Reserved On : 01/05/2026
Pronounced On : 17/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1611 of 1991

With

R/FIRST APPEAL NO. 1517 of 1991

With

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2023

In R/FIRST APPEAL NO. 1517 of 1991

With

CIVIL APPLICATION (FOR PRODUCTION OF ADDITIONAL EVIDENCES) NO. 2 of 2023

In R/FIRST APPEAL NO. 1517 of 1991

With

R/FIRST APPEAL NO. 1612 of 1991

With

R/FIRST APPEAL NO. 1613 of 1991

With

R/FIRST APPEAL NO. 1614 of 1991

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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KISHANJI MAGANJI THAKORE & ORS.
Versus
COLLECTOR OF BARODA & ORS.

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Appearance:
FIRST APPEAL 1611 – 1614 of 1991

MR SHALIN MEHTA, SR. ADVOCATE with ADVOCATES MR NINAD P SHAH & MR. HEMANG SHAH for the Appellants

FIRST APPEAL 1517 of 1991
MR BHARAT T. RAO, ADVOCATE for the Appellants
ADVOCATE NAME DELETED for the Respondent No. 1
DELETED for the Respondent No. 31
NOTICE SERVED for the Respondent No. 10,12,21,2.1,2.2,2.3,28,4,8
RULE NOT RECD BACK for the Respondent No. 15,16,17,19,23,24,25,29,30,7
UNSERVED EXPIRED (N) for the Respondent No. 11,13,14,18,20,26,27,5,6,9
MS DHWANI TRIPATHI, AGP for the Respondent State
MR BG PATEL(599) for the Respondent No. 2.3
MR C B UPADHYAYA(3508) for the Respondent No. 3
MR SP MAJMUDAR(3456) for the Respondent No.22

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. Heard learned Senior counsel Mr. Shalin Mehta assisted by learned advocate Mr. Ninad Shah for the appellants in First Appeal Nos.1611 of 1991 to 1614 of 1991, learned advocate Mr. BT Rao for the appellant in First Appeal No.1517 of 1991 and learned AGP Ms. Dhwani Tripathi appearing for the respondent State. None remained present for other private respondents.

I. CAPTION AND INTRODUCTION

2. These first appeals arise under Section 72(4) of the Gujarat Public Trust Act, 1950 (hereinafter referred to as "the Act of 1950"), and are directed against the common judgment and order dated 21st August 1991 passed in Civil Miscellaneous Application Nos. 31 of 1986, 32 of 1986, 33 of

1986, 34 of 1986, and 36 of 1986 by the learned 3rd Joint District Judge, Vadodara.

3. By the said common judgment and order, all five applications filed by the respective appellants – original petitioners have been dismissed confirming the judgment and order dated 26th August 1985 passed by the Joint Charity Commissioner, Baroda Division, Baroda, in Appeal Nos. 40/79, 42/79, and 46/79, which in turn confirmed the judgment and order dated 25th June 1979 passed by the Assistant Charity Commissioner, Baroda Region, Baroda, in Change Application No. 550 of 1971. By the said order in Change Application No. 550 of 1971, the Assistant Charity Commissioner allowed the application at Exh.1 and ordered that the property bearing Survey No. 9, admeasuring 29 vigas and 3 vasa, and Survey No. 10, admeasuring 3 viga and 69 vasa (in short "the disputed land"), which is forming part of City Survey No. 8/2, Survey No. 1/A admeasuring 707 acre 32 guntha belongs to Shri Yavteshwar Mahadev Trust property as per Exh.60 and 61. The Assistant Charity Commissioner further directed that the disputed land, measurement of which are stated herein above be entered in the Public Trust Register with full details as Shri Yavteshwar Mahadev Trust, bearing Registration Number A-1701-Baroda, as per Exhs.60 and 61.

II. BRIEF FACTS OF THE CASE

4. The Collector, Vadodara, in his capacity as ex officio Administrator and Trustee of Shri Yavteshwar Mahadev

Temple Trust situated opposite SSG Hospital, Vadodara, filed a change application under Section 22A r/w Section 79(1) of the Act of 1950 for a declaration that the disputed land belongs to the Trust properties of Shri Yavteshwar Mahadev Trust. The Trust had been registered under the provisions of the Act of 1950, bearing Trust Registration Number A-1701-Baroda, in the office of the Assistant Charity Commissioner, Baroda Region, Baroda, in the year 1952. The affairs and management of the Trust are managed by the Government through the Collector, Baroda, as ex officio Trustee and Administrator of the said Trust.

4.1 The registration of the Trust commenced with the filing of Application No. 11823 of 1952 and the Trust was registered pursuant to the said application as Shri Yavteshwar Mahadev, Vadodara, by virtue of an order dated 14.5.1956. The object of the Trust is to maintain the temple and manage the worship. The temple, as well as the Trust, is under the direct management of the Government through the Collector.

4.2 Shri Yavteshwar Mahadev Temple, according to the claim of the Collector, is situated on the immovable property of City Survey No.8/2, Survey No.1/A admeasuring 707 acres 32 gunthas. The disputed land belonged to and was owned by Shri Yavteshwar Mahadev Temple until the year 1956, where the name of Shri Yavteshwar Mahadev Temple was shown as occupant in the City Survey record. However, in the year 1956, the name of His Highness the Maharaja F.P. Gaekwad

was entered in the occupant column of the entire land, including the land of Survey No. 10. The City Survey authority mutated the entire land of 707 acre 32 guntha of City Survey No.8/2, Survey No. 1/A, in the name of His Highness the Maharaja of Vadodara, upon receipt of letter bearing Number C-B-3190, dated NIL of 1956, received from the Executive Engineer, R & B., Vadodara.

4.3 The Collector claimed that the City Survey authority, without receiving a notice under Section 135D of the Gujarat Land Revenue Code and in violation of the principles of natural justice, without affording any opportunity of hearing, mutated the name of His Highness the Maharaja of Vadodara in the entire piece of land, thereby removing the name of Shri Yavteshwar Mahadev Temple. Having noticed such act and action on the part of the City Survey authority, the Collector, as ex officio Administrator and Trustee of Shri Yavteshwar Mahadev Trust, wrote letters and attempted to communicate the same to the authority; however, such communications remained unattended. The Collector therefore, preferred an application under Section 22A r/w Section 79(1) of the Act of 1950 for inquiry and declaration that the mutation entry in the name of His Highness the Maharaja is illegal, without jurisdiction, and without following the proper and legal procedure, and thereby sought cancellation of the entries of Survey No. 10 in the name of His Highness the Maharaja.

III. CONTENTIONS OF APPELLANT – HH MAHARAJA – ERSTWHILE STATE OF BARODA

5. After registration of the change application filed by the Collector, notices were duly issued. The appellant – HH Maharaja, erstwhile State of Baroda therein objected to the application and the relief claimed therein. His Highness the Maharaja of Baroda, the main contender, claimed that the disputed land is a private property of the erstwhile ruler of the State of Baroda and forms part and parcel of the Laxmi Vilas Palace, the title and possession of which has been retained by His Highness the Maharaja of Baroda pursuant to the Accession Agreement between the Union of India and the erstwhile State of Baroda. It was further contended that the City Survey authority rightly exercised the power to mutate the said property in the name of His Highness the Maharaja and that this cannot be questioned on the ground that notices were not issued under Section 135D of the Land Revenue Code, or on the ground of violation of natural justice.

5.1 It was further contended that the Collector, as ex officio Administrator and Trustee of Shri Yavteshwar Mahadev Trust, slept over his rights for years together and did not take care to show the disputed land as a Trust property at the time of registration in the year 1952 or even subsequently, when the disputed land was entered in the revenue record in the name of His Highness the Maharaja; and therefore, the action initiated by the Collector under Section 22A r/w Section 79(1) of the Act of 1950 is hopelessly barred by limitation. It was

further contended that Shri Yavteshwar Mahadev Trust was never the owner of the disputed land.

5.2 His Highness the Maharaja further claimed that he has been in possession of the disputed land since the time of his predecessors as rulers of the Baroda State, and that pursuant to the execution of the Accession Agreement with the Union of India at the time of merger, His Highness the Maharaja established title and possession over the disputed land. It was accordingly contended that the change application filed by the Collector, as ex officio Administrator and Trustee of Shri Yavteshwar Mahadev Trust, was vexatious and motivated by an aim to unlawfully appropriate the land of the Baroda State.

5.3 The other and remaining opponents filed written statements challenging the said application on the ground that they are bona fide purchasers of the said property for value without notice, and therefore, no order against them ought to be passed.

5.4 Pending the inquiry before the Assistant Charity Commissioner, one Shri D.K. Fanse and four other persons from the Fanse family made an application (Exh.21) requesting the Assistant Charity Commissioner to permit them to be heard as beneficiaries of Shri Yavteshwar Mahadev Temple. An identical application was also made by one **Mr. Vinayak R. Ambegaokar**. All these beneficiaries, though they preferred intervener applications, did not claim any

personal right over Shri Yavteshwar Mahadev Temple or the disputed land, but came forward solely to lend support to the application filed by the Collector.

IV. PROCEEDINGS BEFORE THE ASSISTANT CHARITY COMMISSIONER, THE JOINT CHARITY COMMISSIONER, AND THE JOINT DISTRICT JUDGE

6. The Assistant Charity Commissioner conducted the inquiry and perused the oral as well as documentary evidence produced by the parties. After hearing all the parties, the Assistant Charity Commissioner came to the conclusion that the disputed land forming part of City Survey No.8/2, Survey No.1/A are properties belonging to and owned by Shri Yavteshwar Mahadev Temple, and accordingly ordered that these properties be entered in the Register as Trust properties.

6.1 The order passed by the Assistant Charity Commissioner was challenged before the Joint Charity Commissioner by filing of three separate appeals. His Highness the Maharaja of Baroda State filed Appeal No. 40 of 1979, and other persons claiming to be bona fide purchasers of the disputed land filed Appeal Nos. 42 of 1979 and 46 of 1979. The Joint Charity Commissioner re-assessed the evidence produced in the inquiry proceedings, examined the legality and validity of the order passed by the Assistant Charity Commissioner, and ultimately by common order, dismissed all three appeals.

6.2 Thereupon, being aggrieved, five civil miscellaneous applications were filed before the Joint District Judge, Vadodara, under Section 72(2) of the Act of 1950. Civil Miscellaneous Application No. 31 of 1986 was filed by His Highness the Maharaja of erstwhile Baroda State. The remaining Civil Miscellaneous Applications, bearing Nos. 32 of 1986, 33 of 1986, 34 of 1986, and 36 of 1986, were filed by persons claiming to be bona fide purchasers. The Joint District Judge re-appraised the evidence on record, examined the legality and validity of the impugned judgments by common order, and was pleased to dismiss all five applications with throughout costs, thereby confirmed the impugned judgment and orders passed by the Assistant Charity Commissioner approved by the Joint Charity Commissioner.

6.3 Being aggrieved by the said common judgment and order, the appellants filed the present appeals under Section 72(4) of the Act of 1950. Amongst the aforesaid appeals, First Appeal No. 1517 of 1991 has been filed by His Highness the Maharaja of Erstwhile Baroda State. The remaining appeals have been filed by the appellants who claim to be bona fide purchasers.

V. SUBMISSIONS ON BEHALF OF THE APPELLANTS – BONA FIDE PURCHASERS

A. ARGUMENTS OF THE LEARNED SENIOR COUNSEL MR. SHALIN MEHTA ASSISTED BY LEARNED ADVOCATES MR. NINAD SHAH AND MR. HEMANG SHAH APPEARING FOR THE APPELLANTS – BONA FIDE PURCHASERS IN FA NOS.1611/ 1991 TO 1614/1991

7. It is mainly argued on behalf of the appellants that the Collector and ex officio Administrator as well as Trustee of Shri Yavteshwar Mahadev Temple had claimed that the land of Survey No. 10 be considered as a property belonging to and owned by Shri Yavteshwar Mahadev Trust. However, the Assistant Charity Commissioner, in excess of jurisdiction, also held that the land of Survey No. 9 is an immovable property belonging to and owned by Shri Yavteshwar Mahadev Trust, thereby, Assistant Charity Commissioner has committed serious and manifest error in granting relief which had not been claimed by the Collector.

7.1 It is further submitted that all three courts which have passed judgments and orders, have done so in a manner that is patently illegal, and the same requires to be set aside. It is further submitted that the application filed by the Collector under Section 22A r/w Section 79(1) of the Act of 1950 is totally not maintainable. The Assistant Charity Commissioner has no authority whatsoever to grant possession of the disputed land to the Administrator and Trustee of Shri Yavteshwar Mahadev Trust. It is further submitted that under

Section 50 of the Act of 1950, the concerned District Court alone has the right to recover the possession of the property of the Trust if it is in the hands of a third party, however, by the impugned orders, the Learned Courts below have virtually granted relief which can only be granted under Section 50 of the Act of 1950.

