under:

"51(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent.

The Charity Commissioner, after hearing the parties and after making such inquiry as he thinks fit, may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-

section (1) the persons applying for such consent may file an appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal act, 1939, in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the Bombay Revenue Tribunal in appeal under section 71, the decision of the Charity Commissioner under sub-

section (1) shall be final and conclusive."

"79. (1) Any question whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.

(2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court on application or of the High Court in appeal, be final and conclusive."

"80. Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive."

Having noticed the statutory scheme of the said Act, we may consider the provisions of Section 26 thereof which is relevant for the purpose of this case, which is as under:

"26. Any Court of competent jurisdiction deciding any question relating to any public trust which by or under the provisions of this Act is not expressly or impliedly barred from deciding shall cause copy of such decision to be sent to the Charity Commissioner and the Charity Commissioner shall cause the entries in the register kept under section 17 to be made or amended in regard to such public trust in accordance with such decision. The amendments so made shall not be altered except

in cases where such decision has been varied in appeal or revision by a court of competent jurisdiction. Subject to such alterations, the amendments made shall be final and conclusive."

#### JURISDICTION OF CIVIL COURT Principles for determination:

The question as regard ouster of a jurisdiction of a Civil Court must be construed having regard to the Scheme of the Act as also the object and purport it seeks to achieve. The law in this regard is no longer *res integra*.

A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The Court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed *de hors* the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7, Rule 11 of the Code of Civil Procedure.

In *Dhulabhai and Others vs. The State of Madhya Pradesh and Another* [(1968) 3 SCR662], Hidayatullah, CJ summarized the following principles relating to the exclusion of jurisdiction of civil courts :

(a) Where the statute gives a finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunals has not acted in conformity with the fundamental principles of judicial procedure.

(b) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(c) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(d) When the provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(e) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(f) Questions of the correctness of the assessment, apart from its constitutionality, are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(g) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. [See also *Rajasthan State Road Transport Corporation and Another vs. Krishna Kant and Others* (1995) 5 SCC 75, *Dwarka Prasad Agarwal vs. Ramesh Chand Agarwal* - (2003) 6 SCC 220, *Sahebgouda vs. Ogeppa* (2003) 6 SCC 151, *Dhruv Green Field Ltd. vs. Hukam Singh* (2002) 6 SCC 416 and *Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors*, [2005 (4) SCALE 116].

The same, however, would not mean that in a given case if the court has the jurisdiction to determine a part of the relief claimed, it will not confine itself thereto and reject the plaint in its entirety. For the purpose of determination of question as to whether the suit is barred, the averments made in the plaint are germane. [See *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, (2004) 3 SCC 137] ANALYSIS OF BPT ACT:

The BPT Act is a special law. It confers jurisdiction upon the Charity Commissioner and other authorities named therein. The statute has been enacted by the Parliament in public interest to safeguard the properties vested in the trusts as also control and management thereof so that the trust property may not be squandered or the object or purport for which a public trust is created may not be defeated by the persons having control thereover. A society may be created either for charitable or religious purposes as also for other purposes. A society registered under the Societies Registration Act is not a juristic person. It cannot own any property. The properties belonging to a society admittedly vest in the trustees. In terms of Section 2(13) of the BPT Act, a society is also a charitable trust. Both the Acts are regulatory in nature. The object and purport of both the Acts are clear and the provisions thereof do not contain any obscurity. It has not been argued before us, as was done before the learned Trial Judge, that there exists any inconsistency between the provisions of the Societies Registration Act which is a Parliamentary Act, on the one hand, and the

BPT Act, which is a State Act, on the other. The core question which had been raised before us is as to whether the Society managing or governing the trust having a separate entity; in relation to its affairs the jurisdiction of the civil court is barred.

**ANALYSIS OF THE AVERMENTS MADE IN THE PLAINT** With a view to determine the said question it is necessary to consider the averments made in the plaint.

The Brethren Church has its history which has been traced in paragraph 1 of the plaint. Paragraph 2 speaks of registration of the church under the Societies Registration Act in the year 1944 and registered under BPT Act after the same came into force.

