



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5567 OF 2017

Shri. Hanuman Maruti Mandir Deosthan ...Petitioners
Trust, Kumshet, Taluka – Junnar, District - Pune & Ors.
V/s.
Sau. Vina Yogesh Doke & Ors. ...Respondents

Mr. Sanjiv A. Sawant a/w Mr. Heramb Kadam & Ms. Samiksha S. Mane
i/b Mr. Himanshu Kode, for the Petitioners.

Mr. Vinayak B. Gadekar, for Respondent No.1.

Ms. V. S. Nimbalkar, AGP, for Respondent Nos.2 and 3 - State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 25 NOVEMBER 2024

JUDGMENT:

1. Heard Mr. Sanjiv Sawant, learned Counsel alongwith Mr. Heramb Kadam, learned Counsel for the Petitioners, Mr. Vinayak Gadekar, learned Counsel for the Respondent No.1 and Ms. V. S. Nimbalkar, learned AGP, for the Respondent Nos.2 and 3 – State.

I] CHALLENGE:

2. By present Writ Petition filed under Articles 226 and 227 of the Constitution of India, Petitioners i.e. Original Respondents have challenged the legality and validity of the Order dated 2nd February 2017 passed by learned Joint Charity Commissioner, Pune Region, Pune in Misc. Application No.4 of 2017. The said Misc. Application No.4 of 2017 was filed by the present Respondent No.1 seeking to recall/review

and set aside Order dated 5th January 2017 passed by learned Joint Charity Commissioner, Pune Region, Pune in Revision Application No.1 of 2016 and seeking that the registration of the Trust known as Shri. Hanuman Maruti Deosthan Trust, at and Post. Kumshet, Taluka - Junnar, District - Pune bearing P.T.R. No.A-2651 (Pune) be cancelled. The said Misc. Application was filed on the ground that the learned Joint Charity Commissioner, Pune Region, Pune committed a procedural error/mistake of such a nature which vitiates the said Order. By the impugned order the said Misc. Application No.4 of 2017 was allowed and order passed in Inquiry Application No.1682/2013 dated 19th June 2014 is set aside.

II] SUBMISSIONS OF THE PETITIONERS:

3. Mr. Sawant, learned Counsel alongwith Mr. Heramb Kadam, learned Counsel for the Petitioners raised the following contentions:

(i) The power of review is to be specifically given by the statute i.e. in the present case by the *Maharashtra Public Trusts Act, 1950* (“**said Act**”). There is no express power of review conferred on the authorities by the said Act and, therefore, the learned Joint Charity Commissioner has no jurisdiction to review his own Order. It is the submission of the Petitioners that the provisions of the said Act have been misconstrued and misinterpreted, resulting into miscarriage of justice. It is submitted that the present case is not a case which can come within the ambit of

the Supreme Court's decision in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*¹, on which the learned Joint Charity Commissioner has relied.

(ii) Learned Counsel relied on the following decisions of the Supreme Court and this Court:

- (i) *Patel Narshi Thakershi v. Pradhymansinghji Arjunsinghji*²
- (ii) *Naresh Kumar v. Govt. of NCT of Delhi*³
- (iii) *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd.*⁴
- (iv) *Trimbakrao Shahurao Deshmukh v. Ahmednagar District Central Co-operative Bank Ltd., Ahmednagar*⁵
- (v) *Anna S/o Shriram Fate v. Joint Charity Commissioner, Nagpur*⁶
- (vi) *Mrs. Shivaneesh Prasanna Deshpande v. The State of Maharashtra*⁷
- (vii) *Anna Bapu Bhosale v. The Chief Executive Officer Slum Rehabilitation Authority*⁸

By relying on said decisions it is the submission that, unless the statute/rules provides by specific provision power of review, the review application is not maintainable in case of judicial and quasi-judicial orders. Learned Counsel submitted that, in absence of any provision in

1 AIR 1981 SC 606

2 (1971) 3 SCC 844

3 (2019) 9 SCC 416

4 (2005) 13 SCC 777

5 Writ Petition No. 5699 of 2005 & Writ Petition No.4210 of 2000 decided by a Division Bench of this Court on 21st August 2006

6 2005 (2) Mh.L.J. 298

7 Writ Petition No.10133 of 2016 and other companion Writ Petitions decided by a Division Bench on 1st August 2017.

8 Writ Petition No.2531 of 2012 decided by a Division Bench on 8th January 2013.

the said Act granting an express power of review, the same could not be made and therefore, the impugned Order is ultra vires, illegal and without jurisdiction.

(iii) Learned Counsel submitted that as far as inquiry of registration contemplates applicability of the provisions of Code of Civil Procedure 1908 (CPC), however, the same can not have effect of applicability of the provisions of review as contained in CPC to the proceedings under Section 18 of the said Act.

(iv) As far as the merits are concerned, it is submitted by learned Counsel that registration of the old Trust registered as Maruti Mandir Deosthan Trust bearing P.T.R. No. A-712 (Pune) is inconsequential as the same is non functional for more than 40 years.

(v) Learned Counsel submitted that the scheme of the said Act provides registration of two trusts of a single charity. To substantiate the said contention, reliance is placed on Section 50A(2) of the said Act. It is submitted that the said provision specifically provides that if the Assistant Charity Commissioner is of the opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, the same has to be done by giving the trustees of such trusts and all other interested persons due opportunity to be heard and framing a common scheme. It is submitted that without prejudice to the contention that as

the earlier registered trust is in fact a defunct trust and therefore it can be assumed to be a non-existing trust, however, assuming the same to be trust in operation, still there can be two trusts formed with respect to the same Charity/temple.

(vi) Learned Counsel submitted that the impugned order be quashed and set aside.

III] SUBMISSIONS OF THE RESPONDENT NO.1:

4. Mr. Gadekar, learned Counsel for the Respondent No.1 raised the following contentions:

(i) The Petitioners obtained order dated 5th January 2017 in Revision Application No.1 of 2016 by playing fraud on the Court. The order dated 19th June 2014 passed in Inquiry Application No.1680 of 2013 by the learned Assistant Charity Commissioner, Pune Region, Pune was also obtained by playing fraud. The Petitioners with complete knowledge that, there is another Trust bearing No. A-792 (Pune) registered in the year 1952, obtained the registration of the Petitioner No.1-Trust by suppressing the said fact.

(ii) Learned counsel, relied on the affidavit-in-reply dated 29th November 2017 of the Respondent No.1. On the basis of the contents of said affidavit-in-reply he submitted a chart of list of dates and events which read as under:

Date	Event
1952	There is another Trust bearing no A-792/Punc is

	registered much prior to the petitioner no.1 Trust with same description of Property
07.03.2013	Petitioners filed Inquiry Application no. 674/2013 by name of Maruti Mandir Deosthan Trust (Page no. 132 of Affidavit in Reply)
11.03.2013	The Respondent no. 1 (the then Sarpanch) communicate her objection to do so to Charity Commissioner (Page no. 138 of Affidavit in Reply)
01.05.2013	Gramsabha passed resolution to oppose the formation of Trust without prior consent of villagers (Page no. 140 of Affidavit in Reply)
15.06.2013	The Petitioners herein filed another Inquiry Application no 1680/2013 by keeping pending their earlier Inquiry Application no. 674/2013 and altering the name by adding word HANUMAN (Page no. 141 of Affidavit in Reply)
10.08.2013	The Petitioners forged the Document by using letterhead of the Respondent no. 1 herein to file N.O.C. for there new trust (Page no. 149 of Affidavit in Reply)
19.06.2014	The impugned Inquiry Application no 1680/2013 was disposed off by Ld. Charity Commissioner (Page no. 157 of Affidavit in Reply)
09.09.2015	The Respondent no. 1 filed a written complaint to Police and Charity Commissioner accusing the petitioners herein for using her false and forged Letterhead for registration of petitioner trust (Page no. 163 of Affidavit in Reply)
19.10.2015	The Petitioners withdrew their Inquiry Application no. 674/2013 (Page no. 21 of Additional Compilation)
19.10.2015	The Respondent no. 1 filed written complaint to J.M.F.C. Junner for prosecuting petitioners alleging used of forged document for registration of Trust (Page no. 166 of Affidavit in Reply)
24.11.2015	The Respondent no. 1 filed revision application no 1 of 2016 under Section 70-A of Maharashtra Public Trust Act before Ld Deputy Charity Commissioner alleging fraud by the Petitioners while forming Trust (Page no. 229 of Affidavit in Reply)
11.01.2016	J.M.F.C. Junnar directed Police Inspector Junner Police Station to investigate properly in view of Section 156(3) of Cr.P.C. (Page no. 170 of Affidavit in