7.2 On the issue of limitation, the Learned Senior Counsel submitted that inquiry under Section 79(1) of the Act of 1950 is governed by the provisions of the Limitation Act. The merger of the State of Baroda with the Union of India took place in 1948. Shri Yavteshwar Mahadev Trust was registered in 1952. At that time, the Collector, being ex officio Administrator and Trustee, did not include the disputed land in the Public Trust Register as Trust property. In the year 1956, the name of His Highness the Maharaja of Baroda State was entered in the land of Survey No. 10, removing the name of Shri Yavteshwar Mahadev Trust as occupant. Despite all this fact situation, the Collector filed the application before the Assistant Charity Commissioner under Section 22A r/w Section 79 only in the year 1971. Therefore, the action initiated by the Collector was hopelessly time-barred, and yet the Assistant Charity Commissioner and the Learned Joint District Judge did not consider the issue of limitation and failed to decide the same in accordance with law, so also Joint District Court.

7.3 It is also argued that the principles of waiver and

acquiescence are equally applicable to the facts of the present case. The Collector and ex officio Administrator and Trustee did not take any steps till the year 1971 to recover or declare the disputed land as belonging to Shri Yavteshwar Mahadev Temple Trust. Within this period, His Highness the Maharaja, whose name was appearing in the revenue record, sold some portions of the land to persons who are the appellants, claiming to be bona fide purchasers. Therefore, it is submitted that the appellants, who have purchased the immovable property after verifying the revenue record and paying sale consideration, are to be considered as bona fide purchasers with the value and are to be protected regardless of the title of the disputed land.

7.4 Referring to Section 50(iii)(a) as well as Section 73 of the Act of 1950, Learned Senior Counsel submitted that recovery of property can be made under the aforesaid provisions by exercising the powers of a civil court. However, the Assistant Charity Commissioner as well as the Joint Charity Commissioner, in ignorance of the aforesaid provisions, passed orders which are injurious to the legal provisions as well as the bona fide nature of the purchase made by the appellants.

7.5 In light of the aforesaid submissions, the Learned Senior Counsel submitted that this Court may reserve the defence of the appellants as a bona fide purchasers, as it could be decided only in a civil suit, and accordingly prays to allow the

appeals.

B. WRITTEN SUBMISSIONS OF LEARNED ADVOCATE MR. BHARAT T. RAO ON BEHALF OF HIS HIGHNESS THE MAHARAJA OF BARODA STATE

8. Learned Advocate Mr. Bharat T. Rao, appearing on behalf of His Highness the Maharaja of Baroda State, besides making oral arguments in line of learned Senior counsel Mr. Shalin Mehta, also filed written submissions, which are taken on record. The arguments of the Learned Advocate Mr. Bharat T. Rao are summarized as under:-

- That the Assistant Charity Commissioner and the Joint Charity Commissioner have wrongly construed Exhs.60 and 61, the document produced by the Collector, which cannot be treated as independent evidence.

- That the Trust was registered in the year 1952, as evidenced by Exh.118. However, in the application tendered for registration of the Trust, the Collector did not mention the disputed land as Trust properties. In the said application, only one property was shown as a Trust property, namely the temple.

- That the application filed under Section 79(1) of the Act of 1950 is beyond the period of limitation, having been filed almost after twenty years.

- That the orders passed by the Joint Charity Commissioner and the Asst. Charity Commissioner are in ignorance of the evidence on record, wherein the Assistant

Charity Collector had observed that the property of Survey No. 9 belongs to His Highness the Maharaja of the Gaekwad family. The agreements produced at Exhs. 55 and 56, entered into by His Highness the Maharaja with the Government of India after independence, makes it clear that the disputed land are the private properties of His Highness the Maharaja. All of these evidence has been wholly ignored.

- That the compound of Shri Yavteshwar Mahadev is also a private property of the Maharaja, and only the temple of Shri Yavteshwar Mahadev is a Trust property. That the document produced at Exh.49 has been totally ignored by the Assistant Charity Commissioner as well as the Joint Charity Commissioner.

- That His Highness the Maharaja of the Baroda State has been granted land admeasuring 707 acres and 32 guntas. The disputed land forms part of this total area land. His Highness the Maharaja has also demarcated plots in the disputed land and sold the same. The Government also acquired land from Survey Nos. 9 and 10, and compensation in respect thereof was paid to His Highness the Maharaja. However, this fact was not considered by the then Assistant Charity Commissioner and the Joint Charity Commissioner.

- The documentary evidence produced on record was not properly considered. The Secretary of the Revenue Department (Appeals) confirmed the revenue entry in the name of His Highness the Maharaja, yet the same has been ignored by the Assistant Charity Commissioner and the Joint Charity Commissioner.

- That the evidence produced by the Collector has been wrongly interpreted to favour him to conclude that the disputed land belongs to the Trust.

- That the Assistant Charity Commissioner and the Joint Charity Commissioner have wrongly applied Section 79 of the Act of 1950 as these properties are not endowment properties. In fact, the village of Kapurai was given for the maintenance of the temple vide a document dated 6th March 1898, which has also been ignored, which suffice to say that the disputed land was never given to Yavteshwar Mahadev Trust.

- That multiple pieces of documentary evidence forming part of the record have been totally ignored by the then Assistant Charity Commissioner as well as the Joint Charity Commissioner.

- That the entertainment of the application under Section 22A by the Assistant Charity Commissioner without reference to any time limit is an erroneous approach. If no limitation period has been expressly stated, then in view of the judgment of the Honourable Supreme Court, the application should be filed within a reasonable time, which shall be stated to be three years. The Change Report Number 550 of 1971 was filed after nineteen years from the date of registration of the Trust, which by itself constitutes an application filed beyond the permissible time limit.

- That the various testimonies at Exhs. 117 and 14, being testimonies of Government witnesses, Exh.112, the order of the Collector, and Exh.55, being the arrangement / agreement

between Hon'ble Mr. V.P. Menon, Former Secretary of the Government of India in Ministry of the State, and His Highness the Maharaja of Baroda, have been ignored. Correspondence dated 9th November 1973 written by the Government of Gujarat through the Deputy Secretary reveals that His Highness the Maharaja of erstwhile State of Baroda was the owner of land admeasuring 707 acres 32 guntha, which includes the disputed land. However, as such communication was not forming part of the record, the Assistant Charity Commissioner was misled into wrongly believing that the disputed land belongs to Shri Yavteshwar Mahadev Trust.

- The letter written by Assistant Secretary, Government of Bombay to Mr. K.K. Shah at Exh.49, depicts that the disputed land belongs to the ex-rulers of the Baroda State, and therefore the Government of Bombay refused to part with the said land to the District Local Board. This letter is also ignored by the learned Assistant Charity Commissioner.

- That the history produced at Exhs. 43 and 43/1, along with the Gujarati translation thereof at Exh.48, are inadmissible evidence, as the said history was written by persons, who were doing Pooja. Similarly, Exhs. 43/4, 60, 61, 65 to 69, as well as Exhs. 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, and 166, have all been misinterpreted by the then Assistant Charity Commissioner to wrongly conclude that the property does not belong to the Maharaja but is that of Shri Yavteshwar Mahadev Trust.

- That the finding of the learned Assistant Charity

Commissioner that Shri Yavteshwar Mahadev Temple was constructed in 1797 and the Laxmi Vilas Palace was constructed in 1875, and therefore the disputed land does not form part of the Laxmi Vilas Palace but is owned by and belongs to Shri Yavteshwar Mahadev Trust, is an erroneous finding and against the evidence on record.

- That the Assistant Charity Commissioner did not discuss and analyze the evidence on record in its correct and true perspective.

- That the map produced on record has been wrongly interpreted by both the Assistant Charity Commissioner and the Joint Charity Commissioner.

- That the finding that the erstwhile ruler is not the owner of the nominated property is totally erroneous.

- That the Joint District Court wrongly relied upon Exhs. 60,61 and 70 in confirming the conclusions of the Assistant Charity Commissioner and the Joint Charity Commissioner. The order of the Special Secretary, Revenue Department, at Exh.61 dated 25th January 1971 has been overlooked. The Assistant Charity Commissioner cannot repudiate the order of the Special Secretary, Revenue Department.

- That the Learned Courts below have failed to appreciate that certain trees in the compound of Survey Nos. 9 and 10 were auctioned by the HH Maharaja as well as HH Maharaja received rent of some part rented to private persons, as Collector himself passed order to that effect, which indicates that the disputed land are the HH Maharaja's personal

property, as proved through Exhs. 45/9 and 45/10.

8.1 In sum and substance, it has been argued on behalf of the appellants that the Learned Joint District Judge as well as the Assistant Charity Commissioner and Joint Charity Commissioner ignored the settled provisions of law, including the law of limitation, and wrongly entertained the change application after nineteen years from the date of registration of the Trust. At the same time, they have wrongly interpreted various documentary evidence alongside the oral evidence and certain evidence of significant evidentiary value has been to wrongly conclude that the disputed land belongs to Shri Yavteshwar Mahadev Trust.

8.2 In support of these submissions, reliance has been placed upon the judgment in the case of **B.S.Sheshagiri Setty and others versus State of Karnataka, (2016) 2 SCC 123**, and in the case of **B.J. Vahane versus Kamlesh Gangaram Kanoje, 1998 (1) BCR 563 (Bombay High Court)**.

VI. SUBMISSIONS OF LEARNED AGP ON BEHALF OF THE RESPONDENTS

9. On behalf of the respondents, learned AGP Ms. Dhwani Tripathi the made following submissions (both oral and written) before the Court.

- That late His Highness the Maharaja of the State of

Baroda had given the land as inam for the construction of Shri Yavteshwar Mahadev Temple, which is undisputed. It is further submitted that it is undisputed that along with the temple, a Dharamshala, a Step well, a Ghat, a garden etc. were also constructed during the same period, which sufficiently indicates that the land was attached to the temple from the time the temple came into existence. It is further submitted that it was undisputed that until the year 1956, the disputed land were lands attached to Yavteshwar Mahadev Temple.

- That the appellants relied upon several documents, all of which are subsequent to the year 1956, once the entry in the revenue record was made. The core documents at Exh.147/1 which became instrumental in mutating the entry in the name of His Highness the Maharaja was a letter of the Executive Engineer. The City Survey Officer, without properly reading the document, mutated the name of His Highness the Maharaja in revenue records of the disputed land. The said letter does not even remotely mention that the disputed land belongs to His Highness the Maharaja, and thereby there was a complete misreadingt and misconception of the letter of the Executive Engineer.

- That it is a universal principle of law that once a Trust property exists, it shall always remain a public Trust property unless the said Trust or property is discontinued or converted to another person's title in pursuance of the relevant provisions of the Act of 1950 or any other law time being in force. However, in the present case, no such order from any

competent authority or court has been produced stating that Shri Yavteshwar Mahadev Trust has been abolished or discontinued, or that the disputed land, formerly attached with Shri Yavteshwar Mahadev Temple, has been converted to any other person's title i.e. in name of HH the Maharaja of Baroda State. It is further submitted that in the absence of any specific mention of Shri Yavteshwar Mahadev Trust in the property list of merger or any other correspondence, His Highness the Maharaja cannot claim that Shri Yavteshwar Mahadev Trust and all attached properties are within the property list of merger signed by the Union of India in favor of His Highness the Maharaja or his private property or property within boundary of Laxmi Vilas Palace.

- That the appellants wrongly placed reliance on Exh.112, a communication dated 13th September 1960 by the Collector, stating that the land in question belongs to His Highness the Maharaja.

- That the said communication by the Collector was made relying upon the disputed revenue entry of 1956, which itself is the subject matter of challenge before the Assistant Charity Commissioner, Joint Charity Commissioner and the Joint District Judge. Therefore, the said document by itself does not prove the title of His Highness the Maharaja qua the disputed land.

- That the Collector has no right or authority whatsoever to bestow title in favor of His Highness the Maharaja by writing a letter.

- That the entry mutated by the City Survey

Superintendent in the records of Survey Nos. 9 and 10, without issuing a notice to the Collector, the ex officio Administrator and Trustee of Shri Yavteshwar Mahadev Trust, is in violation of Section 135D of the Bombay Land Revenue Code as well as the principle of *audi alteram partem* and thereby posting of such entry caused nothing but a serious miscarriage of justice. Even otherwise, such mutation of entry by itself does not give any right to the person in whose name the entry is made, as mutation entry is solely for fiscal purposes and does not decide the ownership or title of the said land.

- As regards the argument that the proceedings initiated before the Charity Commissioner after 19 years are barred by limitation, it was submitted that the Trust was registered in the year 1952, and a perusal of the City Survey property card indicates that the disputed land was entered in the name of Shri Yavteshwar Mahadev Temple in the year 1954. Therefore, when the Trust came to be registered, the said land was running in the name of the temple, and there was thus no reason to believe that the Collector had not mentioned the disputed land as a Trust property. Moreover, Exhs.93/9 and 99/2 being communications between the City Survey Officer and the Collector, indicate that the Collector had repeatedly inquired about the mutation entry. The Collector had asked the City Survey Officer in the year 1962 to enter the said land in the name of Shri Yavteshwar Mahadev Temple Trust. Pursuant to such communication, the Collector also initiated a procedure under Section 37(2) of the Bombay Land Revenue Code in 1963. The said proceedings went up to the

secretary level where an order was passed in 1971 directing the parties to seek remedy from the competent court, which itself suggests that there was no delay on the part of the Collector in initiating the proceedings.