It has been averred that the resolution of the Brethren Church affirmed that C.N.I. would be deemed to be legal continuation and successor of the Brethren Church and rights, title, claims, estates and interest of this Church together with its privileges and obligations shall, as from the date of inauguration, vest in C.N.I. as its legal heir. The Church, thus, ceased to exist as separate entity both as a society and as a trust. Although it is contended that, as provided in the constitution of C.N.I., the Church of North India Trust Association came to be registered as a company under the provisions of the Companies Act in the year 1976 but if the vesting had already taken place in C.N.I. as far back as in the year 1970, the question of trust property vesting in a company would not arise.

The records do not show that the said company had ever taken any decision as regard control and management of the Trust and/ or had dealt with the properties belonging to the Brethren Church.

It is also not in dispute that local churches or congregations which desired to function on the basis of the old constitution were at liberty to do so till the 3rd Ordinary Synod of C.N.I. which was to be held in 1977.

According to the plaintiffs, most of the churches or congregations under the Gujarat Diocesan Council implemented the said chapter. The church or congregation at Valsad although decided to adopt the said constitution, but it is contended that in the intervening period the property Committee (Property Trust Board) of the former Brethren Church continued to manage the properties, estate, etc. of Valsad Church as an agent of and on behalf of the Gujarat Diocesan Council.

The defendant Nos. 1 to 4 who were residents of Valsad and Navsari; took exceptions to the decision of the Synod to terminate the interim period with effect from 7th October, 1977 and held a meeting on 12th November, 1978.

A resolution had been adopted by the said defendants along with others asserting that their independent unit would hold all the movable and immovable properties,

deposit in a bank and cash in hand of the church in its properties wherefor a special committee was constituted.

The defendant Nos. 2 to 4 are said to be the members of the said committee and defendant No. 1 claims to be the Pastor of the Brethren Church. Admittedly, a decision of the executive committee of the Gujarat Diocesan Council taken by it at its meeting held on 11th November, 1978 was stated to be illegal by the defendant Nos. 1 to 4. It is averred:

"The defendants Nos. 1 and 2 also claim to be the Treasurer and Secretary respectively of the said "Valsad Brethren Church". These dissidents are acting in the name of the former Brethren Church and have been writing letters as office bearers of former Brethren Church to the Valsad District Co-operative Bank, the Ankleshwar Branch of the Broach District Central Co-operative Bank etc., asking them not to deal with the members of the legally constituted Pastorate committee of Ankleshwar and Valsad and asserting that they are the only persons legally entitled to deal with the financial affairs of the Ankleshwar and Valsad Pastorates. Besides, defendant No. 2, styling as a secretary of Brethren Church has complained to the authorities that the 20 local Pastorates under the Gujarat Diocesan Council do not function in the name of Brethren Church and do not collect funds in the name of the Brethren Church. A similar complaint was made by him to the Assistant Charity Commissioner Broach who had the matter inquired into. The defendant No. 2, again, purporting to act as a Secretary of the Valsad Brethren Church, wrote a letter on 20th June, 1979 to the legally elected Treasurer of the Ankleshwar church challenging the latter's authority to act as such Treasurer.

The defendant No. 3 and some of his associates residing at Jalapore, Taluka Navsari, District Valsad, have issued a statement dated 8th July, 1979 declaring their intention to sever all their connections with C.N.I. and to function as an independent unit with effect from 15th July, 1979 in the name of Brethren Church, Jalapore. By the said statement, the members of the C.N.I. at Jalapore have been directed not to use or occupy the church."

The aforementioned action on the part of the defendant Nos. 1 to 4 and their associates was the subject matter of the suit.

In the aforementioned context, the plaintiffs had questioned the actions and/ or activities of the defendant Nos. 1 to 4 and other dissidents insofar as they tend to prevent or hinder the plaintiffs and other members of the Pastorate from acting under and in accordance with the said decisions and resolutions of the Gujarat Diocesan Council and the constitution of Synod violate and infringe the legal rights of these persons to do so and are illegal.