	Reply)
19.10.2016	The Respondent no. 1 made an application to file documents pertaining Trust no A/792/Pune in Revision Application no 1 of 2016 (Page no. 248 of Affidavit in Reply)
05.01.2017	Revision Application no 1 of 2016 dismissed by Ld Joint Charity Commissioner (Page no. 250 of Affidavit in Reply)
10.01.2017	The Respondent no. 1 filed Review Application no 4/2017 before Ld Charity Commissioner (Page no. 260 of Affidavit in Reply)
13.01.2017	Villagers filed an application u/s. 47(1)(a) of Maharashtra Public Trust Act 1950 for A/792/Pune i.e., defunct Trust bearing Application No.2 of 2017 which is pending for adjudication till today (Page no. 303 of Affidavit in Reply)
02.02.2017	Review Application no 4/2017 filed by Respondent no. 1 allowed by Ld Charity Commissioner thereby reviewing the order of dismissal passed in Revision Application no. 1 of 2016 (Page no. 272 of Affidavit in Reply)
10.10.2017	Order passed below Exhibit 1 in Application no. 2 of 2017 filed by Villagers under Section 47(1)(a) of Maharashtra Public Trust Act 1950 (Page no..309 of Affidavit in Reply)
02.11.2017	The Petitioners herein filed their objection in Application no. 2 of 2017 filed by Villagers under Section 47(1)(a) of Maharashtra Public Trust Act 1950 (Page no. 16 of Additional Compilation

(iii) Learned Counsel submitted that, the said Trust bearing No. A-792 (Pune) was previously registered in the year 1952 for the same temple and for the same immovable property in the name of Shri. Maruti Mandir, Kumshet, Taluka-Junnar, District-Pune.

(iv) He submitted that, the Petitioners filed Inquiry Application No.674 of 2013 pertaining to the Trust Maruti Mandir Deosthan Trust

and, thereafter, by keeping said Application pending, filed another Inquiry Application No.1682 of 2013 in the name of Shri. Hanuman Maruti Deosthan Trust. He submitted that, the Application No.2 of 2017 has been filed by few villagers of the said Village under Section 47(1) (a) of the M.P.T. Act and the same is pending till today.

(v) Learned Counsel relied on the decision of the Supreme Court in ***Kapra Mazdoor Ekta Union*** (Supra) and submitted that, as the order dated 5th January 2017 was suffering from procedural illegality, the learned Joint Charity Commissioner, Pune Region, Pune has exercised the power of review and passed the order dated 2nd February 2017. He submitted that, the power of procedural review is inherent in all the authorities and, therefore, there is no illegality committed by the learned Joint Charity Commissioner.

(vi) Learned Counsel submitted that, the said Revision Application No.1 of 2016 was filed on 24th November 2015. Thereafter, on 19th October 2016, the Respondent No.1 made an Application and filed certain documents pertaining to earlier Trust No. A-792 (Pune). These documents were specifically referred in the oral submissions. However, without considering the said documents, the Revision Application No. 1 of 2016 was dismissed by order dated 5th January 2017. He submitted that, Respondent No.1 filed Review Application bearing Misc. Application No.4 of 2017 as the documents produced by him along with

Application dated 19th October 2016 were not considered. As those documents were very important documents and, after noticing the same, on the basis of the decisions of the Supreme Court, the learned Joint Charity Commissioner reviewed his order on the ground that, there is procedural illegality which goes to the root of the matter. He submitted that, therefore, no illegality is committed in passing the impugned order.

(vii) Learned Counsel submitted that, as the fraud is played by the Petitioners, the Petitioners are not entitled for any relief. He relied on the decision of the Supreme Court in ***Rajender Singh v. Governor, Andaman and Nicobar Islands***⁹.

(viii) Learned Counsel pointed out Application dated 13th January 2017 filed under Section 47(1)(a) of the said Act filed by few villagers including some of the Petitioners. He submitted that members of the Petitioner No.1 – Trust have filed the said Application. He pointed out Page Nos.3 and 4 of the said Application and submitted that about 25 villagers have filed the said Application. He pointed out the Order dated 10th October 2017 passed by the Joint Charity Commissioner, Pune Region, Pune below Exhibit – 1 in Application No.2 of 2017. He pointed out 7/12 extract of the years 1987 – 1988 to 1997 – 1998 which show that the name of the Trust and that 2 Hectares property is in the name of the Trust i.e. the old Trust registered in the year 1952. He pointed out

⁹ (2005) 13 SCC 289

the objection dated 2nd November 2017 taken out by about 35 villagers for the registration of new Trust. He therefore submitted that in fact the proceedings are pending for appointment of new trustees of the earlier Trust by filing Application under Section 47 of the said Act. The said Application has been filed by various villagers including some members of the new Trust. He submitted that there cannot be two trusts registered with respect to the single temple.

(ix) Learned Counsel therefore submitted that no interference is warranted in the impugned order and the Writ Petition be dismissed.

IV] SUBMISSIONS OF THE RESPONDENT NO.2 AND 3:

5. Ms. Nimbalkar, learned AGP appearing for Respondent Nos.2 and 3 supported the impugned order.

(i) Ms. Nimbalkar, learned AGP for the Respondent – State submitted that the scheme of the said Act does not provide for registration of two trusts with respect to the single temple. She submitted that the Trust namely Shri. Maruti Mandir, Kumshet was registered on 1st March 1952 bearing No.A-792/Pune. She submitted that another trust is registered with respect to the same temple in the name of Shri. Hanuman Maruti Mandir Deosthan Trust bearing No.A-2651/Pune on 19th June 2014. She submitted that it is impermissible under the scheme of the said Act that two trusts will be registered with respect to the same charity. She submitted that the Petitioners have obtained the registration of the said

Shri. Hanuman Maruti Deosthan Trust bearing No.A-2651/Pune on 19th June 2014 by suppressing that there is another earlier trust registered with respect to the same temple being Shri. Maruti Mandir, Kumshet, A-712/Pune dated 1st March 1952. She therefore submitted that the impugned Order has been validly passed and therefore no interference in the impugned Order is warranted.

V] FACTUAL MATRIX:

6. Before considering the rival contentions, it is necessary to set out relevant factual aspects :-

[i] In the year 1952 i.e. on 1st March 1952 there is a Trust registered bearing No. A-792 (Pune) in the name of Shri. Maruti Mandir, Kumshet, Tal. Junnar, Dist. Pune (hereinafter referred to as “**the First Trust**”). The said Maruti temple is very old temple and the properties which are shown as properties of the said Trust are as follows :

- (a) City Survey No.18, Hissa No.10 admeasuring 2 Acres and 13 Gunthas.
- (b) The temple of Maruti idol admeasuring 45 by 35 constructed by bricks and stones.

[ii] On 7th March 2013, the Petitioners filed Inquiry Application No.674/2013 under Section 18 of the M.P.T. Act regarding public Trust by name “Maruti Mandir Deosthan

Trust”. In the said Application, the temple of Hanuman is mentioned as admeasuring 32 by 38.

[iii] Thereafter, the Petitioners filed another Inquiry Application No.1682 of 2013 in the name of public Trust “Shri. Hanuman Maruti Mandir Deosthan Trust”. The property mentioned as trust property with respect to the First Trust is also mentioned in Inquiry Application No.674 of 2013 and also in the said Inquiry Application No.1682 of 2013 in the column of property of the Trust.

[iv] At this stage it is to be noted that, it is not disputed by learned counsel appearing for the Petitioners that, the Maruti Mandir which is the subject matter of the Trust bearing No. A-792 (Pune) is the same as mentioned in the Inquiry Application No. 674 of 2013 and in the Inquiry Application No.1682 of 2013. In fact, the documentary evidence also reflects the same position.

[v] On 19th June 2014, the Inquiry Application No.1682 of 2013 was disposed of by the learned Assistant Charity Commissioner, Pune Region, Pune directing registration of the Trust in the name of Shri. Hanuman Maruti Mandir Deosthan Trust (hereinafter referred to as “**the Second Trust**”). The said registration was granted by conducting inquiry and by

exercising power under Section 18 of the said Act.

[vi] Thereafter, on 19th October 2015, the Petitioners withdrew the Inquiry Application No.674 of 2013 filed by them.