- That the proceedings before the Assistant Charity Commissioner under Section 22 of the Act of 1950 would not attract the law of limitation, as it gives a fresh cause of action as and when it is found that inquiry is needed to decide that property is private or trust property. As a corollary of the general rule, the inquiry regarding Trust property shall not be subject to any law of limitation, and no length of time shall bar an action of inquiry of the title of such property. It was further submitted that in the inquiry before the Assistant Charity Commissioner, the title of the new purchasers has been challenged within the period from the date of the illegal transaction, and therefore even the question of acquiring title by adverse possession does not survive in law, and the new purchasers cannot escape from the burden and liability of dealing with issue that whether, it is a Trust property or private property.

- That the purchasers have taken a plea that they perfected their title on the doctrine of adverse possession, itself demonstrates their acknowledgment that the title to the disputed land lies with Shri Yavteshwar Mahadev Trust. It was further submitted that the Act of 1950 was enacted to regularize the working of charitable and public Trusts and has defined the duties of Trustees. The Act empowers the Charity Commissioner or Assistant Charity Commissioner to keep a

check on the working of all registered Trusts to ensure that each Trust functions for its object of establishment, be it religious, public, or charitable. Under Section 79 r/w Section 80 of the Act of 1950, the Assistant Charity Commissioner has exclusive jurisdiction to decide the question as to whether the land in dispute belongs to a public Trust, and that decision is final and binding on the parties.

- That section 79 of the Act of 1950 uses the expression "shall be decided by," which makes it mandatory for the Charity Commissioner to take a decision, as to whether the property is a public Trust property or otherwise. Therefore, a wrong and illegal mutation entry would not take away the jurisdiction of the Assistant Charity Commissioner to decide title of the trust property. A conjoint and harmonious reading of Sections 17, 22, and 79 of the Act of 1950 makes it manifestly clear that the decision taken by the Charity Commissioner or Assistant Charity Commissioner is final as to whether a property is a public Trust property or otherwise.

- That the ground of adverse possession raised by the new purchasers is neither available nor maintainable, as the scheme of twelve years necessary to establish adverse possession has not been proved. Moreover, the appellants have failed to prove the essential ingredients of adverse possession, namely *nec vi, nec clam, and nec precario*. Once the property is Government land or temple land, the 12 year period would also not assist the new purchasers in perfecting title by way of adverse possession.

- That in the limited jurisdiction under Sections 72(4) of

the Act of 1950, the appellants have failed to make out any case involving substantial questions of law or fact, and therefore the appeals are liable to be dismissed.

9.1 Upon above submissions, learned AGP prays to dismiss the appeals.

In support of these submissions, the learned AGP relied upon the following judgments:

(1) A.P. State Wakf Board through Chairperson versus Janaki Busappa, 2026 INSC 413;

(2) Sawarni versus Inderpur, AIR 1996 SC 2823;

(3) Balwant Singh versus Daulat Singh, AIR 1997 SC 2719;

(4) Jitender Singh versus State of Madhya Pradesh, 2021 (10) Scale 413;

(5) Sita Ram Bhau Patil versus Ramchandra Nago Patil, AIR 1977 SC 1712;

(6) C.S. Jardosh versus Somabhai Ranchhodbhai Patel, 2007 (4) GLR 3008 (High Court of Gujarat);

(7) N. Balakrishnan versus M. Krishnamurthy, AIR 1998 SC 3222;

(8) Mool Chandra versus Union of India, AIR 2024 SC 4046.

VII. CONSIDERATION AND FINDINGS OF THE COURT

A. NATURE OF THE APPEAL: FIRST APPEAL OR SECOND APPEAL

10. Having heard the learned advocates for both sides extensively and having perused the records in question, which is unfortunately nearly in position of being shredded and ripped, and having also gone through the impugned judgments and the concurrent findings of the Assistant Charity Commissioner, Joint Charity Commissioner and learned Joint District Judge, the following observations and findings are recorded.

10.1 At the outset, the question arises as to whether the appeal under Section 72(4) of the Act of 1950 to this Court constitutes a first appeal or a second appeal. Section 72(2) of the Act of 1950 gives the district Court,power to take evidence, confirm, revoke, or modify the order, remit the amount of surcharge, and make such order as to costs as it thinks proper in the circumstances. This provisions of law establishe that the district court exercises the powers of a first appeal court under the nomenclature of a civil miscellaneous application. Section 72(4) of the Act of 1950 uses the expression "appeal to the High Court," but in fact, in reality and in substance, it is an appeal against the decision rendered by the district court.

10.2 A coordinate bench of this Court (Hon’ble Mr. Justice JB Pardiwala, J) (as His Lordship then was), in the case of

R.Tanikaselvam Versus K.Shanmugam, reported in First Appeal No. 3268 of 2018 (Neutral Citation: 2018 GUJHC 32254), grappled with the identical issue of whether an appeal under Section 72(4) of the Act of 1950 is a first appeal or a second appeal, and the said issue was examined in paragraphs 16 to 20 of the said judgment, they are extracted as under:-.

> *"**16.** The short question of law is whether the appeal before me should be treated as a 'First Appeal' as understood under Section 96 of the Civil Procedure Code which deals with appeals from original decree or whether this appeal, though styled as 'First Appeal' in this Court, is in substance and effect a Second Appeal, subject to the limitations of Section 100 of the Civil Procedure Code where an appeal can be entertained only if the High Court is satisfied that the case involves a substantial question of law. Let me consider the law on the subject.*
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> ***17.** In D.R.Pradhan v. The Bombay State Federation of Goshalas and Panjarapoles, 1956 (58) BLR 894, though the question arose in a different context while deciding the issue of limitation for making an application for setting aside the decision of the Charity Commissioner under Section 72(1) of the Act, Chief Justice Chagla observed at page 896 as under-*
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> > *"Now, although S.72(1) confers a right upon a person aggrieved by the decision of the Charity Commissioner to apply to the City Civil Court, we must look at and consider the real nature of the right that is conferred by this subsection. In substance, if not in form, the right is in the nature of an appeal. The application is intended to set aside the decision of the Charity Commissioner and the City Civil Court must consider that decision, and if satisfied that the decision is erroneous, must set it aside and give the necessary relief to the party aggrieved by that decision. Therefore, in substance there is*

very little difference between an application contemplated by Section 72(1) and a right of appeal against the order of the Charity Commissioner."

18. *The above observations make it clear that, in substance, the application made under Section 72(1) to the District Court in the case before me was in the nature of an appeal. In fact, it was an appeal against the order passed under Section 50A of the said Act.*

19. *A Division Bench of the Bombay High Court in the case of Shivprasad Shankarlal Pardeshi v. Leelabai Badrinarayan Kalwar, reported in AIR 1998 Bom 131, had the occasion to consider this issue in details. After an exhaustive review of various provisions of the Act and case-law on the subject, the Division Bench ruled that an appeal under Section 72(4) of the Act before the High Court will be subject to the same limitations as are prescribed under Section 100 CPC since there is nothing in Section 72(4) of the Act, 1950, which confers a wider jurisdiction upon the High Court while hearing such an appeal, though styled as a 'First Appeal'. I may quote the relevant observations thus :*

"14. The question arose directly before the Apex Court in Ramchandra Govind Pandit v. Charity Commissioner, State of Gujarat, AIR 1987 SC 1598, wherein the Deputy Charity Commissioner had started a suo motu enquiry with regard to the nature of the properties in dispute. He held that the properties were of a public trust. Appeal against the said order was dismissed by the Charity Commissioner. Application to the City Civil Court was also dismissed. First Appeal filed in the High Court of Gujarat was dismissed by the High Court. The appellant then filed Letters Patent Appeal. It was also dismissed, holding that the appeal was not maintainable since the requisite certificate under clause 15 of the Letters Patent was not obtained by the appellant. It was against the dismissal of the Letters Patent Appeal, that the appellant moved the Apex Court. The Division

Bench had dismissed the Letters Patent Appeal relying upon an earlier judgment rendered by another Division Bench in Hiragar Dayagar v. Ratanlal, (1972) 13 Guj LR 181 : (AIR 1973 Guj 15). The raio of the decision of Hiragar's case is that the single Judge who disposed of the appeal under Section 72(4) was hearing an appeal in respect of an order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and that, therefore, it was necessary for the appellant to obtain a certificate from the single Judge that the case was a fit one for appeal to the Division Bench under clause 15 of the Letters Patent Appeal. The Apex Court considered the contrary view expressed by the Division Bench of this Court in Khivaraj Chhagniram Zavar v. Shivshanker Basappa Lingashetty, AIR 1974 Bom 40. This Court had held that Section 72(1) of the Act provides a remedy by way of an application only. Though the functions of the District Judge under this section are similar to the functions performed by an appellate Court, the decision of the District Judge is not one in an appellate jurisdiction. Hence, where a single Judge hears an appeal from the decision of the District Judge under Section 72, he does not hear an appeal from the decision of an appellate Court within the meaning of clause 15 of the Letters Patent and an appeal against the decision of the single Judge in such a case can be filed without obtaining leave from him. In arriving at this conclusion in Khivraj's case, the Division Bench had distinguished the ratio of D. R. Pradhan's case which we have discussed above. The Apex Court case considered the conflicting views of this Court in D. R. Pradhan's case and in Khivaraj's case as also the views expressed by Gujarat High Court in Hiragar Dayagar's case. The Apex Court considered the scheme of the provisions of the Bombay Public Trusts Act and found it difficult to agree with the view expressed in Khivaraj's case. The Apex

Court specifically agreed with the reasoning expressed by Chief Justice Chagla in D. R. Pradhan's case as also the view expressed in Hiragar's case. We find it convenient to reproduce the observations of the Apex Court in paragraphs 8 and 9 in Ramchandra Pandit's case at page 1600 and 1601 :

"8. We have considered the reasoning in the three judgments referred above. With respect, we find it difficult to agree with the reasoning in AIR 1974 Bom 40. We agree with the reasoning in the other two cases. The slender thread on which the appellant's arguments rest is the absence of the word "appeal" in S. 72(1). That alone cannot decide the issue. If the well-known word "appeal" had been used in this section that would have clinched the issue. It is the absence of this word that has necessitated a closer scrutiny of the nature, extent and content of the power under S.72(1).

9. The power of the District Court in exercising jurisdiction under S. 72 is a plenary power. It is true that the Commissioner is not subordinate to the District Court but the District Court has powers to correct, modify, review or set aside the order passed by the Commissioner. All the characteristics of an appeal and all the powers of an appellate Court are available to the District Court while deciding an application under S. 72. To decide this case we must be guided not only by the nomenclature used by the section for the proceedings but by the essence and content of the proceedings. That being so, we have no hesitation to hold that the proceedings before the District Court under S. 72(1) are in the nature of an appeal and that District Court exercises appellate jurisdiction while disposing of a matter under S. 72(1). Consequently, the single Judge of the High Court while deciding the appeal from the order of the District Court deals with a matter made by the District Judge in the exercise of an

appellate jurisdiction by a Court subject to the superintendence of the High Court and hence Cl. 15 of the Letters Patent is directly attracted."

The ratio of the decision of Ramchandra Pandit's case leaves no doubt in our mind that all the powers of an appellate Court are available to the District Court while deciding an "application" under S. 72 and we must not decide these issues only by the nomenclature used by the section but by the essence and content of the power conferred upon the District Court or City Civil Court under Section 72 of the Act. That being the position, it would follow that the proceedings before the District Court under Section 72(1) are undoubtedly in the nature of an appeal and what the District Court does is to exercise appellate jurisdiction while disposing of the 'application' under Section 72(1). In Ramchandra Pandit's case the Apex Court dismissed the appeal on the ground that the High Court was right in coming to the conclusion that no Letters Patent Appeal was maintainable in the absence of a certificate under clause 15.

15. Since the question has been referred to us in the light of an apparent conflict between the judgments of some of the single Judges of this Court, we feel it necessary to make a brief reference to them.

16. In Govindrao Devabasappa Manthalkar v. Apparao Devabasappa Manthalkar, 1987 (3) Bom CR 493, A. C. Agarwal, J. was dealing with an identical question as to the nature of the proceedings before the District Court under Section 72(1) of the Act. The other question was as to whether the appeal filed against the order of the District Court, though styled in this Court as a 'First Appeal', should be treated as a 'Second Appeal' subject to the limitations imposed by Section 100 of the Civil Procedure Code. On construction of the relevant provisions

of the Act and relying upon the decision of the Apex Court in Ramchandra Pandit's case, Agarwal, J. held that, if one considered the scope, ambit and content of the proceedings before the District Court it will have to be held that the District Court would be exercising appellate jurisdiction. The District Court while dealing with an application under Section 72(1) was given the power to confirm, revoke or modify a decision of the Charity Commissioner. In substance the application is intended to set aside the decision of the Charity Commissioner and one must consider the real nature of the right that is conferred by the sub-section. Consequently it was held that the appeal though styled as 'First Appeal' arises out of an order passed by the District Court in appeal and hence the same shall be treated as a second appeal which has to satisfy the requirements of Section 100 of the Code of Civil Procedure.