The Appellant herein was joined as defendant No. 5 in the said suit, although no relief had been claimed against the original defendant No. 5 who is the Appellant before us. The status of the



defendant No. 5 has not been disclosed in the plaint. The legal status of Church of North India has not been disclosed in the plaint.

It is accepted that the defendant No. 5 Appellant has got itself registered as a trust only in the year 1980. It also stands admitted that a change report has been filed by the Appellant before the Commissioner of Charity in the year 1981.

We have noticed hereinbefore that as regard the correctness or otherwise of functioning of the congregation of Ankleshwar and Valsad had been the subject matter of complaints before the authorities under the BPT Act.

One of the causes of action for instituting the suit is said to be constitution of a special committee by the defendant Nos. 1 to 4; resolution dated 12th November, 1978 was passed and the obstructions created by them to the plaintiffs and other members of the Pastorates through the actions of the Plaintiffs and other members of the Pastorates in the name of the former Brethren Church.

The plaintiffs made their position clear when they categorically stated in paragraph 21 that the suit inter alia involved questions as to the rights of property of the former Brethren Church.

In the aforementioned premise, plaintiffs had prayed for the following reliefs:

"(a) It may please be declared that the former First District Church of Brethren has ceased to exist.

(b) It may please be declared that the Church of North India is the legal continuation and successor of the said First District Church of Brethren together with the right, title, claim, interest in or over its properties and the constitution, decisions and resolutions of the Church of North India, its Synod and Gujarat Diocesan Council are binding on all the Pastorates on Gujarat which were functioning as local Churches or congregations under the First District Church of Brethren.

(c) The defendants No. 1 to 4 and their associates may be restrained by a perpetual injunction from acting in any manner contrary to the constitution, decisions and resolutions of the church of North India its Synod and Gujarat Diocesan Council and from obstructing in any manner the plaintiffs and other members/ office bearers of these pastorates under the Church of North India in acting in accordance with the said constitution, decisions and resolutions and in their use, enjoyment and possession of the Churches and their properties.

(d) The defendants No. 1 to 4 and their associates may be restrained from acting in the name of the First District Church of Brethren and from collecting funds, donations, etc. in that name.

(e) The defendants Nos. 1 to 4 may be directed to pay to the plaintiffs the costs of this suit."

**DETERMINATION:**

The plaint nowhere suggests that the society and the trust had ever been treated as two different entities. No case has been made in the plaint to the effect that the society as registered under the Societies Registration Act plays any role or discharges any function which is not done by the trustees of the trust. It also does not appear from a perusal of the plaint that the society and the trust comprises of different persons or for different functions to perform. In fact in paragraph 2 of the plaint it is accepted that the Church which was registered as a society under the Societies Registration Act was a public trust as defined under Section 2(13) of the BPT Act. The ownership of movable and immovable properties at the places mentioned in the plaint is referable to the congregations under the Brethren Church. It is not alleged that whereas the properties belong to the trust it was managed by the society. The plaint furthermore does not disclose that the decision as regard dissolution of the churches and congregation of Brethren Church had been taken by anybody other than the trustees. The committees constituted for the aforementioned purpose, viz., Continuation Committee and Negotiating Committee, evidently were represented by the authorities of the congregations and not of any society. A decision, as would appear from the averments made in paragraph 6 of the plaint, to dissolve six uniting Churches and merge the same into one, viz., the Church of Northern India (C.N.I.) so as to make the latter a legal continuation and successor of the United Churches and all the properties, assets, obligations, etc. of these uniting churches would vest in or dissolve on C.N.I. The very fact that a decision having been taken as regard the properties, assets, obligations of the United Churches, the same would mean that they would vest in the trust to be created for the said purpose and not for the benefit of any society.

We are not oblivious of the fact that the Resolution adopted in the meeting held on 17th February, 1968 allegedly fulfilled all the requirements for such resolution as provided in the Societies Registration Act but it is now beyond any controversy that the society having not owned any property, their transfer in favour of a new society was impermissible in law. In terms of Section 5 of the Societies Registration act, all properties would vest in the trustees and only in case in absence of vesting of such properties in trustees the same would be deemed to have been vested for the time being in the governing body of such property. In this case, it is clear that the properties have vested in the trustees and not in the governing body of the society.