[vii] On 24th November 2015, the Respondent No.1 filed Revision Application No.1 of 2016 under Section 70-A of the said Act before the learned Joint Charity Commissioner, Pune Region, Pune challenging the legality and validity of the order dated 19th June 2014 passed in the Inquiry Application No.1682 of 2013 and for cancellation of the registration of the Second Trust.

[viii] On 19th October 2016, the Respondent No.1 submitted an Application bearing Exh.13 in Revision Application No. 1 of 2016 seeking permission to produce certain documents concerning registration of the First Trust and also produced said documents along with list of documents at Exh. 14. By order dated 19th October 2016, the learned Joint Charity Commissioner passed following order :-

“Other side to say”.

Thereafter, on 19th October 2016, the learned Joint Charity Commissioner passed following order :-

“Production allowed”.

The said papers are concerning the registration of earlier Trust bearing No. A-792 (Pune) i.e. the First Trust. The said documents are annexed to the affidavit-in-reply of the Respondent No.1 at pages 104 to 120 and said Application at Exh.13 is at page No. 248 and Application at Exh.14 is at page No. 249.

[ix] The learned Joint Charity Commissioner by order dated 5th January 2017 dismissed the Revision Application No.1 of 2016.

[x] However, it is the case of Respondent No.1 that, although, in the arguments, the said documents produced on 19th October 2016 were specifically pointed out, the impugned order dated 5th January 2017 was passed without taking into consideration the said documents. In view of this position, the Respondent No. 1 filed Misc. Application No. 4 of 2017 before the learned Joint Charity Commissioner, Pune Region, Pune seeking review of the order dated 5th January 2017.

[xi] By impugned order dated 2nd February 2017, the said Misc. Application No.4 of 2017 was allowed by the learned Joint Charity Commissioner, Pune Region, Pune thereby reviewing the order dated 5th January 2017 and consequently

Revision Application No. 1 of 2016 was allowed by setting aside order passed in Inquiry Application No.1682/2013 dated 19th June 2014 and the said Inquiry Application is dismissed. The operative part of the impugned order dated 2nd February 2017 passed by the learned Joint Charity Commissioner, Pune Region, Pune in Misc. Application No. 4 of 2017 is as under :-

“ORDER

1. *Misc. Application No. 4/2017 is allowed.*
2. *The judgment and order passed in Revision Application No. 1/2016, dated 05-01-2017 is hereby recalled, the Revision Application No. 1/2016 is allowed and the judgment and order passed in Inquiry Application No. 1682/2013, dated 19-06-2014 is set aside and the said inquiry application is dismissed.*
3. *In the peculiar facts of the case no order as to costs.*
4. *The applicant or persons having interest shall move an application for Scheme under Section-50A of the M.P.T. Act.*
5. *Proceeding be initiated under Section-47 of the M.P.T. Act for appointment of the trustees.*
6. *Entry of this order be taken in Schedule-I of the Register of Public Trust.*
7. *Proceeding is closed.”*

[xii] The learned Joint Charity Commissioner relying on the decisions of the Supreme Court in ***Vijay Syal & Anr. v. State of***

Punjab and Ors. ¹⁰, *Assistant Commissioner, Income Tax, v. Saurashtra Kutch Stock Exchange Limited* ¹¹, and *Meghmala & Ors. v. G. Narasimha Reddy & Ors.* ¹² held that, a party should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances, the Court should not perpetuate the fraud. The rectification of an order stems from fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality. The learned Joint Charity Commissioner also relied on the decisions of *Kapra Mazdoor Ekta Union* (Supra), *Grindlays Bank Ltd.* (Supra) and of *Dinkar Indrabhan Kadaskar & Ors. v. Grampanchayat Bhagwatipur Taluka-Rahata, Dist-Ahmednagar Through its Sarpanch* ¹³ and held that, as he has committed procedural error and mistake of a nature which vitiated the proceeding he is competent to review his order. The learned Joint Charity Commissioner observed that, the documents which are produced by Respondent No.1 along with Application dated 19th October 2016 at Exh.13 and at Exh.14 were not taken into consideration while passing the order dated 5th January 2007 and, therefore, reviewed the said order on the ground

10 (2003) 9 SCC 401

11 (2008) 14 SCC 171

12 (2010) 8 SCC 383

13 Civil Application No.809/2006 in First Appeal No.829 of 2003

that, the said order suffered from procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consecutively the order passed therein. The learned Joint Charity Commissioner observed that if he would have taken into consideration the aspect that already a trust is registered with respect to said Maruti Mandir, he would not have confirmed the order dated 19th June 2014 of the learned Assistant Charity Commissioner which has the effect of registration of two separate and distinct public trusts with respect to the same Charity-Maruti Mandir, Kumshet, Taluka-Junnar, Dist-Pune. The learned Joint Charity Commissioner set aside the order dated 19th June 2014 passed by the learned Assistant Charity Commissioner, by which, registration was granted to the Petitioner No.1-Trust i.e. the Second Trust as the earlier Trust bearing No. A-792 (Pune) i.e. the First Trust was already registered.

7. In view of the rival contentions and in view of the above factual position, following points require to be decided:

- (A) Whether power of review can be exercised by the authorities under the Maharashtra Public Trust Act, in the absence of specific statutory power of review in the said Act?
- (B) Whether the impugned order could have been passed by

the learned Joint Charity Commissioner by invoking procedural review?

(C) Whether under the Scheme of the Maharashtra Public Trust Act is it permissible to register two separate Trusts for the same Public Trust?

8. The entire basis of the impugned order passed by the learned Joint Charity Commissioner is that only one trust can be registered under the scheme of the said Act with respect to the Charity/temple and therefore initially the said point is required to be decided.

9. A perusal of the impugned Order dated 2nd February 2017 passed by the learned Joint Charity Commissioner, Pune Region, Pune clearly shows that in Paragraph No.12 it is specifically observed that if the learned Joint Charity Commissioner would have considered the documents filed below Exhibit – 14 showing registration of earlier trust in the year 1952 regarding the said Maruti temple, the Joint Charity Commissioner would not have passed the Order dated 5th January 2017 in Rev. Application No.1 of 2016 confirming registration of second trust concerning the same temple. The relevant observations in paragraph 14 of the impugned Order dated 2nd February 2017 are as follows:

“If this Authority would have considered the documents placed on record while deciding the revision application, it would not have allowed the revision application. On the contrary, it would have rejected the inquiry application filed by the respondents. The observations made while deciding the

revision application are crystal clear that, respondents have not come with clean hands before the Authority for registration of the trust. They have suppressed material facts from the villagers. Therefore, the respondents cannot be permitted to continue their activities under the guise of registration of the subsequent trust. In fact in this proceeding the ld. advocate of the respondents has not disputed the registration of the trust in respect of the same temple in the year 1952. According to him, it is not functioning. However, that cannot be a ground for the respondents to make a fresh application for registration of another trust and to take over the management of the said trust keeping the villagers in dark. Hence, the present application deserves to be allowed. Consequently, the point answered accordingly.”

(Emphasis added)

Thus, in effect what the learned Joint Charity Commissioner, Pune Region, Pune has held is that if the Authority would have known that the earlier trust is registered with respect to said temple, then the Joint Charity Commissioner could not have passed the Order dated 5th January 2017.

10. In view of the said observations of the learned Joint Charity Commissioner, it is the contention of Mr. Sawant along with Mr. Kadam, learned Counsel for the Petitioners that the Joint Charity Commissioner has jurisdiction to register two trusts with respect to the same charity i.e. the concerned temple in the present case. To substantiate the said contention, reliance is placed on Section 50A of the said Act.

11. In view of the said contention, it is necessary to see the scheme of the said Act. It is relevant to note certain definitions viz. “public trust”

[Section 2(13)], “temple” [Section 2(17)], “trustee” [Section 2(18)], “Instrument of trust” [Section 2(7A)], “manager” [Section 2(8)] Section 18 is regarding registration of public trusts. Section 19 is regarding inquiry for registration. Section 20 is regarding findings of Deputy or Assistant Charity Commissioners after completion of the inquiry provided for under Section 19. Section 21 is regarding entries in Register. Said provisions are relevant and the same are reproduced herein below:

(i) “Section 2(7A) “Instrument of trust” means the instrument by which the trust is created by the authority of the trust [and includes any scheme framed by a competent authority or any memorandum of association and rules and regulations of a society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra];

(ii) Section 2(8) “manager” means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes—

(a) in the case of a math, the head of such math,

(b) in the case of a Wakf, a mutawalli of such Wakf,

(c) in the case of a society registered under the Societies Registration Act, 1860, its governing body, [whether or not the property of the society is vested in a trustee];

(iii) Section 2(13)“public trust” means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a Wakf, [church, synagogue, agiary or other place of public religious worship] [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;

(iv) Section 2(17)“temple” means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship;

(v) Section 2(18)“trustee” means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;

(vi) 18. Registration of Public Trusts.