17. Maqbul Ahmed Miya Girav v. Hidayatulla Baldi, 1992 Mah LJ 1526, decided by one of us (Savant, J.), dealt with a similar question and relying upon the decision of the Apex Court in Ramchandra Pandit's case, AIR 1987 SC 1598 (supra) and of this Court in D. R. Pradhan's case, 1956 (58) BLR 894, it was held that the appeal under Section 72(4) of the Act to this Court, though styled as 'First Appeal' was in the nature of a 'Second Appeal' and will have to satisfy the requirements of Section 100, C.P.C.

18. In Godawaribai w/o. Manilal Trivedi v. Rambhau Madhaorao Fating, 1992 Mah LJ 230, M. S. Deshpande, J. while dealing with a similar question expressed a contrary view relying upon the judgment of a learned single Judge of the Gujarat High Court (A. M. Ahmadi, J., as His Lordship then was) in Miya Mohamed Abdul Karim v. Collector of Surat, 1977 (18) GLR 488. However, since the counsel agreed that the matter should be disposed of on the basis of the evidence and they would have no objection to

the evidence being considered, as if it was a First Appeal, Deshpande, J. did not think it necessary to make a reference to a larger Bench.

19. Recently, R. G. Vaidyanatha, J. while disposing of a group of First Appeals (F.A. 1587 of 1996 and other Companion Appeals) on 13th March, 1997 held that though an appeal under Section 72(4) may be a second appeal under the Act, it does not come within the meaning of a Second Appeal under Section 100, C.P.C. Vaidyanatha, J. referred to the views expressed by other single Judges of this Court and though he agreed that the appeal was a second appeal, he came to the conclusion that, there were no words of limitation in sub-section (4) of Section 72 so as to restrict the powers of this Court as if it were a second appeal under Section 100, C.P.C.

20. At this stage, it is necessry to mention that the view expressed by the Apex Court in Ramchandra Pandit's case (supra) has been recently reiterated by the Apex Court n Nanabhai Dayabhai Patel v. Suleman Isubji Dadabhai, AIR 1996 SC 1184. The Apex Court was dealing with an appeal by Special Leave from the judgment of the Gujarat High Court in L.P.A. No. 10/76 decided on July 27, 1979. In that case the initial enquiry was before the Assistant Charity Commissioner under Section 18 of the Act. Against the order of registration the matter was carried in Appeal under Section 70 of the Act, which appeal was dismissed by the Charity Commissioner. The First Appeal to the High Court was allowed and a further Letters Patent Appeal was allowed by the Division Bench. On an Appeal by Special Leave to the Apex Court, the question arose as to whether the Letters Patent Appeal against the decision of the single Judge would lie, without obtaining the requisite leave under clause 15. In paragraph 4 of the judgment at page 1186, the

Apex Court referred to its earlier decision in Ramchandra Pandit's case (supra), summarized the facts and the ratio in that case and concluded thus in para 5 of the judgment at page 1186 :

"5. Consequently, this Court had held that the Letters Patent Appeal against the decision of the learned single Judge did not lie. The same ratio applies to the facts in this case. Leave of the learned single Judge was admittedly not obtained for filing the appeal. Consequently, since the appeal of the learned single Judge arises under the Act by virtue of the statutory conferment of supervisory jurisdiction, by operation of earlier part of clause 15 of the Letters Patent Act would vest in him. The Letters Patent Appeal would not lie to the Division Bench unless the certificate of the learned single Judge has been granted for leave to appeal. In that view, the appeal to the Division Bench was incompetent and is accordingly set aside."

The above ratio of the Apex Court decision leaves no doubt in our mind that the appeal under Section 72(4) is in the nature of a second appeal against which alone, leave under clause 15 of the Letters Patent is required for a further appeal to the Division Bench. It is obvious that if the appeal under Section 72(4) to the High Court was, in substance, a 'First Appeal' and was not a 'Second Appeal', there was no question of insisting upon leave under clause 15 being obtained before filing a Letters Patent Appeal to the Division Bench.

21. There is yet another aspect of the matter which has not been considered in any of the judgments of this Court and we think it necessary to make a reference to the same. Subsection (1) of Section 4 of the C.P.C. provides that, in the absence of any specific provisions to the contrary, nothing in the C.P.C. shall be deemed to limit or otherwise affect any

special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force. Subsection (1) of Section 100 of C.P.C. provides that save as otherwise expressly provided in the body of the C.P.C. or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. In our view, therefore, if a special law does not otherwise widen the scope of a 'second appeal', such a second appeal must conform to the limits imposed by Section 100 of the C.P.C. There may be cases where a special statute provides for the remedy of a second appeal and specifically confers power wider than those contemplated by Section 100, C.P.C. In such a case, it may be possible to contend that having regard to the opening words of sub-section (1) of Section 100, C.P.C., a second appeal on ground wider than those provided in Section 100, C.P.C., could be entertained if the special law so provides.

22. In Chunilal Vithaldas v. Mohanlal Motilal Patel, AIR 1967 SC 226, the question arose in the context of the provision for a second appeal under Section 28 of the Saurashtra Rent Control Act, 1951. The question was whether the appellate Court dealing with the second appeal was bound by the same restrictions as are imposed by Section 100, C.P.C. It was argued before the Apex Court that a second appeal under Section 28(1) of the Saurashtra Rent Control Act, 1951 meant an appeal from an appellate decree but the restrictions imposed by Section 100, C.P.C., upon the power of the High Court were not attracted to a "second appeal" under Section 28 of the Saurashtra Act. The Apex Court considered the scheme of the provisions of the Saurashtra Act, 1951 and of the C.P.C., and concluded in para 9 of the

judgment that the Saurashtra Act had merely declared that the second appeal will lie to the High Court against the decrees or orders passed by the Courts exercising jurisdiction under Section 27, but thereby the essential character of a second appeal under the C.P.C. was not altered. There was nothing in the Special Act to conclude that the Legislature had intended to confer upon litigants a right of second appeal unhampered by the restrictions imposed by Section 100, C.P.C. The Apex Court concluded that in a second appeal under Section 28 of the Saurashtra Act, questions which cannot be raised in an appeal under Section 100, C.P.C., could not be raised. It was, therefore, held that a second appeal under Section 28 of the said Act may be entertained by the High Court within the limits prescribed by S. 100, C.P.C. and it is not open to the parties to demand reappraisal of the evidence by the High Court. Observations to this effect are also to be found in paras 10 and 12 of the said decision at page 228.

23. We find the same principle enunciated by the Apex Court in State of Himachal Pradesh v. Maharani Kam Sundri, AIR 1993 SC 1162. This was a case where the special law gave wider powers to the High Court and by virtue of Section 104 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, the High Court was entitled to reappraise the evidence and come to its own findings even in a Second Appeal. Since the special law viz. the said Himachal Pradesh Act conferred wider powers by virtue of Section 104 on the High Court, it was held that the limitations imposed by Section 100, C.P.C. on the powers of the High Court to interfere with the findings of fact were not applicable and, hence, the High Court was entitled to reappraise the evidence and come to its own findings in view of the wider scope of Section 104 of the Special Act. These observations are to be found in para 3 of the judgment.

24. We may also refer to a Full Bench decision of the Punjab and Haryana High Court in Ganpat v. Smt. Ram Devi, AIR 1978 P and H 137. S. S. Sandhawalia, J. (as he then was) dealt with the provisions of Section 41 of the Punjab Courts Act, 1918 which were no way affected or curtailed by the amended provisions of Section 100, C.P.C. The provisions of Section 41 of the Punjab Courts Act were virtually in pari materia with the unamended provisions of Section 100, C.P.C. But, though provisions of Section 100, C.P.C. were amended by the Amending Act of 1976, there was no corresponding amendment to Section 41 of the Punjab Courts Act, under which the second appeal was entertained. Relying upon the provisions of sub-section (1) of Section 4 as also sub-section (1) of Section 100, C.P.C. the Full Bench came to the conclusion that if the special law had conferred wider jurisdiction on the High Court while dealing with the Second Appeal under Section 41 of the Special Law, the limits imposed by Section 100, C.P.C. could not curtail such powers. These conclusions are to be found in paras 11 to 14 of the judgment at page 140 of the report.

25. In view of the law laid down by the Apex Court in the two cases discussed in paras 22 and 23 above (Chunilal Vithaldas's case and Maharani Kam Sundri's case (supra)) as also the view expressed by the Full Bench of the Punjab and Haryana High Court in Ganpat's case (para 24 above) coupled with the fact that the ratio of the Apex Court decision in Ramchandra Pandit's case (supra) has been reiterated in Nanabhai Dayabhai Patel's case (supra) and having regard to the fact that Section 72(4) of the Bombay Public Trusts Act, does not confer any powers wider than those conferred by Section 100, C.P.C. while dealing with a second appeal, we are clearly of the view that the answer to the first part of first question referred by the learned single Judge must be in the affirmative. We, therefore, hold that an appeal filed under

Section 72(4) of the Bombay Public Trusts Act, is subject to the restrictions and limitations imposed under Section 100, C.P.C. while entertaining a Second Appeal. Consequently it would follow that an appeal under Section 72(4) would lie to this Court only if the High Court is satisfied that the case involves a substantial question of law. In substance, such an appeal will be subject to the same limitations as are prescribed under Section 100, C.P.C. since there is nothing in Section 72(4) of the Bombay Public Trusts Act which confers a wider jurisdiction upon this Court while hearing such an appeal, though styled as a First Appeal."

20. *I have to my advantage a Division Bench decision of this Court in the case of Parvez Rustamji Bharda v. Navrojji Sorabji Tamboly and others, AIR 2001 Gujarat 160. A Division Bench of this Court, in the above referred case, has taken the view that when a Single Judge of a High Court renders a judgment in exercise of jurisdiction under Section 72 of the Act, 1950, he exercises appellate jurisdiction against a decree passed or order made in exercise of an appellate jurisdiction. To put it differently, he exercises jurisdiction as a second appellate court and not as a first appellate court. Let me clarify that although the Division Bench decision of this Court was in a different context, i.e. with regard to right to file an intra court appeal to a Division Bench, yet the observations fortify the view taken by the Division Bench of the Bombay High Court, referred to above. I may quote the relevant observations thus :*

"5. The question, therefore, before us is as to whether LPA against the order passed by the learned single Judge in FA under Section 72 of the Act would be competent. In our opinion, such appeal would not lie and the point is no more res-integra as it is covered by the Division Bench of this Court in Hiragar Dayagar (AIR 1973 Guj 15). In Hiragar Dayagar , almost in identical situation, the Court was called upon to consider the provisions of Sections 70 to 76 of

the Act read with Clause 15 of the Letters Patent and maintainability of LPA.

Clause 15 of the Letters Patent of Bombay as applicable to this Court, reads thus :

"15. And we further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of Sec. 107 of the Government of India Act or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec. 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec. 108 of the Government of India Act made (on or after the first day of February, 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us. Our heirs or successors in Our or Their Privy Council, as thereafter provided."

6. In Hiragar Dayagar (AIR 1973 Guj 15), this Court observed that Clause 15 provides a right of appeal from a judgment of one Judge of the High Court to a Division Bench of the High Court. It, however, states that an appeal shall lie

from "a judgment of one Judge of the High Court in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal". In other words, if a single Judge of the High Court exercises appellate jurisdiction against a decree passed in exercise of appellate jurisdiction and renders a judgment, no appeal as of right would lie against such judgment.

7. In Hiragar Dayagar (AIR 1973 Guj 15), ambit and scope of the expression 'appellate jurisdiction' was considered by the Division Bench. Referring to the relevant provisions of the Act, Bhagwati, C. J. (as he then was) observed (Para 3) :

"The argument of the appellants was that Sec. 72 subsec. (1) speaks only of an application to the Court to set aside the decision of the Charity Commissioner and it does not provide for an appeal against the decision of the Charity Commissioner. It is significant, pointed out the appellants, that though the legislature has used the word "appeal" in Secs. 70 and 71, it has departed from this nomenclature in Sec. 72 and while dealing with the proceedings under Sec. 72, it has deliberately and advisedly omitted to use the word "appeal" and characterised that proceeding as an application. The proceeding under Sec. 72 cannot, therefore, be regarded as an appeal to the District Court against the decision of the Charity Commissioner and when the District Court exercises its jurisdiction in relation to an application under Sec. 72, it does not exercise appellate jurisdiction but it exercises a special jurisdiction conferred upon it by Sec. 72. If, contended the appellants, the legislature intended to confer appellate jurisdiction on the District Court, the legislature would have used the well known and familiar

expression "appeal" which it has used in Secs. 70 and 71 but the legislature not having used this expression, the inference must be inevitably raised that the jurisdiction which the legislature intended to confer on the District Court under Sec. 72 was not appellate jurisdiction but jurisdiction of a special nature. The Charity Commissiner who is the fourth respondent before us supported this line of argument advanced on behalf of appellants. Respondents Nos. 1 to 3, however, urged that the nomenclature used by the legislature in Sec. 72 was immaterial. What was required to be considered was as to what was the real nature and character of the jurisdiction conferred on the District Court and this could be determined only on a proper consideration of the scope and ambit of the powers exercisable by the District Court in an application under Sec. 72. Respondents Nos. 1 to 3 pointed out that the powers conferred on the District Court while dealing with an application under Sec. 72 were, clearly appellate powers and though the words "appeal" was not used by the legislature, it was really appellate jurisdiction which was being exercised by the District Court while dealing with an application under Section 72. These were the rival contentions of the parties which we shall now proceed to consider."