There is nothing on record to show that the concerned churches were being managed by the societies registered under the Societies Registration Act. In any event, it stands accepted that the dispute as regard dissolution of societies and adjustment of their affairs should have been referred to the principal court of original civil jurisdiction.

The suit in question also does not conform to the provisions of Section 13 of the Societies Registration Act.

Section 20 of the Act provides that the societies enumerated therein can only be registered under the said Act.

Unless a suit is filed in terms of Section 13 of the Act, the Society is not dissolved. Even assuming that the society stands dissolved in terms of its Memorandum of Association and Articles of Association, the same would not ipso facto mean that the properties could be adjusted amongst the members of the society in terms of the provisions of the said Act. Concededly, the properties of the trust being properties of the religious trust had vested in such trust. Such a provision, we have noticed hereinbefore, also exist in the BPT Act. Thus, only because the society has been dissolved, ipso facto the properties belonging to the trust cannot be said to have been adjusted. The Appellants, thus, we have noticed hereinbefore, have averred in the plaint that the suit relates to the property of the trust and their administration. If the properties of the churches did not belong to the society, the Appellant herein cannot claim the same as their successor. The plaint has to be read meaningfully. So done, it leads to the only conclusion that the dispute was in relation to the management of the churches as religious trust and not as a society. Even if it is contended that the administration of the property would mean the properties of the Brethren Church both as a trust and as a society, still then having regard to the legal position, as discussed supra, the property belonging exclusively to the trust, the suit will not be maintainable.

It is interesting to note that the Appellants themselves in grounds 1, 2, 4, 5 and 6 have categorically stated that both the society registered under the Societies Registration Act and the trust registered under the BPT Act is only one entity and that upon dissolution of a society the trust automatically ceases and all that remains is to carry out the registration under the BPT Act wherefor applications have been made before the Charity Commissioner. The stand taken by the Appellants herein is unequivocal in nature. The Trial Court also appears to have proceeded on that basis, as would appear from Issue No. 4 framed by it which is as under:

"(4) Whether it is proved that the Brethren Church was also dissolved and ceased to exist as a separate entity as alleged?

The learned Trial Judge observed:

"Now, whether the First district Church of Brethren has been legally dissolved in accordance with the provisions of the Societies Registration Act (Section 13) or whether it exists till today, can only be decided by the Civil Court and such a dispute cannot be decided by the Charity Commissioner and as such, on this court also the present Civil Court is the only competent Court to decide the suit of the present nature. Apart from this, the strange consequence would follow if it were to be held that the question of dissolution of the First District Church of Brethren as a society can be decided by the Civil Court but the question of dissolution of it as a trust cannot be decided by the Civil Court because the First District Church of Brethren is only the

on institution and in its dual capacity viz. the society as well as the trust. Apart from this, even if it is assumed for the sake of an argument that the jurisdiction of the dispute is to be divided in two parts, then in that case, there is every possibility of conflicting decisions by the Civil Court and the Charity Commissioner and this would lead to anomaly."

The Trial Court, however, proceeded to determine the issue on the premise that there exists an apparent conflict between the Societies Registration Act and the BPT Act holding that as regard question of jurisdiction of the civil court, the provisions of the BPT Act to the extent of repugnancy would be inoperative.

The finding of the learned Trial Judge on that count is apparently wrong. The learned counsel for the Appellants also did not raise any contention before us that having regard to the provisions contained in Article 254 of the Constitution of India, the provisions of the Societies Registration Act shall prevail over the BPT Act.