(1) It shall be the duty of the trustee of a public trust to which this Act has been applied to make an application for the registration of the public trust.

(2) Such application shall be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust [or the trust property or substantial portion of the trust property is situated, as the case may be.]

(3) Such application shall be in writing, shall be in such form and accompanied by such fee as may prescribed.

(4) Such application shall—

(a) in the case of a public trust created before this Act was applied to it, be made, within three months from the date of the application of this Act, and

(b) in the case of a public trust created after this Act comes into force, within three months of its creation.

(5) Such application shall inter alia contain the following particulars:—

[(ai) the designation by which the public trust is or shall be known (hereinafter referred to as the name of the public trust)],

(i) the names and addresses of the trustees and the manager;

(ii) the mode of succession to the office of the trustee;

(iii) the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof;

(iv) the approximate value of movable and immovable property;

(v) the gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter;

(vi) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause (v) relate;

(vii) the address to which any communication to the trustee or manager in connection with the public trust may be sent;

(viii) such other particulars which may be prescribed:

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(6) Every application made under sub-section (1) shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf. It shall be

accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

[(6A) Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction.]

[(7) It shall also be the duty of the trustee of the public trust to send a memorandum in the prescribed form containing the particulars, including, the name and description of the public trust, relating to the immovable property of such public trust, [to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate [for the purpose of filing in Book No. I under section 89 of that Act.]

Such memorandum shall be sent within three months from the date of creation of the public trust and shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.]

(vii) 19. Inquiry for Registration.

On the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall within thirty days make an inquiry in the prescribed manner 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.*

(viii) **20. Findings of Deputy or Assistant Charity Commissioners.**

On completion of the inquiry provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefor as to the matter mentioned in the said section, [and may make an order for the payment of the registration fee.]

(ix) **21. Entries in register.**

(1) *The Deputy or Assistant Charity Commissioner shall make entries in the register including those maintained in an electronic form kept under section 17 in accordance with the findings recorded by him under section 20 or if appeals [or applications] are made as provided by this Act, in Accordance with the final decision of the competent authority provided by this Act.*

(2) *The entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive.”*

12. Rule 6 of the *Bombay Public Trusts Rules, 1951* (“said Rules”) is concerning Application for registration of a public trust under Section 18, Rule 7 is concerning manner of inquiries, Rule 7A is regarding public notice to be given before making certain inquiries and Rule 8 is concerning Certificate of Registration. The relevant portion of said Rules 6 to 8 reproduced herein below:

(i) “6. Application for registration of a public trust under Section 18

(1) The application for registration of a public trust, in addition to the particulars specified in clauses (i) to (vii) of sub-section (5) of section 18 , shall contain the following particulars:—

- (a) Particulars of documents creating the trust.**
- (b) Particulars other than documents about the creation or origin of the trust.**
- (c) Objects of the trust.**
- (d) Sources of income of the trust.**
- (e) Particulars of encumbrances, if any, on trust property.**
- (f) Particulars of the scheme, if any, relating to the trust.**
- (g) Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.**

The Charity Commissioner may, however, direct that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified by him.

(2) *The application shall be in the form of Schedule II hereto.*

(3) *The application in addition to a copy of the instrument of trust, shall be accompanied by a copy of the scheme, if any, in operation in regard to the public trust.*

(4) *Every person signing the application shall subscribe on solemn affirmation before the Deputy or Assistant Chanty Commissioner, a Justice of the Peace, [an Executive Magistrate or a Notary appointed under the Notaries Act, 1952 for the State of Maharashtra] that the facts mentioned in the said application are true to the best of his information and belief.*

(5) *The fee to accompany the application shall be in cash and of the following amounts:—*

	Rs.
(i) <i>when the value of the property of a public trust does not exceed Rs. 2,000.</i>	3
(ii) <i>when the value of the property of a public trust exceeds s. 2.000 but does exceed Rs. 5,000.</i>	5
(iii) <i>when the value of the property of a public trust exceeds Rs. 5,000 but does not exceed Rs. 10,000.</i>	10
(iv) <i>when the value of the property of a public trust exceeds s. 10,000 but does not exceed Rs. 25,000.</i>	20
(v) <i>when the value of the property of a public trust exceeds Rs. 25,000.</i>	25

Provided that no such fee shall be charged in the case of public trusts deemed to have been registered under Section 28.

(6) *When on an application for registration of a*

*public trust made under Section 18, it has been decided by the Deputy or Assistant Charity Commissioner or any other competent authority under the provisions of the Act, that the trust does not exist or that the trust is not a public trust to which the Act applies or that the value of the property of the public trust is less than the amount for which registration fee has been paid, the Deputy or Assistant Charity Commissioner or such other authority may **direct the refund of the** whole of the fee or such part of the fees as has been paid in excess of the fee payable under sub-rule (5), as the case may be, to the applicant.*

[(7) The memorandum referred to in sub-section (7) of section 18 shall be in the form of Schedule 11-A hereto. Such memorandum shall be verified in the manner prescribed under sub-rule (4).]

(ii) 7. Manner of inquiries

[Except as otherwise provided in the Act and these rules, inquiries under or for purposes of sections 19, 22, 22A, 28, 29, 36, 39, 41D, 41E(3), 43(2)(a), 47, 50A, 51, 54(3) and 79AA(2) or any other inquiry which the Charity Commissioner may direct to be held for the purposes of the Act,] shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and elsewhere under the Provincial Small Cause Courts Act, 1887. In any inquiry, a party may appear in person or by his recognised agent or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Deputy or Assistant Charity Commissioner so directs, be made by the party in person.

(iii) [7A. Public Notice before making certain inquiries

(1) When an application or otherwise, any inquiry is

to be made for purposes of sections 19, 22, 22A, 28 or 29 as to whether a public trust exists or whether any property belongs to a public trust, the Deputy or Assistant Charity Commissioner shall, subject to the provision of this rule, give public notice of such inquiry as provided in sub-rule (3) by calling upon all persons concerned to submit their objections, if any, to him.

[(2) (a) When any such inquiry is initiated on application, the Deputy or Assistant Charity Commissioner shall, by order in writing,—

(i) call upon the applicant to pay the estimated cost of giving such public notice within a specified time, regard being had to the mode of issuing such public notice; or

(ii) when publication of such notice by an advertisement in one or more local newspapers is ordered in addition to other modes of publication, allow the applicant to publish at his own cost, the public notice prepared by the Deputy or Assistant Charity Commissioner in the newspapers approved by the said officer within a specified time.

(b) Notwithstanding anything contained in clause (a), the Deputy or Assistant Charity Commissioner may by order in writing exempt the applicant from payment of the whole or part of the cost of issuing such public notice, if he is satisfied that the applicant is not in a position to bear such cost, regard being had to the capacity of the trust to pay, the financial position of the applicant or the nature of his interest in the matter.

(c) When the applicant fails to pay the estimated cost of giving such public notice within the specified time without reasonable excuse, or where the applicant is so exempted from depositing or meeting the cost of issuing such public notice or when the inquiry is made by the Deputy or

Assistant Charity Commissioner on his own motion, the Deputy or Assistant Charity Commissioner shall direct the cost to be initially met from the Public Trusts Administration Fund and then while making the final order shall pass appropriate orders as to its reimbursement or otherwise from the property of the trust or any party to the proceedings as he may deem fit.

(d) Failure on the part of the applicant to deposit or pay estimated or actual cost of giving such public notice within the specified time, or to publish it as an advertisement in the newspapers at his own cost within the specified time, as required by this sub-rule, shall amount to a contravention of the provision of this rule for the purposes of Section 67.]

(3) The Deputy or Assistant Charity Commissioner [shall give or cause to be given public notice] of such inquiry—

(a) either by advertisement in one or more local newspapers [having wide circulation in the region] or by beat of drums or any other method considered by him to be adequate in the circumstances of any case, regard being had to the value of the property involved and the capacity of the trust to bear the cost of advertisement in a newspaper, and

(b) by affixing a copy of such notice on the 'Notice Board' of his office, [or by publication of such notice on the Official Website of the Charity Commissioner] and also on some conspicuous part of the property involved, if any, and

(c) by issuing a notice to the person in occupation or possession of such property.