8. Considering earlier decisions, the Court proceeded to state (Para 5) :

"Now, it may be noticed that the District Court in an application under Sec. 72 is given the power to confirm, revoke or modify the decision of the Charity Commissioner and there are no limits or fetters upon this power. The entire matter which was before the Charity Commissioner is at large before the District Court and the District Court has full and complete power to review the decision of the Charity Commissioner, either on law or on fact, in such manner as it thinks proper. If this be not

an appellate power, it is difficult to see what else it can be. It is true that the Charity Commissioner is not subordinate to the District Court in the sense that the District Court has no power of superintendence over the Charity Commissioner but there can be no doubt that inter alia in the matter of his decisions under Sec. 70, the Charity Commissioner is inferior to the District Court in that the District Court has power to revoke or modify his decisions. What is of the essence of an appeal is that a superior Tribunal should have the power to review the decisions of the inferior Tribunal and that power of the District Court certainly has under Sec. 72. The District Court, as we have already pointed out, may confirm, revoke or modify the decisions of the Charity Commissioner on an application under Sec. 72. The District Court may also, in the exercise of its inherent power under Section 76 read with Sec. 151 of the Code of Civil Procedure, make an order of remand to the Charity Commissioner, if the District Court thinks it necessary to do so in a proper case. Vide Chandrakant v. Charity Commissioner, (1965) 6 Guj LR 649. We may point out that sub-section (1A) of Sec. 72 also reinforces the view that the power conferred on the District Court under Sec. 72 is an appellate power. The provision enacted in Sec. (1A) of Sec. 72 is in identical terms as Order 41, Rule 27 of the Code of Civil Procedure and it emphasizes that what the District Court is called upon to do under Sec. 72 is to review the correctness of the decision of the Charity Commissioner on the evidence which was before him and this is clearly a characteristic of appellate power. There can, therefore, be no doubt that though the word "appeal" is not used by the Legislature and the proceedings under Sec. 72 is designated as an application, the jurisdiction conferred on the District Court while dealing with such proceeding is appellate jurisdiction.

9. The Court thus concluded that when the

District Court dealt with an application under Section 72 of the Act, it exercised appellate jurisdiction and when the learned single Judge heard an appeal against that order, he can be said to have exercised appellate jurisdiction against a decree passed in exercise of appellate jurisdiction and consequently, no LPA would lie without getting a certificate of fitness from the learned single Judge who decided the matter. Since in that case, no such certificate of fitness was obtained, LPA was held not maintainable.

10. It is no doubt true that the Division Bench of the High Court of Bombay in Khivaraj Chhagniram, (AIR 1974 Bombay 40) had taken a contrary view. But apart from the fact that the said judgment is not binding to this Court and Hiragar Dayagar (AIR 1973 Guj 15) is binding to us, reading Khivaraj Chhagniram, it is obvious that attention of the Court was not invited to the decision of this Court in Hiragar Dayagar. Moreover, the Division Bench of the Bombay High Court in Khivaraj Chhagniram did not consider relevant provisions of the Act. It was also of the view that Clause 15 of the Letters Patent must be construed in the light of the words and expressions used therein by giving natural meaning and one should not go beyond the express language of the said clause.

The Court stated :

"14. It may be remembered that a remedy like an appeal is a creature of law. Unless an appeal is so provided, there does not seem any right in a litigant to approach some higher Court or tribunal by way of an appeal. The expression "appeal" is also a term of an art. The legislature which is fully aware of the difference between the various remedies has chosen in the circumstances of this case, the expression may. . . apply' under Section 72 as against the expression 'an appeal' under Sections 70 and 71. Ordinarily, it is true that when original jurisdiction is being exercised the litigating

parties have a right to lead evidence. It is a fundamental right of a party of being heard. The hearing which denies the right of leading evidence could hardly be described as hearing. However, we do not think how the legislature could not divide the right of being heard into different parts and provide a particular tribunal for leading evidence and another tribunal having a higher experience and position to reexamine the entire evidence recorded, by way of an independent remedy. Whether this remedy could be an appeal must depend upon the language used by the legislature. It may be that the functions performed by the Court under this remedy may have similarity with the functions performed otherwise by the appellate Courts. It may be that the legislature has resorted to this time saving device by directing evidence to be recorded before the Deputy or Assistant Charity Commissioner and a further examination of that evidence by way of an appellate remedy by a higher departmental officer viz. Charity Commissioner. However, when the first remedy to approach to a civil Court is made available the legislature has in terms provided an application and not an appeal. It would not be therefore proper to confuse the nature and the functions of the Court under Section 72 with the technical remedy of an appeal which has to be so provided by the legislature ."

11. The Court, therefore, concluded :

"16. In the present case, the narrow question is, whether the Letters Patent Appeal could be filed, as the language goes, as of right or must be filed only with the leave of the learned single Judge- Undoubtedly both are rights of appeal. In one case the party can directly approach a Division Bench and try its luck. In the other case, he has first to obtain leave of that Judge who had decided the matter and then file the appeal. Undoubtedly, the second remedy is more onerous and seeks to curtail the right of

appeal to some extent. If it could be held in the present case that the Court under Section 72 was itself exercising the appellate jurisdiction, then undoubtedly, the present appeals filed without the leave of the learned single Judge are incompetent. Such appeals lie only with his leave and not otherwise. If otherwise it could be held, as the natural meaning of the expression suggests, that Section 72 provides a remedy by way of an application only, and though the inquiry held by the District Court seems to have some semblance of an appellate jurisdiction, it is not a jurisdiction created by the legislature as an appellate jurisdiction. It is only where the jurisdiction is appellate and a decision in exercise of such jurisdiction is given, and the High Court has also exercised the appellate jurisdiction, that the bar contemplated by Clause 15 of the Letters Patent of obtaining leave of the Court seems to come in."

12. On the basis of the above reasoning, the Court negatived the preliminary objection raised on behalf of the respondent and held that LPA was maintainable.

13. We may, however, state that after Hiragar Dayagar (AIR 1973 Guj 15) and Khivaraj Chhagniram (AIR 1974 Bombay 40), the point came up for consideration before the Supreme Court in Ramchandra Govardhan Pandit v. Charity Commissioner, State of Gujarat, AIR 1987 SC1598. The Apex Court was called upon to consider correctness or otherwise of two conflicting views - one of the High Court of Gujarat in Hiragar Dayagar and other of the High Court of Bombay in Khivaraj Chhagniram. Approving the view of the High Court of Gujarat and overruling the view of the High Court of Bombay, the Supreme Court observed :

"8. We have considered the reasoning in the three judgments referred above. With respect, we find it difficult to agree with the reasoning in AIR 1974 Bombay 40. We agree with the

reasoning in the other two cases. The slender thread on which the appellants' arguments rest is the absence of the word "appeal" in S. 72(1). That alone cannot decide the issue. If the well known word "appeal" had been used in this section that would have clinched the issue. It is the absence of this word that has necessitated a closer scrutiny of the nature, extent and content of the power under S. 72(1).

9. The power of the District Court in exercising jurisdiction under S. 72 is a plenary power. It is true that the Commissioner is not subordinate to the District Court but the District Court has power to correct, modify, review or set aside the order passed by the Commissioner. All the characteristics of an appeal and all the powers of an appellate Court are available to the District Court while deciding an application under S. 72. To decide this case, we must be guided not only by the nomenclature used by the section for the proceedings but by the essence and content of the proceedings. That being so, we have no hesitation to hold that the proceedings before the District Court under S. 72(1) are in the nature of an appeal and that District Court exercises appellate jurisdiction while disposing case and hence Cl. 15 of the Letters Patent is directly attracted ."

14. The above view was reiterated by the Supreme Court in Naranbhai Dayabhai Patel v. Suleman Isubji Dadabhai, AIR 1996 SC 1184.

From the above discussion, in our judgment, the legal position is fairly well settled and it is that when a single Judge of a High Court renders a judgment in exercise of jurisdiction under Section 72 of the Bombay Public Trusts Act, 1950, he exercises appellate jurisdiction against a decree passed or order made in exercise of appellate jurisdiction. To put it differently, he exercises jurisdiction as a second appellate Court and not as a first appellate Court and hence, a party aggrieved by a 'judgment'

> *rendered by the single Judge cannot, as of right, file an intra-Court appeal to a Division Bench of the same High Court without obtaining certificate of fitness from the single Judge who decided the matter.*"

10.3 In view of the aforesaid judgment passed by the Coordinate Bench of this Court, these appeals are in the nature of second appeal.

10.4 Bearing in mind the scope of the present appeal as discussed, deliberated, and decided by the coordinate bench, the present appeals are to be decided accordingly.

B. DISPUTE BETWEEN THE PARTIES

11. Coming to the dispute between the parties, His Highness the Maharaja of Baroda claims that the disputed land forms part of the Laxmi Vilas Palace, and that in the merger agreement, the said land was granted to His Highness the Maharaja as part of the Laxmi Vilas Palace complex. Upon merger, executing accession agreement, since the disputed land forms part of Laxmi Vilas Palace, disputed land became private properties. The other appellants claim that they are bona fide purchasers, having purchased their respective plots from His Highness the Maharaja after verifying the mutation entry. As against these claims, the finding of the Assistant Charity Commissioner, confirmed by the Joint Charity Commissioner and further confirmed by the learned Joint District Judge, that the disputed land was given by His Highness the Maharaja of the Baroda State at the relevant time to construct Yavteshwar Mahadev Temple, and it was

inami land and remained in the name of Yavteshwar Mahadev Temple till the revenue entry in the city survey property card was changed in the year 1956.

C. HISTORY OF THE TEMPLE

12. Although learned Advocate Mr. B.T. Rao appearing for His Highness the Maharaja did not acknowledge the history of the temple and questioned its evidentiary value, the history of the Trust produced in the Marathi language, at Mark 43/1 at page No. 134 in the record, with an authentic Gujarati translation produced at page No. 147, referred by the Joint District Court as well as both Assistant and Joint Charity Commissioner is relevant material for understanding how the temple came into existence.

12.1 According to the said history, the erstwhile Secretary of the Baroda State, Mr. Raoji was informed by the village people that the ling of Shri Yavteshwar Mahadev was found from the Narmada River near the Sulpani area, and fifty to sixty Brahmins attempted to excavate it but were remained unsuccessful. Subsequently, the Koli community succeeded in excavating it and kept the ling in its custody. Once this came to the knowledge of the erstwhile Diwan, Raoji Appaji, he informed the then Maharaja of the Baroda State, HH Shri Govindrao Gaekwad and prayed that the ling of Shri Yavteshwar Mahadev be established in the city of Baroda, near the bank of the Vishwamitra River, and that a temple in the southern style be constructed thereon. His Highness the Maharaja Shri Govindrao agreed to the proposal and

permitted them to bring the ling of Shri Yavteshwar Mahadev to Baroda city and further stated that he would bear all the expenses for constructing and running the temple. Ultimately, the prayer of all the people succeeded, and the ling was brought to Baroda city and was established on the bank of the Vishwamitra River. His Highness the Maharaja Govindrao readily extended all the resources, including the finances necessary for the construction of the temple.

12.2 The history further states that the village Kapurai was given for meeting the expenses of the temple. Later on, village Kapurai became Jagir of His Highness the Maharaja of Baroda State. As such, it relieved from item of Yavateshwar Mahadev Trust. The history also records that land admeasuring approximately 12 kumbha and 18 vigha was given in Samvat year 1853 in mauje Nagarwada, in the city of Vadodara, and a Sanad was issued in the name of Diwan Sitaram Chimnaji. The land was given for the maintenance of the temple. Thus, in Samvat 1853, the temple of Yavteshwar Mahadev was built, constructed, and established. In Samvat 1860, the village Kapurai entered into the revenue record of the village of Dumali.

12.3 After the demise of Diwan Sitaram Raoji, his son Narayan Sitaram did not succeed as Diwan, but the management of the temple and its property remained in the family of Sitaram Raoji. Later, a family dispute arose, and the management of the temple ultimately handed over to the

Khangi Khata of the erstwhile State of Baroda in the year 1854, and it remained in the Khangi Khata of His Highness the Maharaja till the time of merger. It is also documented at page No. 152 of the record that on 6th March 1898, His Highness the Maharaja had thought of to merge the Yavteshwar Mahadev Temple and its surrounding attached land with the Laxmi Vilas Palace compound. However, this remained merely an idea and was never executed, as it was dropped.