In fact the Appellants have categorically admitted that the Memorandum of Association of the Society itself became the deed of trust. It also stands admitted that only with a view to have one body to administer and manage the properties, the trust so created by the society was also registered. It is not a case where the trust was created for the benefit of the society. Furthermore, there is nothing on record to show the mode and manner of the management and control of the trust property. [See Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. State of Delhi (Now Delhi Administration) and another, AIR 1962 SC 458, Dharam Dutt and Others Vs. Union of India and Others, (2004) 1 SCC 712, para 52 and Illachi Devi (Dead) By LRs. and Others Vs. Jain Society, Protection of Orphans India and Others, (2003) 8 SCC 413, paras 21 and 22] In Athmanathaswami Devasthanam Vs. K. Gopalaswami Ayyangar [AIR 1965 SC 338], this Court did not permit a new question to be raised. In this case also, a new contention has been raised contrary to the pleadings that the society and the trust are different entities.

We have noticed hereinbefore that the BPT Act provides for finality and conclusiveness of the order passed by the Charity Commissioner in Sections 21(2), 22(3), 26, 36, 41(2), 51(4) and 79(2).

In view of the decision of this Court in Dhulabhai (supra) such finality clause would lead to a conclusion that civil court's jurisdiction is excluded if there is adequate remedy to do what the civil courts would normally do in a civil suit. In this case, we are not concerned with a dispute as regard absolute title of the trust property. We are also not concerned with the question as regard creation of any right by the trust in a third party which would be otherwise beyond the jurisdiction of the Charity Commissioner. It is also not a case where the plaintiffs made a complaint that the provisions of the BPT Act were not complied with or the statutory tribunal had not acted in conformity with the fundamental principles of judicial procedure. In fact no order has been passed on the Appellant's application for changes in the entries made in the registers maintained under Section 17 of the Act. The BPT Act provides for express exclusion of the jurisdiction of the Civil Court. It in various provisions contained in Chapter IV a power of inquiry and consequently a power of adjudication as regard the list of movable and immovable trust property, the description and particulars thereof for

the purpose of its identification have been conferred. In fact, the trustee of a public trust is enjoined with a statutory duty to make an application for registration wherein all necessary descriptions of movable and immovable property belonging to the trust including their description and particulars for the purpose of identification are required to be furnished. Section 19 provides for an inquiry for registration with a view to ascertaining inter alia the mode of succession to the office of the trustee as also whether any property is the property of such trust. It is only when the statutory authority satisfies itself as regard the genuineness of the trust and the properties held by it, an entry is made in the registers and books, etc. maintained in terms of Section 17 of the Act in consonance with the provisions of Section 21 thereof. Such an entry, it will bear repetition to state, is final and conclusive. Changes can be brought about only in terms of Section 22 thereof.

A change notice having been given, it would now be for the appropriate authority to consider the matter and if a change has occurred, a finding is required to be arrived which must contain the reasons therefor. The defendants are disputing that any such change in accordance with law was effected. An order passed by Deputy or Assistant Charity Commissioner is appealable. Yet again, when an amendment is made in the entry in the register, the same would be final and conclusive. Even a power exists for holding a further inquiry.

Section 31 bars a suit to enforce a right on behalf of a public trust. C.N.I. got itself registered as a public trust in the year 1981. A suit evidently was filed by the plaintiffs in the year 1980 because C.N.I. was not then entitled to file a suit. It may be true that the suit was filed under Order 1, Rule 8 of the Code of Civil Procedure but therein the question as to whether the Appellant herein, being a registered trust became entitled to the properties of Brethren Church could not have been gone into. What is prohibited is to enforce a right on behalf of a public trust. When the plaintiffs intended to enforce a right on behalf of the Appellant, the suit was evidently not maintainable.

Furthermore, the purported resolutions of the churches affiliated to the Brethren Church and merger thereof with the Appellant, having regard to the provisions of the Act was required to be done in consonance with the provisions thereof. It is not necessary for us to consider as to whether such dissolution of the churches and merger thereof in the Appellant would amount to alienation of immovable property but we only intend to point out that even such alienation is prohibited in law. The control and management of the religious trusts vests in the Charity Commissioner. The trustees of the Trust are statutorily enjoined with a duty to render all cooperation to the Charity Commissioner. The directions issued by the Charity Commissioner to the trustees are binding. Dissolution of a trust, it is not disputed, is a matter which falls within the exclusive jurisdiction of the Charity Commissioner.