(4) No objection submitted under sub-rule (1) shall ordinarily be considered, unless it is submitted within thirty days from the date of publication of the notice which is the last in point of time.]

(iv) 8. Certificate of Registration

[(1)] When a public trust is enrolled in the Register of Public Trusts a certificate in the following form shall be issued to the trustee in token of the registration. Such certificate shall be signed by the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office and shall bear the official seal.

[(2) If any certificate of registration is lost, destroyed or defaced, the Deputy or Assistant Charity Commissioner may, on an application for the purpose, issue a duplicate thereof [(the word "Duplicate" being clearly stamped in red ink)] on payment of such charge therefor not exceeding two rupees as the Deputy or Assistant Charity Commissioner may deem fit.]

[8A. Registration of public trust when its name is duly changed

Where the name of any trust is duly changed and the Deputy or Assistant Charity Commissioner records this change of the name in respect of the trust in the Register of Public Trusts, the Deputy or Assistant Charity Commissioner may either correct the original certificate if produced, or issue a fresh certificate of registration in the new name with the original registration number on payment of a sum not exceeding one rupee.]”

13. The registration of the trust provides entries in register as contemplated under Section 21 of the said Act and the same includes the details as provided by Rule 5 of the said Rules. The said Rule 5 reads as under:

“5. Maintenance of a Register of Public Trust

In every Public Trusts registration Office or Joint Public Trusts Registration Office there shall be maintained a Register of Public Trusts in the form of Schedule 1 hereto in respect of public trusts, registered or deemed to be registered

under the Act:

Provided that the Charity Commissioner may, in case of any Public Trusts Registration Officer or Joint Public Trusts Registration office, direct the maintenance of such a register separately for different classes of public trusts or areas within the region or sub-region.”

The details are to be maintained in the said register as per Schedule – I.

The said Schedule – I is as under:

Serial No.	Name of the trust	Names of trustees and managers with their addresses	Mode of succession to trusteeship and managership	Objects of the trust	Particulars of documents creating the trust	Particulars other than documents about the origin or creation of the trust	Movable Property		
							Movable property (entries regarding cash should be made only if it forms part of the Capital of the trust)	Its estimated value	Village where situate
1	2	3	4	5	6	7	8	9	10

Immovable property				Average Annual Income			
Tenure	Survey Number of C. S. or Municipal number	Area	Assessment or Judi	Estimated Value of each property mentioned in column 12	Average gross annual income from property in columns 8 and 12	Average gross annual income from other sources	Total of columns 16 and 17
11	12	13	14	15	16	17	18

Average Annual Expenditure						Particulars of the scheme, if any, relating to the trust	Particulars of encumbrances on trust property	Particulars of title-deeds pertaining to trust property and names of trustees in possession thereof	Remarks
Remuneration to trustees or managers	On establishment and staff	On religious objects	On charitable objects	On miscellaneous items	Total of columns 19 to 23				
19	20	21	22	23	24	25	26	27	28

(Emphasis added)

14. Section 22 of the said Act is regarding change i.e. where any change occurs in any of the entries recorded in the register kept under Section 17, then the trustees shall within 90 days from the date of the occurrence of such change, have to report the same to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept.

15. For the purpose of this discussion, another relevant provision is

Sub-Section 3A of Section 22 which is concerning de-registration of a trust. Said Sub-Section 3A of Section 22 reads as under:

“(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, deregister the trust on the following grounds:—

- (a) when its purpose is completely fulfilled; or*
- (b) when its purpose becomes unlawful; or*
- (c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or*
- (d) when the trust, being revocable, is expressly revoked; or*
- (e) when the trustees are found not doing any act for fulfilling object of the trust:*

Provided that, no trust shall be deregistered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.”

16. Rule 12A of the said Rules is regarding procedure to be followed for de-registration of trust under Section 22, and Rule 12B is concerning maintenance of register of de-registration of trusts. The said Rule 12A and Rule 12B are reproduced herein below for ready reference:

[12A. Procedure to be followed for de-registration of trust

under section 22.

(1) Every Deputy or Assistant Charity Commissioner shall ascertain, on the basis of the record of the trust before it, that the trust deserves the de-registration as contemplated in sub-section (3-A) of section 22.

(2) The Deputy or Assistant Charity Commissioner shall, if trust deserves the de-registration under sub-rule(1), make inquiry of the trust to be de-registered in manner specified in rule 7 and also by issuing notices to the trustees on record and notice in accordance with rule 7-A, to the concerned persons, to verify weather the trust is liable for de-registration on the grounds mentioned in sub-section (3-A) of section 22 and then pass appropriate order under fit.

(3) If the Deputy or Assistant Charity Commissioner, in the course of such inquiry, finds that the trust has movable or immovable properties, he can take over the management of such properties and record its details in form given in Schedule II-C appended to the rules.

(4) The Deputy or Assistant Charity Commissioner shall, after taking over the possession of the trust property and after hearing objections, if any, pass further orders for disposal of such property after ascertaining value of such property.

(5) The Deputy or Assistant Charity Commissioner may, after passing an order under sub-rule (4) for the sale of the property, sell it by holding auction after inviting offers by publishing a notice in the two newspapers having a wide circulation in the area where the property is situated, on such terms and conditions as he may deem fit.

(6) The Deputy or Assistant Charity Commissioner shall, after sale of the property of the trust to be de-registered, deposit the sale proceeds in the Public Trusts Administration Fund.]”

[12B. Maintenance of register of de-registration of trusts

There shall be maintained in every Public Trusts Registration Office or Joint Public Trust Registration Office, a register of the trusts de-registered under sub-section (3-A) of section 22 of the said Act, in the form given in Schedule II-C appended to the rules.]”

17. The scheme of the said Act as seen from the above elaborate provisions, clearly shows that the Application for registration of a public trusts as contemplated under Section 18 shall contain the following particulars:

- (i) the name of the public trust;
- (ii) the names and addresses of the trustees and the manager;
- (iii) the mode of succession to the office of the trustee;
- (iv) the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof;
- (v) the address to which any communication to the trustee or manager in connection with the public trust may be sent;

The Application for registration of a public trusts apart from the above particulars shall also contain *inter alia* following particulars:

- (a) Particulars of documents creating the trust.
- (b) Particulars other than documents about the creation or

origin of the trust.

- (c) Objects of the trust.
- (d) Sources of income of the trust.
- (e) Particulars of encumbrances, if any, on trust property.
- (f) Particulars of the scheme, if any, relating to the trust.
- (g) Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

18. The Application for registration of the trust shall be in the form of Schedule II. The important particulars as contemplated in the form of as prescribed vide Rule 6 of the said Rules *inter alia* contains the above particulars as prescribed under Section 18 of the said Act and under Rule 6 of the said Rules. Thus, inquiry for registration as contemplated under Section 19 of the said Act provides that the inquiry shall be made in the prescribed manner for the purpose of ascertaining *inter alia* the following aspects:

- (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.

19. The manner of inquiries as provided under Rule 7 of the said Rules and as far as the Greater Bombay Region is concerned, the same shall be in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and elsewhere the same shall be held as far as possible in accordance with the procedure prescribed for the trial of suits under the Provincial Small Cause Courts Act, 1887. Thus, what is to be ascertained under the inquiry is whether a public trust exists, whether the concerned trust is a public trust, whether any property is of the property of such trust, whether the portion or any substantial portion of the subject matter of the trust is situated within his jurisdiction, the names and addresses of the trustees and manager of such trust, mode of the succession to the office of the trustee of such trust and the origin, nature and object of such trust.

20. In the context of the present matter it is relevant to note that in this case registration of the public trust is of a temple. Sub-Section (13) of Section 2 defines the public trust *inter alia* as 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 formed either for a religious or charitable purpose or for both.

21. Thus, every temple is a public trust. As noted in Order dated 5th January 2017 by the learned Joint Charity Commissioner, Pune Region, Pune it is observed that the registration of the said temple ought to have taken place earlier and no efforts were made by the villagers after the commencement of the said Act for the registration of the said temple and therefore the registration was directed. These observations were made as the learned Joint Charity Commissioner failed to notice that the trust regarding said temple is already registered. It is important to note in the context of the present case is that the existence of the concerned temple is an admitted position and as noted hereinabove every temple is a public trust.