D. ANALYSIS OF DOCUMENTARY EVIDENCE

13. At the outset, it is relevant to notice findings arrived at by the Assistant Charity Commissioner.

> *"1) All the immovable property whether it may be agricutural land or building site have their history as to who first acquired this property, where it is situated, what is 古 its approximate area etc and I shall discuss hereafter whether Shri Yavteshwar Mahadev temple and trust has any such history and property.*
>
> *At Ex. 21 the leading members of the Fanse family submitted application in the inquiry on the ground that they are beneficiaries of this trust property. This temple along with its property was built by their ancestors Raoji Appaji in or about Samwant Year 1853 ie. A. D. 1797 during the regime of Govindra) Maharaja Gaekwar of Baroda.*
>
> *As said above, the members of the Phanse family who claimed to be beneficiaries of this trust property, produced important evidence regarding this temple and its properties.*
>
> *As said above, the case was opened by Shri B. K. Phanse whos the descendent of cousin brother of late Raoji ppaji the Diwan of Baroda State, To prove this*

br. B.K. Phanse in his deposition at Ex. 72 produced he pedegree of the family Ex. 74. In his deposition he produced certified copy of Ex. 43/1 History of Yavteshwar Mahadev Temple in Marathi its Gujarati traxslation Ex. 43/2. Ex. 70 is the original book of Yavteshwar Mahadev. Map of S, No. 1 of Tikka 8/2 newly formed by city survey and the Map of S. No. 10 of Nagarwada (under dispute) is at Ex. 43/3, 43/4 Ex. 160 and 61 certified copies of pratwari of S. No. 9 and 10. of A. D. 1890. Ex. 62 is certified copy of Fesal Patrak of A. D. 1874 1.e. land Register Ex.63 is certified copy of Pahani Patrak of 1874. Ex.43/10 certified copy of Tippan. Ex. 43/11 18 its Gujarati translation of Ex. 43/10. E::.43/4 is the Map of Nagarwada of S. No. 8,9,10 prepared from the field work of Survey Department from the above documentary evidence it would be clear that S. No. 9 and 10 of Nagarwada belonged to this Yavteshwar Mahadev Temple Trust. As discussed previously it would appear from Gujarati translation of Yavteshwar Mahadev temple History at page 5 and 6 of original book that the trust property is situated on the bank of Vishwamitri and all the four directions have been clearly given in it which does not have leave any doubt for it. The area of the property is also mentioned therein as 12 kumbhas, i.e. approximately 18 bighas plus 5 bighas of land given for garden to Shri Sitaram. The 3 bighas of land on which the temple stands and the area and the around it has acquired from Kanbi Lakha who was in possession this history was published and it is corroborated in actual facts by map, fesal patrak, pahani patrak prepared by Survey department of Baroda government and it cannot be challenged by opponent No.1 for its correctness. It is absolutely binding upon opponent No.1.

All these documentary evidence go to prove that the property comprised S. No. 9 and 10 belong to the Yavteshwar Mah: der temple.

Even the recent Pahani patrak produced by the applicant clearly shows the property belongs to the trust. This Tippan Ex. 43/10 shows the valuation of the property and the amount of the compensation that would have to be awarded in ease the property would be acquired.

It has been clearly stated in Ex. 63 and 64 that the whole S.No.10 including the kharaba land belonged to temple and Sitaram Raoji. Had there been any other ownership than this number would have been divided into sub-number, but such is not the case. The most surprising and questionable that in S. No. 10 temple has been entrusted to the trust according to the opponent and the surrounding area belong to the Maharaja, that means temple without land and there is no passage to go to the temple. It is not possible under any circumstances and I do not agree with this contention."

13.1 The Assistant Charity Commissioner in the proceedings of inquiry inspected the site and recorded following observations:

"In this inquiry, Inspection of site of disputed old S. No. 10 and of Nagarwada Yavteshwar Makadev temple compound was done by me. Looking to the situation of the disputed land and old and new construction of the disputed lands like two chhatries. One of Sati and other Chhatri of Raoji Appaji. Vav or stepwell, 5. Remnanis of the foundation walls of old well and that of Dharmashala situated in S. No. 10, the Deri of Sati Samadhi, etc. beyond reasonable doubt proved that it is a trust property and dedicated to Yavteshwar mahadev trust. The Samshan (cremation area) is clearly seen due to the existence of erected samadhis, dercies etc. It is ridiculous matter that a Samshan area would ever be situated and included in the palace compound where the Royal family reside, such situation is never seen in

palace compound. No doubt, the cremation was stopped by H. R. in the past and new cremation land was given near. Bahucharaji temple and this fact has been corroborated in tippan Ex. 43/10 and 11.

In short, the compound of palace Jain, S. No. 9 and S. No. 10 were carefully inspected and observed t that Yavteshwar mahadev temple does not stand in the compound of Laxmi Vilas Palace. In between Laxmi Vilas Palace compound and the property i.e. 3. No. 9 and 10 there is a vast area of Jail and also open land i.e. open land between Jail and Rain water stream running east to west through Hospital, Thus. Laxmi Vilas Palace compound is not connected to Yavteshwar mahadev property 1.0. No. 9 and 10. Two chhatries one of Sati and other chhatri of Raoji Appaji, vav, well, Dharamshala and other structures of shrines put over the area. It may be observed that the mahadev temple was erected by about A. D. 1797. While Laxmi Vilas Palace was constructed during the regime of Sayajirao Gaekwad in about 1875. While observing the boundaries and the compound of Laxmi Vilas Palace and of Jain it would be observed that the pillars of foundation of palace compound are constructed with stone base and top with vertical iron bar on the top. While that of Jail boundary is demarcated and supported by bared wire fencing attached to the iron angle bars. The palace compound touches nowhere the boundaries of S. No. 9 and 10 which is belonging to the Yavteshwar mahadev property. Ongoing through the definition of the word compound mentioned in the dictionary if would appear that the compound is a structure in which the main building is situated. Here the laxmi vilas palace and the boundary is itself complete, uninterrupted and consistent throughout and this has been mentioned in the inventory of property of maharaja saheb (laxmi vilas palace).”

13.2 Following observations of the Assistant Charity

Commissioner is also material, which reads as under:-

> *"I have gone through the section 57 and section 30 of the evidence act. Tae Exh. 70 and the tippan Ex. 43/10, 43/11 and other documents are admissable in law and the applicants have every right to relay upon them because they are corroborated by other evidence. I know that the ancient document must be corroborated by some evidence and here the all ancient documents. Ex. 70, 43/10,43/11 and others are fully corroborated with other facts. They are from proper custody and more than thirty years old and section 90 of the evidence act is applicable as far as these 'documents are concerned.*
>
> *The original application Ex.1 is for declaration of the property bearing S. No. 10 admeasuring 3 Bighas and which forms the part of C.T. No. 8/2 S. No. 1/A, admeasuring acres 707-32 gunthas as trust's property but inquiry reveals and it is proved beyond reasonable doubt that not only above said S.No. 10 is the Yavteshwar Mahadev's trust property but S. No. 9 admeasuring 29 bighas and 3 Vasas and which forms the part of C. T. No. 8/2 S. No. 1/A admeasuring Acres 707-32 gunthas is also belonging to the Yavteshwar Mahadev trust's property."*

13.3 The aforesaid findings have been confirmed by the Joint Charity Commissioner and learned Joint District Judge.

It is undisputed that the land of Survey No. 10 has since the very beginning consistently remained in the name of Shri Yavteshwar Mahadev Trust until the year 1956, when the name of His Highness the Maharaja was mutated pursuant to the letter written by the Executive Engineer. The legality and propriety of this entry is addressed hereinafter. Insofar as the land of Survey No. 9 is concerned, it was Sitaram Bapu's Bagh and was under the administration of the Government. It was

initially granted in the name of Baji Raiji, who was then the Secretary or the Diwan of the Baroda State, and was instrumental in bringing the ling of Yavteshwar Mahadev to Baroda city and in urging His Highness Govindrao to construct the temple. It was then mutated in the name of Sitaram Bapu. All this therefore proves that though the land was not named as Shri Yavteshwar Mahadev Trust property, it was land given by the then Maharaja (HH Shri Govindrao) for the maintenance of Shri Yavteshwar Mahadev Trust. First, this parcel of land was mutated in name of Diwan and once quarrel took place in the family of erstwhile Diwan of State of Baroda, the same has been transferred in Khangi Khata maintaining temple affairs. Noticeably, this parcel of land never transferred back as private property of HH Maharaja of State of Baroda.

13.4 Exh.60 specifies this in no uncertain terms. This finding is further strengthened by reading Exh.62, which reveals that the land of survey No. 8 was the waste land of the Laxmi Vilas Palace; survey No. 9 was Sitaram Bapu's Bagh, an inami land managed by the state Government at the relevant time; and the land of survey No. 10 was again an inami land managed by the Baroda State for the welfare of Shri Yavteshwar Temple. Survey No. 9 consists of 29 bigha 3 vasa and survey No. 10 consists of 3 bigha. Exh.63 is another document which further strengthens this finding. Exh.65, the extract of the property card, also indicates that the name of Yavteshwar Mahadev in the city revenue record, which existed up to the year 1954, was bracketed and the name of His Highness the

Maharaja Fateh Singh was mutated based upon letter No.CB/3/10 of the Executive Engineer. The aforesaid evidence on record establishes that the land of survey No. 9 was in name of the erstwhile Baroda State. The then Diwan of the Baroda State was instrumental in bringing the ling of Yavteshwar Mahadev to Baroda city and establishing it on the bank of the Vishwamitri River. The dedication of the land by His Highness the Maharaja Govindrao is established by the fact that the land of survey Nos. 9 and 10 respectively stood in the name of the then Diwan and in the name of Yavteshwar Mahadev. To be noted that neither the then Diwan nor his successors ever claimed the same as their personal property.

13.5 By Exh.147/1, the letter bearing number CB/3190-A from the office of the Executive Engineer became the sole instrument for bringing the name of His Highness the Maharaja in the city survey record in place of Shri Yavteshwar Mahadev. Save and except this documentary evidence, there is nothing on record or in evidence which proves that the land under inquiry, held by the Assistant Charity Commissioner to be land belonging to Yavteshwar Mahadev, belongs to any other person. The extract of Exh.147 reads as under:-

> *"NO. CB/3190-A*
> *Office of the Executive Engineer.*
> *Baroda Division P.W.D. Baroda.*
> *Dated. February, 1956.*
>
> *To*
> *The City Survey Officer,*
> *Baroda.*

Sub:- List of properties of His Highness of Baroda.
Ref:- This office No. C/28 dated 10.02.56.

On going through the list it is notified that details of S.NO. 1/61 (Hirabag stud farm) are not given. In the inventory of private properties as received from the Collector, it is noticed that following remarks are made against this items:-

"3 9 Hirbag bungalow Baroda, state (use of adjoining stud farm will be allowed to H.H. Free of rent till such time as she needs as such)

Hence registration may not be made of that item till relevant details are furnished to this office.

2. Regarding vilaspur site S.No. 2 please refer to this office No. CB/J/1907 dt. 15/12/55 and verify that the Govt. Land as pointed out there-in not included in the list.

3. The list received from you with the plans is returned herewith.

D.A.: List & Plan

Sd/-
Executive Engineer
Baroda (R&B) Division, P.W.
Baroda

Copy Fwd. to the Dy. Engineer City Sub-Dn. Baroda.

True Copy (Sign)
Executive Engineer,
R&B Div. Baroda"

13.6 On a careful examination of Exh.147, it appears that at

no place does the Executive Engineer, Baroda R & B Division stated that the land of Survey No. 9 or Survey No. 10 belongs to and is owned by His Highness the Maharaja of the State of Baroda. The said letter pertains to Survey No. 1/61, being the Hirabagh Stud Farm. However, this letter has been either misread or misconceived, possibly purposefully, so as to mutate the land belonging to Yavteshwar Mahadev in the name of His Highness the Maharaja. It further appears that once the land belonging to Yavteshwar Mahadev was mutated in the name of His Highness the Maharaja no sooner, under mortal greed, the lands were divided into plots and some portions thereof were sold to third parties. Perhaps, it was calculated move. HH Maharaja of State of Baroda , who owned vast number of land in city of Baroda, upon mutation of the revenue entry, in the year 1956, immediately sold some portion of the land with a view to create illusion of bona fide purchaser.

E. THE TOPOGRAPHY OF THE LAND

14. Even the topography of the place of Yavteshwar Mahadev Trust supports the above finding. The Central Jail, Baroda built up more than century ago, admittedly, situates between Laxmi Vilas Palace and Yavteshwar Mahadev temple and land attached with it. Therefore, the central jail practically and physically divides the land of the Laxmi Vilas Palace from Shri Yavteshwar Mahadev Temple. The Yavteshwar Mahadev Temple is situated on northen side of Central Jail, which is situated on nothern side of Laxmi Vilas Palace. Apposite to note that the central jail was never

claimed to be a part of the Laxmi Vilas Palace. It therefore becomes stark and clear that Shri Yavteshwar Mahadev Temple and land attached with it were never a part of the Laxmi Vilas Palace.