Prayer (a) in the plaint is for a declaration. Such declaration cannot be granted by a civil court as regard succession of the District Church of Brethren as the same was a religious trust registered under the BPT Act.

Prayer (b) of the plaint also could not have been granted, as the question as to whether the applicant is the legal continuation and successor of the First District Church of Brethren is a matter which would fall for exclusive determination of Charity Commissioner keeping in view the provisions of

the deed of trust as regard its succession. It would necessarily follow that whether the First Appellant became a legal successor of the properties held by the First District Church of Brethren could not also have been granted. The decision and resolution purported to have been adopted by the Synod and Gujarat Diocesan Council are binding on all churches or not would again be a question which could have been gone into by the Charity Commissioner as the same had direct bearing not only with the administration and management of the Church registered with it but also related to the properties held by it. Such a decision of the Charity Commissioner is again final and conclusive subject to the decision of the appellate authority, viz., Bombay Revenue Tribunal.

Grant of prayer (c) for perpetual injunction would also give rise to adjudication on the question as to whether the Appellant herein had the legal right to own the properties of the First District Church of Brethren and administer or manage the same although at the relevant time it was not registered trust and although no amendment had been effected in the registers and books maintained by the Charity Commissioner in terms of Section 17 read with Sections 21 and 22 of the Act. The plaintiffs with a view to obtain an order of injunction furthermore were required to establish that they could file a suit for enforcement of right of the Appellant as a religious trust and such a legal right vests either in the plaintiff or in the Appellant herein indirectly. Such a prayer, related to the possession of the property, comes squarely within the purview of the BPT Act. If the question as regard recovery of possession of the property belonging to a public trust squarely falls within the purview of Section 50 of the Act, had such application been filed before the Charity Commissioner he was required to go into the question as to whether the plaintiffs are persons having interest in the trust and whether a consent should be given to them to maintain a suit. Only when, inter alia, such consent is granted, a suit could have been filed in terms of Section 51 of the Act. In the event of refusal to give consent, the persons interested could have preferred an appeal.

Yet again the question as regard existence of a trust is a matter which squarely falls within the purview of Section 79 of the Act.

We have no doubt in our mind that the Charity Commissioner was impleaded as a party at a later stage of the suit only with a view to fulfill the requirements of Sub-section (3) of Section 50 of the Act.

In *Virupakshayya Shankarayya Vs. Neelakanta Shivacharya Pattadadevaru* [1995 Supp (2) SCC 531], this Court categorically held that the suit for recovery of possession of property as validly appointed Mathadhipati is hit by Sections 50 and 51 of the Act. The matter might have been different if the suit was not for declaration or injunction in favour or against the public trust or where the plaintiffs are not beneficiaries either.

*Narmadabai and Another Vs. Trust Shri Panchvati Balaji Mandir and Others* [1995 Supp (3) SCC 676] was a case where a suit for injunction was filed for restraining the defendants from interfering with the implementation of the scheme for better management and administration of the public trust settled by the Charity Commissioner. In that view of the matter, it was held that a suit was not required to be filed in conformity with the provisions of Sections 50 and 51 of the Act.

In Shree Gollaleshwar Dev and Others vs. Gangawwa Kom Shantayya Math and Others [(1985) 4 SCC 393], it was held:

"14. It is clear from these provisions that Section 50 of the Act created and regulated a right to institute a suit by the Charity Commissioner or by two or more persons interested in the trust, in the form of supplementary statutory provisions without defeasance of the right of the manager or a trustee or a shebait of an idol to bring a suit in the name of idol to recover the property of the trust in the usual way. There is therefore no reason why the two or more persons interested in the trust should be deprived of the right to bring a suit as contemplated by Section 50(ii)(a) of the Act. Although sub-section (1) of Section 52 makes Sections 92 and 93 of the Code inapplicable to public trusts registered under the Act, it has made provision by Section 50 for institution of such suits by the Charity Commissioner or by two or more persons interested in the trust and having obtained the consent in writing of the Charity Commissioner under Section 51 of the Act."