22. Thus, it is clear that what is contemplated under the scheme of the Act is the objects of the trust, sources of income of the trust, the names and addresses of the trustees and the manager, and the list of the movable and immovable trust property, the address to which any communication to the trustee or manager in connection with the public trust be sent, particulars of title deeds pertaining to trust property and the names of the trustees in possession thereof. Thus, the scheme of the Act clearly contemplates that the registration of only one trust in the

context of the present case concerning one temple, is permissible.

23. The submission of learned Counsel of the Petitioner that the scheme of the Act as contemplated under Section 50A(2) provides that in the interest of the proper management or the administration, two or more public trusts may be amalgamated by framing a common scheme, is to be understood in the light of the above scheme of the said Act. Sub-Section (2) of Section 50A of the said Act reads as under:

[50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.—

(1) Notwithstanding anything contained in section 50, where the 4 [Assistant or Deputy Charity Commissioner] has reason to believe that, in the interest of the proper management or administration of public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the 5 [Assistant or Deputy Charity Commissioner] may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

*“(2) Where the [Assistant or Deputy Charity Commissioner] is of opinion that **in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after —***

(a) publishing a note in the Official Gazette [and also if necessary in any newspaper which in the opinion of the [Assistant or Deputy Charity Commissioner] is best calculated to bring to the notice of persons likely to be

interested in the trust] with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.”

(Emphasis added)

24. Thus, what is contemplated by the said provision is that in the case of the proper management or administration of two or more public trusts the same may be amalgamated by framing a common scheme by giving the trustees of such trusts and all other interested persons due opportunity to be heard. Thus, in this case, in such a situation what is contemplated is the existence of two or more public trusts and for the proper management or administration the common scheme can be framed for such two or more public trusts. The said provision has no application to the present case and to support the contention that two distinct and separate trusts can be formed concerning one Charity/temple. Section 50A(2) is applicable when two or more public trusts are functioning and then the said power can be exercised for amalgamation of said two trusts for the purpose of proper management or administration of such two or more public trusts. Thus, in fact what is contemplated by the said provision in the context of this case is that there are two independent trusts concerning two temples and then in the interest of proper management or administration of such two or

more public trusts/temples the same are amalgamated by framing a common scheme for the same. However, by no stretch of imagination, the said provision contemplates that two independent and separate trusts can be formed with respect to a single temple/charity.

25. Thus, the scheme of the Act is very clear. When a particular trust is registered under the said Act not only the name and the address is registered but various details of the trust are registered including movable and immovable properties. If any changes are required in the particulars which are entered in register of public trust as provided in Schedule – I then Section 22 of the said Act contemplates that trustees shall report the said change to the Deputy or Assistant Charity Commissioner in charge of the Public Trust Registration Office where the register is kept. The said details are very relevant as they included movable and immovable property, particulars of documents creating the trust, the names of trustees and managers with their addresses, mode of succession to trusteeship and managership, particulars of the scheme relating to the trust, particulars of encumbrances of the trust property, particulars of title deeds pertaining to trust properties and names of trustees in possession thereof.

26. Thus very elaborate provisions are made under the said Act concerning registration of the trust. The said Act and the said Rules clearly show that registration of a single trust with respect to one

temple/one charity is contemplated. A bare perusal of the relevant provisions along with Schedule I shows that if registration of two trusts are contemplated with respect to the single trust, then the proper management or administration of the trust will be affected. As there will be two set of trustees who are in charge of the affairs of the trust, the movable and immovable property etc. of the trust will be in charge of two set of trustees. In fact as per Section 2(8) of the said Act the trust property vests in the trustees. Thus, it is very clear that the scheme of the Act and the Rules contemplated registration of only one trust with respect to one public trust or more public trusts but not registration of two separate and distinct public trusts with respect to one temple. Sub-Section (2) of Section 50A of the said Act operates in different field and the same is concerning amalgamation of two or more separate public trusts. The said provision does not indicate that the registration of two or more public trusts are contemplated with respect to one temple. Thus, there is no substance in the said contention.

27. As discussed hereinabove under the scheme of the said Act it is permissible to register only one public trust concerning one Charity/temple and thus in view of the same, it is required to consider the legality and validity of the impugned order.

28. Mr. Sawant, learned counsel appearing for the Petitioners has relied on the decision of the Division Bench in ***Anna S/o Shriram Fate***

(Supra). In the said decision, it has been held that, although, the procedure to be adopted for enquiry contemplated under Section 22 of the said Act is as prescribed under the Provincial Small Causes Courts Act, 1877, Section 17 of the Provincial Small Causes Courts Act, 1887, in turn, provides that the procedure prescribed in the Code of Civil Procedure shall have to be followed. Thus, it is his submission that the applicability of Code of Civil Procedure, 1908 for enquiry under Section 22 is restricted to the procedure of enquiry and all other substantive provisions contained in the Code of Civil Procedure, 1908 have no Application to the proceedings under Section 22. It is his submission that in **Anna Fate** (Supra) it has been in effect held that, the provisions of the Code of Civil Procedure, 1908, particularly, regarding review are not applicable to the enquiry to be conducted under Section 18 of the Bombay Public Trusts Act, 1950.

29. Mr. Sawant, learned counsel has also relied on the decision of the Supreme Court in **Anna S/o Shriram Fate** (Supra) as well as in **Naresh Kumar & Ors.** (Supra), to substantiate his contention that, in absence of any statutory provision providing for review, entertaining an Application for review under the garb of clarification/ modification/correction is not permissible. He also submitted that as the provisions of CPC are applicable to very limited extent, the provisions concerning review as contained in CPC, more particularly Section 114 and Order XLVII are

not applicable to the proceedings under the said Act.

30. Mr. Sawant, learned counsel has also relied on the decision in ***Trimbakrao Shahurao Deshmukh & Ors.*** (Supra), wherein, the review was sought *inter alia* on various grounds including contradictory Judgments ignored by the Industrial Court and relying on the decision of ***Kapra Mazdoor Ekta Union*** (Supra), it has been held that, there is clear distinction between the procedural review and a review on merits. In ***Trimbakrao*** (Supra) this Court observed that, as the review is sought on merits, there has to be specific power of review by express provision or by implication. The Court has held that, the power of substantive review is not available under Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

31. Mr. Sawant, learned counsel appearing for the Petitioners also relied on the decision of this Court delivered on 1st August 2017 in ***Mrs. Shivane Prasanna Deshpande*** (Supra), wherein, it has been held that, it is settled principle of law that, unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. In the said decision, it is further held that, no doubt, if an order is obtained by exercising fraud, it would stand vitiated.

32. Mr. Gadekar, learned counsel appearing for Respondent No.1 relied on the decision of the learned Single Judge of Nagpur Bench of

this Court in **Saroj Ashok Sontakke v. 1. Isaac Baburao Manwatkar & Ors.** ¹⁴. In the said decision, it has been held that, the power of review under Section 114 of the Code of Civil Procedure, 1908 is available, in case, Deputy/Assistant Charity Commissioner takes decision in an enquiry under Section 22 of the M.P.T. Act. It is the contention of Mr. Gadekar that, the same principle will apply to the enquiry for registration as contemplated under Sections 18 and 19 of the said Act. However, it is the contention of Mr. Sawant, learned counsel appearing for the Petitioners that, the decision of the Division Bench in **Anna S/o Shriram Fate** (Supra) is not taken into consideration by the learned Single Judge in the decision in **Saroj Ashok Sontakke** (Supra).

33. As far as the present case is concerned, if it is found that, the present case is squarely covered by the law laid down by the Supreme Court in **Grindlays Bank Ltd.** (Supra) and in **Kapra Mazdoor Ekta Union** (Supra) and if, it is found that, the power of review which is invoked by the learned Joint Charity Commissioner is a power of procedural review which is inherent in every Court/Tribunal and not a review on merits, then, it is not required for this Court to consider the contentions raised by Mr. Gadekar, learned counsel appearing for Respondent No.1 that Section 114 of the Code of Civil Procedure, 1908 which provides for review on merits, also applies to the present case. In fact, in the present case, the Joint Charity Commissioner, Pune Region, Pune while passing

¹⁴ Writ Petition No.4011 of 2019

impugned order dated 2nd February 2017 has specifically observed that, the learned authority has invoked the power of procedural review.

34. To appreciate the rival submissions regarding scope of procedural review and the applicability of the same to the present case, it is necessary to consider the relevant decisions of the Supreme Court in ***Grindlays Bank Ltd.*** (Supra) and ***Kapra Mazdoor Ekta Union*** (Supra).