F. EXHS. 55, 56, AND THE MERGER AGREEMENT

15. On going through Exh.55, being letter by Hon'ble Mr. V.P. Menon on behalf of the Union of India, which was heavily relied upon by learned advocate Mr. BT Rao to claim that Shri Yavteshwar Mahadev and its surrounding land form part of the Laxmi Vilas Palace, however, on plain reading along with Exh.56, being the list of inventories of properties stated to be the private properties of His Highness the Maharaja of Baroda, which runs into total of 73 to 74 properties, the name of Shri Yavteshwar Mahadev Trust and the surrounding land are conspicuously absent therefrom. Even, cursory reference is also missing. The Yavteshwar Mahadev Temple built prior to Laxmi Vilas Palace, even at that time, had unique identity, but in merger agreement or in list of inventory, even, whisper of words are not made in regards to the Yavteshwar Mahadev Temple or property attached with it. This establish that the said properties were not included in the merger list as private properties of His Highness the Maharaja.

16. It is important to refer to page No. 220 of the record, being a part of Exh.22, wherein the list of the Khangi property used by the Raja free of charge is mentioned. The entry at serial Nos. 1 and 2 reads as under:-

“1. 1. Ground occupied by Nurses' quarters and Sisters' quarters in Yeoteshwar.

2. Ground occupied by Electric ric Exchange at Yeoteshwar and Chimanbag.

17. The aforesaid entry signifies that Shri Yavteshwar Mahadev Temple and surrounding attached lands were known by its name at the time of execution of Exhs. 55 and 56, and were entered in the list of Khangi property used by the Raja free of charge. This clearly implies that the temple or its property was never the personal property of the Raja or the Baroda State. The property may have been managed by the erstwhile Baroda State or its devasthanam department owing to some dispute in the administration of the temple and the attached property, which was lastly managed by the Fanse family. However, this does not establish that the disputed land is owned by His Highness the Maharaja.

18. Although learned Advocate Mr. Rao, in his extensive arguments, sought to establish that the disputed land belongs to His Highness the Maharaja, he failed to point out any single independent evidence in support of this claim. On a careful reading of Exh.49, there is nothing to establish that the disputed land of Shri Yavteshwar Mahadev Temple, and the land attached thereto, was held to be or recognized to be the land of His Highness the Maharaja.

19. At the cost of repetition, it is to be observed from the history produced on record that Shri Yavteshwar Mahadev Temple was built in the era of Diwan Raoji Appaji. The Diwan also constructed the stepwell, garden, and allied structures, which form part of the disputed land. Diwan Sitaram Raoji succeeded as Diwan to Raoji Appaji and was administering the temple and its property. After the demise of Diwan Sitaram Raoji, his son Narayan Sitaram did not succeed as Diwan, but the management of the temple and its property remained with the family of Sitaram Raoji. Later, a family dispute arose, and the management of the temple was ultimately handed over to the Khangi Khata of the erstwhile state in the year 1854 and it remained in the Khangi Khata of His Highness the Maharaja till merger. Therefore, the revenue record of the land of Survey No. 9, which stood in the name of Sitaram Raoji as Sitaram Bapu's Garden, remained as Khangi Khata till merger and was never recorded as the personal property of His Highness the Maharaja. This is clearly established from the documentary evidence, including Faisal Patrak, Pani Patrak etc. which prove the matter beyond reasonable doubt.

20. During the course of inquiry, Mr. Hargovanbhai Patel was examined as witness for the appellants' side. He was serving as Avval Karkoon in Devsthan department of the Collector office, Vadodara from February 1970 to November, 1973. He was also serving in the erstwhile State of Baroda since 1942. He deposed that during the erstwhile State of Baroda, the Devsthan department was separately maintained.

He further deposed that since 15.12.1908, grant of Rs.382/- was given to Yavteshwat Mahadev Trust and that grant is still continued. He has also produced documentary evidence etc. with the quadrilateral of Yavteshwat Mahadev Trust. He has also produced Faisal Patrak of land of survey No.10 stating that it was admeasuring 3 viga and 9 vasa consisting of well, sump, boundaries etc. He has further deposed that the cabin constructed in the land was given on rent since the erstwhile State of Baroda. He has further deposed that when the erstwhile State of Baroda was in regime, the rent was deposited with the erstwhile State of Baroda and later on, it was deposited with the Collector office, Vadodara. He has also placed on record rent receipts. He has further deposed that in Faisal Patrak, the disputed land in shown as Yavteshwar Mahadev Trust land. He has further deposed that upon this land, the State Government or erstwhile State of Baroda has no whatsoever right. He has further deposed that at the time of merger, His Highness, the Maharaja of erstwhile State of Baroda did not show the disputed land as private property. He has further deposed that the Executive Engineer, R & B Department had no whatsoever right to inform the City Survey Department to mutate land of survey No.10 in name of His Highness, the Maharaja of erstwhile State of Baroda. He has also deposed that the aforesaid act of the Executive Engineer is unjust, illegal and unwarranted. In nutshell, in chief examination, Avval Karkoon Mr. Patel, in no uncertain terms, stated that the disputed land belongs to the Yavteshwar Mahadev Trust and it was bestowed by the then His Highness, the Maharaja of erstwhile State of Baroda i.e.

HH Maharaja Shri Govindrao Gaekwad. This witness has been thoroughly cross-examined. However, nothing fruitful opposing case of the appellants is coming out during the cross-examination.

21. In defence, at Exh.139, His Highness, the Maharaja of erstwhile State of Baroda has examined Mr.DM Majumdar. According to his chief-examination, he is power of attorney of His Highness, the Maharaja of erstwhile State of Baroda Shri Fatehsinh Gaekwad, however, no such power of attorney was produced during the course of the inquiry proceedings. In the cross-examination, he has admitted that riding track is prepared within the compound of Laxmi Vilas Palace and it was prepared for riding horse. The Yavteshwar Mahadev Trust is situated adjacent to the riding track (Exh.27). He has also admitted that during the erstwhile State of Baroda, a separate department is maintained for the personal property of Raja. In cross-examination, he has further admitted that he has not seen any Register kept for private property of His Highness, the Maharaja of erstwhile State of Baroda. However, he has admitted that His Highness, the Maharaja of erstwhile State of Baroda was maintaining such Register and it was kept in the office of Chitnis. He has further admitted that he has seen this Register after merger of Baroda State with Union of India took place, albeit prior to merger, he has not seen such Register. He has further admitted that such Register is still lying in the office, however, no such Register or copy thereof has been produced during the inquiry proceedings. He has further admitted that in the list of

private property of Mahadev (Exh.56), the disputed land i.e. land of Yavteshwar Mahadev Trust and land attached with the Yavteshwar Mahadev Trust has not been shown as private property of His Highness, the Maharaja of erstwhile State of Baroda. He has further admitted that His Highness, the Maharaja of erstwhile State of Baroda has no private temple. He has further admitted that in erstwhile State of Baroda, a separate department in name of Devsthan was maintained for maintenance of the temples. He has further admitted that he does not know as to whether administration of Yavteshwar Mahadev Trust and attached lands were ever taken place as private property of His Highness, the Maharaja of erstwhile State of Baroda prior to independence. He has further admitted that Laxmi Vilas Palace is surrounded by the compound wall as well as iron bar placed on the compound wall. He has further admitted that the iron bar is installed around the central jail and is a separate place. He has further admitted that the central jail is not a part of Laxmi Vilas Palace compound. He has further admitted that *pagdandi* going towards Akota village exist between the open land of the Laxmi Vilas Palace compound. He has further admitted that in the land of survey No.10, nursing quarters are situated and these are not the private property, but it belongs to the State Government and it is mainly constructed for residential purpose of the nursing staff. He has further admitted that he has not seen tippan. He has further admitted that for the purpose of construction of Indira Avenue road, His Highness, the Maharaja of erstwhile State of Baroda did not get any compensation as the disputed land did not belong to him. He

has further admitted that he does not know what was the original survey number of Yavteshwar Mahadev Trust and surrounding land. He has further admitted that he does not know on which side, land of survey No.10 is existed. He has further admitted that he does not know as to whether Yavteshwar Mahadev Trust is existed on land of survey No.10 or otherwise. After seeing Exh.71 – map, he has admitted that the quadrilateral of survey No.9 stated therein is correct. He has further admitted that in said Exh.71, land of survey No.10 is shown on north side of land of survey No.9. He has further admitted that Yavteshwar Mahadev Trust is existed on land bearing survey No.10. He has further admitted that His Highness, the Maharaja of erstwhile State of Baroda has no revenue records to show that land of survey No.10 belongs to private property of His Highness, the Maharaja of erstwhile State of Baroda. In cross-examination, he was shown Exh.66 – Faisal Patrak of the year 1892 and he admitted that in this Faisal Patrak, land of survey No.9 was admeasuring 39 viga and 9 vasa and after correction, it was admeasured 27 viga and 8 vasa. He has further admitted that land admeasuring 2 viga and 5 vasa was taken for construction of the Indira Avenue road. He has further admitted that land of survey No.10 is admeasuring 3 viga and 9 vasa and in column No.8 of the revenue records, it is stated as Government waste land. He has further admitted that in column No.11, it is stated at Mahadev temple and Kharaba land. He has further admitted that 9 vasa land from survey No.10 was deducted for construction of the road. He has further admitted that Laxmi Vilas Palace is situated in land of survey No.8, land of survey

No.9 is situated towards central jail and in land of survey No.10, Yavteshwar Mahadev Temple is situated on north to it. He has further admitted that he cannot say that whether Yavteshwar Mahadev Temple was built by His Highness, the Maharaja of erstwhile State of Baroda He has further admitted that he does not know who has built up and established Yavteshwar Mahadev Temple. He has further admitted that Raoji Appaji was the first Diwan / Secretary of His Highness, the Maharaja of erstwhile State of Baroda. He has further admitted that he has not prepared pedigree of the Gaekwad family. He has further admitted that he has not inquired the private records of His Highness, the Maharaja of erstwhile State of Baroda to say that whether the land of Yavteshwar Mahadev Trust belongs to His Highness, the Maharaja of erstwhile State of Baroda. This witness was shown Exh.65 and after perusing and going through this, he has admitted that it is a history of Yavteshwar Mahadev Temple. He has further admitted that he cannot say that vide Exh.57 map, it can be claimed that the disputed land is private property of His Highness, the Maharaja of erstwhile State of Baroda. He has further admitted that the map does not contain date. After going through Exh.57, he has admitted that he cannot say that land of survey No.8 is existed to by what extent. However, he has admitted that central jail is built in land of survey No.9 in the year 1881 and land of survey No.10 is situated on northern side of the jail. He has further admitted that he has not seen property card of the disputed land. Letter of Mr. KK Shah at Exh.113 when was showed to this witness and after going through it, this witness

stated that name of Yavteshwar Mahadev Trust or sorrounding land is not mentioned in Exh.113. This witness was also shown Exh.114 and again, he has admitted that name of Yavteshwar Mahadev Trust and land sorrounding to it is not mentioned in Exh.114. This witness has further admitted that whether name of Yavteshwar Mahadev Trust was mentioned in the record of rights prior to independence or not is not within his knowledge. He has further admitted that after merger, and till 1956 i.e. from 1949 to 1956, His Highness, the Maharaja of erstwhile State of Baroda has not preferred any application before the revenue officer to mutate his name in the revenue records of the disputed land. He has further admitted that as per the list prepared and approved by the Union of India, process has taken place to mutate the name of the His Highness, the Maharaja of erstwhile State of Baroda in his private property, but he does not know who has carried out that procedure. He has further admitted that His Highness, the Maharaja of erstwhile State of Baroda had not requested the Executive Engineer to transfer the land of survey No.10 in his name. He has further admitted that he has not seen revenue records which could establish that the disputed land was private property of His Highness, the Maharaja of erstwhile State of Baroda. Lest, in cross-examination, this witness admitted that land of survey No.8/2 mutated in name of His Highness, the Maharaja of erstwhile State of Baroda by letter dated 14.2.1949 of the Union of India. This letter was written by Hon'ble Mr. V.P. Menon on behalf of Union of India. Copy of inventory was also attached with the letter (Exh.55 and 56). He has further admitted that

name of His Highness, the Maharaja of erstwhile State of Baroda in the revenue records in land of Yavteshwar Mahadev Trust was first time mutated in the year 1955-56. He has further admitted that extract of the property card is produced at Exh.65. He has further admitted that in Exh.65, - extract of the property card, there is no mention of letter dated 14.2.1949 of the Government of India signed by Hon'ble Mr. V.P. Menon and the revenue entry was not mutated on the basis of letter dated 14.2.1949 (Exhs.55 and 56). He has further admitted that Exh.147/1 – letter written by the Executive Engineer became source of mutation of entry in name of His Highness, the Maharaja of erstwhile State of Baroda replacing name of Yavteshwar Mahadev Trust. He has further admitted that Exh.147/1 is in regards to Hirabag Bungalow and Vilaspur side in land of survey No.2, he has further admitted that these two properties have no connection with the immovable property of Yavteshwar Mahadev Trust. He has further admitted that nursing quarters situated in the southern side of the Yavteshwar Mahadev Trust belongs to the State Government. He has further admitted that His Highness, the Maharaja of erstwhile State of Baroda has not taken any rent of the nursing quarters. He has further admitted that on the southern side, bungalows for the use of Medical Officers are constructed and is within the control of State Government.