The provisions of the Act and the Scheme thereof leave no manner of doubt that the Act is a complete code in itself. It provides for a complete machinery for a person interested in the trust to put forward his claim before the Charity Commissioner who is competent to go into the question and to prefer appeal if he feels aggrieved by any decision. The bar of jurisdiction created under Section 80 of the Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the Act. The matter, however, would be different if the property is not a trust property in the eye of law. The civil court's jurisdiction may not be barred as it gives rise to a jurisdictional question. If a property did not validly vest in a trust or if a trust itself is not valid in law, the authorities under the Act will have no jurisdiction to determine the said question.

With a view to determine the question as regard exclusion of jurisdiction of civil court in terms of the provisions of the Act, the court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein. If for the purpose of grant of an appeal, the court comes to the conclusion that the question is required to be determined or dealt with by an authority under the Act, the jurisdiction of the civil court must be held to have been ousted. The questions which are required to be determined are within the sole and exclusive jurisdiction of the authorities whether simple or complicated. Section 26 of the Act must be read in that context as it specifically refers to those questions wherewith a court of competent jurisdiction can deal with and if the same is not expressly or impliedly barred. Once a decision is arrived at, having regard to the nature of the claim as also the reliefs sought for, that civil court has no jurisdiction, Section 26 per force will have no application whatsoever.

We may at this stage notice the decisions relied upon by the learned counsel for the parties.

In State of Madras Vs. Kunnakudi Melamatam and another [AIR 1965 SC 1570] a composite suit for injunction was filed claiming two different reliefs, viz. (1) an injunction restraining the levy of contributions and audit fees under Act II of 1927; and (2) an injunction restraining the levy of contributions and audit fees under Act XIX of 1951. It was, in that context, held that although the

decision under Section 84(2) of Madras Hindu Religious Endowments Act that an institution is outside the purview of the Act, the demand of contribution as being not enforceable under the 1951 Act was maintainable.

In *Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddi* [AIR 1967 SC 781], this Court was concerned with a question as to what constitutes an administration of religious property. In that case, the provisions of the Act did not impose a total bar on the maintainability of a suit in a civil court and having regard to that aspect of the matter vis-à-vis Section 92 of the Code of Civil Procedure it was held that Section 93 of Madras Hindu Religious and Charitable Endowments Act would apply in the matter for which provision has been made in the Act and would not bar the suit under the general law which do not fall within the scope of any section of the Act. This decision instead of helping the Appellant runs counter to their claim.

In *Chiranjilal Shrilal Goenka (Deceased) Through LRs. Vs. Jasjit Singh and Others* [(1993) 2 SCC 507] it was held that in matters relating to will the Probate Court has exclusive jurisdiction. The said decision was rendered having regard to the fact that the decision of a probate court is a judgment in rem and conclusive and binds not only the parties but also the entire world.

In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others* [(1995) 5 SCC 75], this Court following *Dhulabhai* (supra) held that having regard to the provisions contained in the Industrial Disputes Act and Industrial Employment (Standing Orders) Act, 1946, the civil court will have no jurisdiction as enumerated in paragraph 35.

In *Sahebgouda (Dead) By LRs. and Others Vs. Ogeppa and Others* [(2003) 6 SCC 151] the allegations made in the plaint showed that the only right claimed by the Appellants was that of being ancestral pujaris of the temple. They did not claim to be the trustees of any trust. No declaration regarding the existence or otherwise of the trust or any particular property is the property of such trust had been claimed and in that view of the matter, it was held that the reliefs so claimed do not come within the purview of Section 19 or Section 79 of the Act wherefor the Deputy or Assistant Charity Commissioner will have the exclusive jurisdiction to hold an inquiry and give a decision.

*Ramesh Chand Ardawatiwa Vs. Anil Panjwani* [(2003) 7 SCC 350] has no application in the present case as therein the Charity Commissioner took a specific objection that the civil court's jurisdiction is barred whereupon several additional issues were framed and determined.