35. Mr. Gadekar, learned counsel appearing for Respondent No.1 has relied on the decision of the Supreme Court in ***Grindlays Bank Ltd.*** (Supra). In the said decision, the Central Government Industrial Tribunal was hearing a reference made by Govt of India, Ministry of Labour by an order dated 26th July 1975. The reference was fixed for hearing on 9th December 1976 and on that day counsel appearing on behalf of Respondent No. 3, the Commercial Establishments Employees' Association sought an adjournment on the ground that, the General Secretary of the Association had lost his father and that he was on leave to perform the "Shraddha Ceremony". However, the Tribunal refused to grant any further adjournment and passed ex-parte award on 19th January 1977. The Respondent Nos. 5 to 17 applied for setting aside the exparte award, on the ground that, they were prevented by sufficient cause from appearing when the reference has been called on for hearing on 9th December 1976 and the Tribunal by order dated 12th April 1977 set aside the ex parte award on being satisfied that there was sufficient

cause within the meaning of Order IX Rule 13 of the Code of Civil Procedure, 1908. The said order was challenged before the High Court and the High Court declined to interfere in the above facts. The order of the Tribunal and the High Court was challenged in the Supreme Court. In paragraph No. 3 of the said decision, the Supreme Court has considered the questions arising in the said Appeal and framed the same in the following manner:

“3. Two questions arise in the appeal, namely, (1) whether the Tribunal had any jurisdiction to set aside the ex parte award, particularly when it was based on evidence? And (2) whether the Tribunal became functus officio on the expiry of 30 days from the date of publication of the ex parte award under S. 17, by reason of sub-sec. (3) of S. 20 and, therefore, had no jurisdiction to set aside the award and the Central Government alone had the power under sub-sec. (1) of S. 17-A to set it aside.”

In paragraph No. 6, the Supreme Court observed as under :

“6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of

the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.”

In paragraph 13, the Supreme Court explained the concept of procedural review and the review on merits.

*“13. We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in **Narshi Thakershi v. Pradyumansinghji**, AIR 1970 SC 1273 is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-Sections (1) and (3) of S. 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act, while the procedure is left to be devised by the Tribunal to suit carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in S. 11. The answer to the question is, therefore, to be found in sub-s. (1) of S. 11 and not in sub-s. (3) of S. 11. Furthermore, different considerations arise on review. The expression ‘review’ is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension*

by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

(Emphasis added)

36. The Supreme Court in *Kapra Mazdoor Ekta Union* (Supra) considered the scope of procedural review. In the said decision, the Supreme Court reiterated the statement of law as laid down in *Grindlays Bank Ltd.* (Supra) and further elaborated the same. In the said decision, the difference and distinction between a procedural review and a review on merits is discussed in detail by the Supreme Court. The relevant discussion is to be found in paragraph nos.17 to 20 which reads as under:

"17. The question still remains whether the Tribunal had jurisdiction to recall its earlier Award dated 12-6-1987. The High Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier award. The High Court has relied upon the judgments of this Court in Kuntesh Gupta (Dr.) v. Hindu Kanya MahaVidyalaya and Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji wherein this Court has clearly held that the power of review is not an

*inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in **Grindlays Bank Ltd. vs. Central Govt. Industrial Tribunal**. In that case the Tribunal made an ex parte award. The respondents applied for setting aside the ex parte award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex parte award on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the Code of Civil Procedure and accordingly set aside the ex parte award. That order was upheld by the High Court and thereafter in appeal by this Court.*

18. *It was, therefore, submitted before us, relying upon **Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal** that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in **Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal** clearly highlighted this distinction when it observed :*

"Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected

is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal".

19. *Applying these principles it is apparent that where a Court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the*

face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.

20. The facts of the instant case are quite different. The recall of the award of the Tribunal was sought not on the ground that in passing the award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring

the power of review on the Tribunal either expressly or by necessary implication.”

(Emphasis added)

37. The Supreme Court has noted the difference between a procedural review and a review on merits. The said difference as noted by the Supreme Court can be summarized in the following manner :-

[A] The expression 'review' is used in the two distinct senses, namely:

- (i) A procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and;
- (ii) A review on merits when the error sought to be corrected is one of law and is apparent on the face of the record.

[B] When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.

[C] Where a Court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit, only if the Court or the quasi- judicial authority is vested with power of review

by express provision or by necessary implication.

[D] The procedural review belongs to a different category.

In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.

Thus, it has been held that, a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consecutively the order passed therein comes in the ambit of the procedural review.

38. It is significant to note that, the Supreme Court has given illustrative cases where the procedural review is permissible. Where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice has been served to the opposite party, or where a matter is taken up for hearing and decision on date other than the date fixed for its hearing, are some illustrative cases noted by the Supreme Court in which the power of procedural review can be invoked. It has been held that, the party invoking the said power has to establish that, the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the

order made therein. It has been held that, in a proceeding which was itself vitiated by an error or mistake which goes to the root of the matter and invalidated the entire proceeding, in such cases, the power of procedural review can be invoked.

39. As explained by the Supreme Court, the procedural review means the procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consecutively the order passed therein. A bare perusal of the illustrations given by the Supreme Court to explain the procedural illegality, it is seen that, where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases explained by the Supreme Court in which the power of procedural review can be invoked. Thus, it is clear that, what is contemplated by the Supreme Court is, if the principles of natural justice are not followed, then, *inter alia* power of procedural review can be invoked. However, it is to be noted that, whether to invoke procedural review will depend on the facts and circumstances of each case and it will have to be done in the above parameters as laid down by the Supreme Court and, therefore, no straitjacket formula can be prescribed.

40. As far as the present case is concerned, it is admitted position that, the Respondent No.1 filed Application dated 19th October 2016 bearing Exhibit-13 in Revision Application No.1 of 2016 and brought on record documents pertaining to Trust No. A-792 (Pune) i.e. the First Trust. It is also admitted position that by order dated 19th October 2016, the learned Joint Charity Commissioner allowed the production of said documents. It is also admitted position that, the said Revision Application was dismissed by the learned Joint Charity Commissioner without considering the said documents produced along with Application dated 19th October 2016.

41. It is the submission of Respondent No.1 that, the said documents were pointed out to the learned Joint Charity Commissioner at the hearing of the Revision Application No. 1 of 2016, however, the order was passed dismissing the said Revision Application No.1 of 2016 without considering the said documents. The order dated 5th January 2017 passed by the learned Joint Charity Commissioner in Revision Application No. 1 of 2016 clearly demonstrates that, the documents pertaining to Trust No. A-792 (Pune) i.e. the First Trust were not taken into consideration.

42. However, it is required to be noted that in every case where certain documents have remained to be considered by the Court/Authority the procedural review may not be available, as

procedural review is permissible to set aside a palpably erroneous order passed under misapprehension by Court or Tribunal. The said power is either inherent or implied in a Court or Tribunal. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal. Procedural review is permissible when the Court, Tribunal or Quasi-judicial authority commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.

43. Thus, on the touchstone of above principles, it is necessary to consider whether the learned Joint Charity Commissioner rightly invoked the power of procedural review.

44. The learned Joint Charity Commissioner has observed that, if registration of Trust No. A-792 (Pune) in the year 1952 i.e. the First Trust would have been considered by him, then, the Revision Application No. 1 of 2016 could not have been rejected. It is very important to note the reasoning of the learned Joint Charity Commissioner *inter alia* as reflected in paragraph 12 of the impugned order while invoking the procedural review, which reads as under :

“12. In the light of the settled principles of Law as initiated by the Hon’ble Apex Court, time and again must be kept in mind while deciding such applications. On perusal of the record

and proceeding of Revision Application No. 1/2016 it reveals that, applicant has produced on record the certified copies of Inquiry Application No. 2021/1952 in respect of the registration of the trust of 'Hanuman Maruti' temple of her village. The said trust has been registered way back in the year 1952. It also reveals from the record that, this fact came to the knowledge of the applicant after filing the revision application. Therefore, the revision applicant has not taken pleading in this regarding in the revision application. At the time of judgment this point was skipped mistakenly/inadvertently from this Authority, and therefore, the revision application came to be dismissed. After going through the observation made in the order, dated 05-01-2017 it is crystal clear that, this Authority has already recorded a finding that, the revision applicant kept villagers in dark and got registered the trust in respect of said temple. But since it is a trust under the category 'A' having deeming provision, this Authority allowed the registration of the trust with a specific direction to hold the election within a period of three months from the date of order passed in Scheme application. If this Authority would have considered the documents filed below list Exh.14, the result would have otherwise. Therefore, I am of the view that, it is a procedural mistake or irregularity which can be rectified and for that purpose there is no need to have a specific provision in the M. P. T. Act for review of the order."

(Emphasis added)

45. Thus, this is a case where, non consideration of documents which were brought on record and the production of the same was specifically

allowed and the same were specifically brought to the notice of the Authority were not considered. It is specifically observed by the learned Joint Charity Commissioner that registration of the Public Trust in the year 1952 of the said Maruti Temple is inadvertently skipped from his mind. Thus, it is clear that due to non-consideration of said documents showing registration of the said Trust in the year 1952 a palpably erroneous order is passed directing registration of Second Trust with respect to the same Charity about which First Trust is registered since 1952. In fact as already First Trust is registered with respect to said Maruti Temple, order directing registration of another Trust i.e. “Second Trust” concerning the same Maruti Temple is a nullity. It is very clear that only one Trust can be registered with respect to one Charity/temple. This is a case where due to non-consideration of said documents, the learned Joint Charity Commissioner committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Therefore, the present case is squarely covered under the procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consecutively the order passed therein. Thus, this is a case where, the learned Joint Charity Commissioner rightly invoked the power of procedural review as contemplated by the Supreme Court in various decisions including

Grindlays Bank Ltd. (Supra) as well as **Kapra Mazdoor Ekta Union** (Supra).

46. This is not a case which is as contemplated in **Trimbakrao Shahurao Deshmukh & Ors.** (Supra), on which, Mr. Sawant has relied. In that case, it has been held that, the review was sought as there were internal contradiction in the Judgment and the same were pointed out to the learned Industrial Court. Thus, it is very much clear that, in that case, the decision was sought to be reviewed on merits and no review was sought on the ground of procedural review.

47. In this case, the documents were produced and the said production was allowed on the assumption that, they will be considered at the time of hearing of the Revision Application No. 1 of 2016. It is the case of Respondent No.1 that, they have pointed out the said documents to the learned Joint Charity Commissioner at the time of oral arguments, and it is admitted position that, the Revision Application was dismissed by order dated 5th January 2017 without considering the said documents. In fact, the learned Joint Charity Commissioner has specifically observed in the order that at the time of passing Judgment, mistakenly/inadvertently the said documents were skipped and not taken into consideration. Thus, this case is squarely covered by the procedural illegality in the facts and circumstances, as discussed hereinabove, which goes to the root of the matter and invalidates the

proceeding itself, and consecutively the order passed therein.

48. It is significant to note that the Petitioners have also accepted that there is a Trust registered bearing No. A-792 (Pune) in the name of Shri. Maruti Mandir, Kumshet, Tal. Junnar, Dist. Pune i.e. the First Trust. It is also accepted that the said Maruti Mandir which is the subject matter of the Trust bearing No. A-792 (Pune) is also the same as mentioned in the Inquiry Application No. 674 of 2013 and in the Inquiry Application No.1682 of 2013. It is also admitted position that the properties which are shown as the properties of the First Trust are also shown as the properties of the Second Trust. If, the registration of two separate public trusts are permitted with respect to the same trust properties then there will be innumerable problems in the administration of the public trusts. Allowing the registration of two distinct and separate public trusts with respect to the same temple having same properties is not contemplated by the scheme of the said Act.

49. Mr. Sawant, learned counsel appearing for the Petitioners has strongly relied on paragraph 20 of *Kapra Mazdoor Ekta Union* (Supra) and contended that the present case will not come under the purview of procedural review but the same will be a review on merits. He submitted that non-consideration of certain documents will not come under the purview of the procedural review. The said paragraph No.20

of ***Kapra Mazdoor Ekta Union*** (Supra) is already reproduced hereinabove. The Supreme Court in paragraph No. 20, as far as the facts of that case, has observed that, the ground of review in that matter was matters which ought to have been considered by the Tribunal, have not been duly considered and, therefore, it has been observed that, the same will not come under the purview of procedural review but the same will be a review on merits. Therefore, it is observed that, a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication. To appreciate the observations of the Supreme Court in said paragraph 20, it is necessary to consider the factual aspects in said ***Kapra Mazdoor Ekta Union*** (Supra). In that case, it was the contention of the Appellant-Union that the only question which had been argued before the Tribunal was in relation to the power and jurisdiction of the Conciliation Officer to record settlement between the parties during the pendency of the disputes. The question as to whether the settlement was fair and just, and should be accepted by the Tribunal, was not argued. It was therefore, understood that the said question would be decided later on, in case the Tribunal held that the Conciliation Officer had jurisdiction to record the settlement. Under some misconception the Tribunal had determined the terms of the settlement to be fair and just and had passed an award on 12-6-1987. It was, therefore, prayed that

the appellant Union be given an opportunity to establish that the settlement was neither just nor fair. For this purpose the award may be recalled and the appellant Union be given an opportunity to establish that the settlement is unjust and unfair, adversely affecting a large number of workmen. It was prayed that the award may be recalled which was in fact an *ex parte* award, and the question of fairness of the settlement be decided after providing an opportunity to the parties to produce evidence. The Supreme Court *inter alia* dealt with the said submission in Paragraph No.24, which reads as under :

“24. It was also urged before us by the learned counsel for the appellant that the Tribunal ought to have considered, while passing an Award on 12-6-1987, that the settlement was just and fair and protected the interest of the workmen. The recall of the order was sought on the ground that this aspect of the matter has not been considered when an award was made in terms of the settlement. This was precisely the ground on which the Tribunal entertained the application for recall and allowed it by order dated 19-2-1990. The Tribunal in our view proceeded on a factually incorrect assumption. The High Court has found that the Tribunal while making an award in terms of the settlement has in clear terms recorded its satisfaction in para 25 of its order (which we have quoted earlier in the judgment) that the settlement was fair and just. We entirely agree with the High Court.”

(Emphasis added)

Thus, it is clear that the real issue in the said decision of **Kapra Mazdoor**

Ekta Union (Supra) was whether the Industrial Tribunal has considered whether the settlement was just and fair and not the non-consideration of material on record and non-consideration of such material goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Thus, the observations in paragraph 20 of ***Kapra Mazdoor Ekta Union*** (Supra) will not be of any assistance to the Petitioners in the facts of the present case and will not apply to the present case.

50. In the present case, the documents which were not considered by the learned Joint Charity Commissioner shows registration of the public trust in the year 1952 of the same temple with same properties. Therefore, it is clear that order allowing the registration of public trust for the same temple with same properties by order dated 19th June 2014 and confirmation of same by order dated 5th January 2017 by the learned Joint Charity Commissioner amounts to committing a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.

51. It is also required to be noted that learned Joint Charity Commissioner in the impugned order has observed that the Petitioners were aware about the registration of the First Trust concerning the said Maruti Temple. It has been further observed that the order directing

registration of another trust concerning same Maruti Temple has been obtained by the Petitioners by playing fraud and therefore a party should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances, the Court should not perpetuate the fraud. The rectification of an order stems from fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality.

52. It is also required to be noted that the proceedings are pending for appointment of new trustees of the earlier Trust by filing Application under Section 47 of the said Act. The said Application has been filed by various villagers including few Petitioners i.e. some members of the new Trust.

53. As I have come to the conclusion that, the case is covered by procedural review, I have not examined the aspect whether Section 114 of the *Code of Civil Procedure, 1908* is also applicable to the enquiry conducted under Sections 18 and 19 of the M.P.T. Act, which is the alternate submission of Mr. Gadekar, learned counsel appearing for Respondent No.1.

54. For above reasons the Writ Petition is dismissed, however, with no Order as to costs.

55. Mr. Sawant, learned counsel appearing for the Petitioners at this stage, states that, the impugned order of the learned Joint Charity

Commissioner was stayed by this Court by Order 2nd November 2017 and the said stay is operating till today. Accordingly, the said stay is extended by a period of 12 weeks from the date of uploading of this order.

56. This order was dictated in Open Court. As I am conducting the Court at least for 2-1/2 hours almost every day after regular Court hours, leaving the Chamber after correcting/signing daily orders after 10:30 p.m.-11:30 p.m. on almost all the Court working days and reading the case papers at my residence up to 02:00 a.m., reading the case papers in the morning at least for one hour and also attending the Chamber on almost all Saturdays/Sundays/Holidays for completing pending work, uploading of this order is delayed

[MADHAV J. JAMDAR, J.]