In *NDMC Vs. Satish Chand (Deceased) By LR. Ram Chand* [(2003) 10 SCC 38], this Court clearly held that Sections 84 and 86 of the Punjab Municipal Act, 1911 bar the jurisdiction of the civil court as the Act provided a complete remedy to the party at plea as also a remedy by way of an appeal.

In *K. Shamrao and Others Vs. Assistant Charity Commissioner* [(2003) 3 SCC 563], this Court held:

"17 Functions of the Assistant Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all the powers which an ordinary civil court has including power of summoning witnesses, compelling



production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted."

In *Yeshwantrao Laxmanrao Ghatge and Another Vs. Baburao Bala Yadav (Dead)* By LRs. [(1978) 1 SCC 669], this Court observed:

"8. Mr Datar placed reliance upon the decision of the Bombay High Court in *Dev Chavata v. Ganesh Mahadeo Deshpande* in order to take advantage of Section 52-A of the Act. The ratio of the case has to be appreciated in the background of the facts found therein. The principles of law as enunciated cannot be fully and squarely applied. But yet the decision, if we may say so with respect, is correct. This would be on the footing that the decision given by the Assistant Charity Commissioner under Section 79 read with Section 80 of the Act was conclusive and final. He had exclusive jurisdiction to decide the question as to whether the suit land belonged to the trust. He had so decided it on November 5, 1954. The suit was filed on July 21, 1955. In that view, the High Court was right in holding that a suit filed under Section 50 of the Act was not barred under Section 52-A because the decision of the Assistant Charity Commissioner given in 1954 had declared the property to be a trust property and which decision was final."

In *Suresh Ramniwas Mantri and another Vs. Mohd. Iftequaroddin s/o Mohd. Badroddin* [1999(2) Mh.L.J. 131] it was observed that a society although formed either for religious or charitable purposes or for both cannot be held to a public trust ipso facto although registered under the Societies Registration Act unless it is registered also under the BPT Act as the question whether such a trust was validly formed or not would come within the purview of Sections 18, 19 and 20 of the BPT Act. In that case the plaintiff was not registered as a public trust and in that situation it was held that Section 80 would operate.

In *Mahibubi Abdul Aziz and others Vs. Sayed Abdul Majid and others* [2001(2) Mh.L.J. 512], a learned Single Judge of the Bombay High Court held that a civil suit cannot be entertained only because a complicated questions of title has been raised.

In *Keki Pestronji Jamadar and Another vs. Khodadad Merwan Irani and Others* [AIR 1973 (Bom) 130] the question was as to whether the author of a trust was the lawful owner of the property of which he has created the trust. The Full Bench of Bombay High Court held that the author of the trust has no title over the property and Section 80 would not operate as a bar.

In *Nagar Wachan Mandir, Pandharpur vs. Akbaralli Abdulhusen and Sons and Others* [(1994) 1 MhLJ 280] a question arose as regard power of a co-trustee to delegate a matter relating to grant or determination of lease to another co-trustee keeping in view of Section 47 of the Act which deprives the trustee from delegating his office or any of his duties to a co-trustee or a stranger unless conditions mentioned therein are complied with.

The principle enunciated in each of the decision laid down relate to the fact situation obtaining therein. In each case indisputably the lis arose for determination of a question relating to interpretation of one or the other clause enumerated in different provisions of the BPT Act which come either within the exclusive jurisdiction of the statutory authorities or otherwise. The Civil Court will have no jurisdiction in relation to a matter whereover the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the Act or in relation to a matter, unconnected with the administration or possession of the trust property, the Civil Court may have jurisdiction. In this case, having regard to the nature of the lis, the jurisdiction of the Civil Court was clearly barred.

#### CONCLUSION:

Having given our anxious thought in the matter, we are of the opinion that the suit has rightly been held to be not maintainable by the High Court and, thus, the impugned judgments must be affirmed.

The applications for impleadment filed by various persons, in view of the aforementioned findings, need not to be dealt with separately.

For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly. No costs.