22. The aforesaid re-examination of the documentary evidence along with oral evidence essentially says that the disputed land at no point of time was personal property of His

Highness, the Maharaja of erstwhile State of Baroda. At the cost of repetition, it can be observed that HH Shri Govindrao Gaekwad, the Maharaja of erstwhile State of Baroda, upon request and insistence of his Diwan / Secretary i.e. Raoji Appaji, dedicated the land near the bank of Vishwamitra river to construct the temple of Yavteshwar Mahadev and to establish ling of Lord Shiva. The disputed land are quite different and distinct than land of survey No.8, on which, Laxmi Vilas Palace is situated. At no point of time, for more than 100 years, the disputed land stands as private property of the His Highness, the Maharaja of erstwhile State of Baroda except in the year 1956 (Exh.65). Noticeably proved that the Revenue Officer completely misread the letter at Exh.147. The Assistant Charity Commissioner has thoroughly gone through the evidence on record and at the end of inquiry, has rightly held that the disputed land belongs to the Yavteshwar Mahadev Trust. The Joint Charity Commissioner again carried out exercise and confirmed the findings of the Assistant Charity Commissioner. The learned Joint District Judge, Vadodara in appeal proceedings u/s 72(2) of the Act of 1950 re-looked and reanalyzed the entire evidence to confirm the concurrent findings.

23. This Court has also taken the exercise to re-investigate the evidence on record. In the scope and ambit of appeal u/s 72(4) of the Act of 1950, this Court finds no reason to interfere with the concurrent findings arrived at by the Assistant Charity Commissioner, Joint Charity Commissioner and Joint District Judge.

24. Learned advocate Mr. BT Rao contended that initiation of inquiry u/s 22A r/w section 79 of the Act of 1950 after 15 years is barred by law of limitation so also the initiation of inquiry by the Assistant Charity Commissioner is without jurisdiction and beyond statutory time period. He has further argued that even if Statute does not prescribe any limitation to initiate inquiry, under the doctrine of reasonable time period, the Assistant Charity Commissioner, at the best can initiate inquiry within the reasonable time period of three years. Therefore, initiation of inquiry after 19 years is beyond the period of limitation.

25. The contention firstly can be met with the observation that the Limitation Act applies only to courts and not to quasi-judicial bodies or tribunals unless expressly extended by Statute.

26. The Hon'ble Apex Court in case of the **Property Company (P) Ltd. vs.Rohinten Daddy Mazda, 2026 LiveLaw SC 19**, observed in para 42 as under:-

> *"42. In the absence of a specific provision in the special legislation which expressly extends the application of the Act, 1963 to proceedings before the concerned quasi-judicial body or the system of quasi-judicial bodies, the thumb rule is that the rules of limitation, not only those that seek to lay down a prescribed period but also those envisaged under Sections 4 to 24 respectively of the Act, 1963, would remain inapplicable to quasi-judicial bodies."*

27. The Assistant Charity Commissioner had conducted inquiry in exercise of powers u/s 22 r/w section 79 of the Act of 1950, the provisions of law are extracted as under:-

> *"22A. If at any time after the entries are made in the register under section 21 or 22 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not the subject-matter of the inquiry under section 19, or sub-section (3) of section 22, as the case may be, has remained to be enquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of findings and the making of entries in the register under this section.*
>
> *79. (1) Any question whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act. (2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court [on application] or of the High Court in appeal, be final and conclusive."*

28. The expression "any time after the entries are made in the register" under section 21 or 22 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not the subject-matter of the inquiry under section 19, or sub-section (3) of section 22, as the case may be, has remained to be enquired into and makes

it abundantly clear that the statute of limitation does not apply to the inquiry to be carried out by the Assistant Charity Commissioner or Deputy Charity Commissioner. The word "any time" and "may make further inquiry" appeared in section 22A makes it clear that these inquiries are not subject to law of limitation and it is completely at the discretion of the Assistant Charity Commissioner or Deputy Charity Commissioner.

29. It was further argued by learned advocate Mr. Rao that the Collector when filed the application in the year 1952 to register the trust of Yavteshwar Mahadev, did not include the disputed land in the registration application and therefore, inclusion of such property by way of inquiry u/s 22A of the Act of 1950 is not permissible. I see no fathom in such submission. The revenue entry of land of survey No.10 was changed in the year 1956 pursuant to letter at Exh.147/1, which is reproduced herein above. Noticeably, it does not mention Yavteshwar Mahadev Trust or the land attached to the Yavteshwar Mahadev Trust. This letter of the Executive Engineer was in regards to the immovable property of Hirabag Bungalow. Yet by complete misreading, the Revenue Officer, based upon such letter, mutated name of His Highness, the Maharaja of erstwhile State of Baroda in the Yavteshwar Mahadev Trust and sorrounding land as his private property. When, the trust was registered in the year 1954, the Yavteshwar Mahadev Trust and its attached surrounded land were already in name of Yavteshwar Mahadev Trust and therefore, there was no necessity to carry

out any inquiry in that regard, or mentioning of it, in prayer for registration of trust.

30. In fact, in the Devsthan department maintained by the erstwhile State of Baroda as well as by the Collector subsequently post-independence maintained the disputed land belongs to the Yavteshwar Mahadev Trust. One can notice that overall particulars belongs to a public trust may not be disclosed intentionally or otherwise in an inquiry for registration of the public trust u/s 19 of the Act of 1950. There may be a myriad of reasons for omit to mention the property while applying for registration of trust. Sometimes, trust property are mentioned as private property of the trustee. However, if it comes to the notice of the Deputy Charity Commissioner or Assistant Charity Commissioner, as the case may be, on the information sought by a person having interest that certain properties or other properties are omitted, Deputy Charity Commissioner or Assistant Charity Commissioner can invoke jurisdiction u/s 22A and make further inquiry. Similar action may be occurred in regards to entry made in the claim in any of the particulars recorded u/s 22. Therefore, section 22A makes it clear that inquiry for this purpose will be made and necessary entries would be made by the Deputy Charity Commissioner or Assistant Charity Commissioner after inquiry.

31. The word “particular” mentioned in section 22 has been interpreted by this Court in case of **Kuberbhai Shivdas Versus Mahant Purshottamdas Kalyandas, (1961) 2 GLR**

654, wherein it is observed that the word particular mentioned in sec. 22A would mean any information or detail as to a trust which has not been considered in a previous inquiry under sec. 19.

32. In regards to word "particular in other decision" in case of **Ishwarlal Nanalal vs. Ghanchi Chimanlal R., ILR (1963) Guj 767**, it was held by this Court that the claim made by the third party in connection with the property which has been held to be public trust in an inquiry u/s 19 of the Act of 1950 would be particular relating to public trust inasmuch as it is claimed in regards to immovable property which is held under inquiry u/s 19 of the Act of 1950 alleged to belong to a public trust. It was further held that in that circumstance, the claim remains to be inquired into in the inquiry u/s 19 of the Act of 1950 nor can it be gainsaid that this claim is not the subject matter of the inquiry u/s 19. If that it be so, then provisions of section 22A would be applicable and the third party would have a remedy under this section.

33. The Division Bench of this Court in case of **A.C.Joshi, City Deputy Collector, Ahmedabad Versus Shukla Ramanujacharya, 1976 GLR 529**, examined the scope of section 22A vis-à-vis section 19 of the Act. It has been held that if some particular was not subject matter of inquiry under S. 19 and which has remained to be inquired into then S. 22A would fully apply to facts of case and Dy. Charity Commissioner would have jurisdiction to go into that question.

Relevant paras are 4 to 9 read as under:-

> *"**4.** The question which is involved in this appeal is one of the correct interpretation which call be put to sec. 22A of the Act as regards its real scope and ambit. This sec. 22A is in the following terms:*
> *22A. If at any lime after the entries are made in the register under sec. 21 or 22 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust which was not the subject matter of the inquiry under sec 19 or sub-sec. (3) of sec. 22 as the case may be has remained to be inquired into the Deputy or Assistant Charity Commissioner as the case may be may make further inquiry in the prescribed manner record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act in accordance with the decision of the competent authority provided by this Act. The provisions of secs. 19, 20, 21 and 22 shall so far as may be apply to the inquiry the recording of findings and the making of entries in the register under this section.*
>
> *The section thus obviously contemplates a fresh inquiry in cases where any particular relating to any public trust which was not subject matter of an inquiry under sec. 19 has remained to be inquired into. In other words the section has application to the cases where even though an inquiry under sec. 19 has been made some particulars relating to a public trust remained to be inquired into in an inquiry conducted under sec. 19. If a reference is made to sec. 19 it will be found that it inter alia contemplates an inquiry for the purpose of ascertaining (i) whether any property is the property of such trust; and (ii) any other particulars as may be prescribed under sub-sec. (5) of sec. 18. Looking to these provisions of sec. 19 it is obvious that the question whether any property is the property of a particular trust is one of the questions which is required to be inquired during the course of the inquiry contemplated by it. But there would be*

cases where particulars relating to either the property regarding which the inquiry is made for the public trust itself have remained to be inquired into during the course of the inquiry contemplated by sec. 19. In order to meet such contingencies sec. 22A was inserted in the scheme of the Act by sec. 2 of Bombay Act 59 of 1954.

5. *Now looking to the facts of this case the question which is now sought to be inquired at the instance of the Government is whether the property covered by S. No. 568 of Wadaj is the property belonging to the Government and not to the trust in question. If it is found that the consideration of this question is a particular relating to the trust in question which particular was not the subject matter of inquiry under sec. 19 and which has remained to be inquired into then provisions of sec. 22A would fully apply to the facts of this case and the Deputy Charity Commissioner would have jurisdiction to go into that question.*

6. *Shri Daru who appeared on behalf of the first respondent contended that since it is an admitted fact that during the course of the original inquiry under sec. 19 of the Act it was found that S. No. 568 of Wadaj is one of the properties belonging to the trust it should be presumed that all the particular relating to the ownership of this properly were inquired into during the course of the original inquiry and if that be so sec. 22A would have no application to the facts of this case. He further contended that the present inquiry contemplates with regard to the particular relating to the property of the Government and therefore it cannot be said that the question which is raised by the Government under sec. 22A is a question about a particular relating to the trust.*

7. *We find that the expression particular relating to the public trust has been often considered and interpreted by this court in various decisions ranging from the year 1961 to 19730 The earliest decision on this question is found in KUBERBHAI SHIVDAS AND*

ANOTHER. V. MAHANT PURSHOTTAMDAS KALYANDAS & ORS. (1961) 2 GLR. 654. Therein it is observed that the word particular mentioned in sec. 22A would mean any information or detail as to a trust which has not been considered in a previous inquiry under sec. 19. Thus the word particular is interpreted as connoting any information relating to the trust in question. This meaning of the word particular has been consistently adopted by this court in various decisions as will be seen subsequently. If we once accept that the meaning of the word particular connotes any information relating to the trust in question and if it is found that the said information or detail was not the subject matter of inquiry under sec. 19 and remains to be inquired into then it cannot be gainsaid that the Deputy or Assistant Charity Commissioner has got jurisdiction under sec. 22A to decide the question. Speaking of this case it is an admitted position that during the course of the original proceedings under sec. 19 of the Act there was no information before the concerned authority that the disputed property was the property of the Government. If there was no such information it follows that the said information was not the subject matter of inquiry under sec. 19 of the Act and that therefore that information remains to be inquired into now. In our view therefore if the connotation of the word particular which is found used in sec. 22A and which is consistently accepted by this court in various of its decisions is follows then the jurisdiction of the Deputy Charity Commissioner to inquire into the question raised by the Government before him under sec. 22A of the Act cannot be challenged.

8. *We shall not proceed to consider how this court has consistently followed the view which was initially taken in the above referred case of KUBERBHAI V. PURSHOTTAMDAS. In F.A. No.67/63 which is decided along with Second Appeal No. 377/63 (RATILAL KESHAVLAL V. BAI MANI) D. A. Desai J. has taken the same view in his judgement dt. 4-7-69. Thereafter M. U. Shah J. has also taken the same view in F.A.: No. 404/63 (HIRAGAR DAYAGAR V. RATANLAL*

CHUNILAL) which is decided on 3-2-70. Thereafter on 16 November 1972 a Division Bench of this court constituted by M. P. Thakkar and P. D. Desai JJ. has taken the same view in F. A. No. 784/65. (RASIKLAL SOMNATH V. LAXMICHAND ATMARAM). Dealing with the present question P. D. Desai J. speaking for the Bench has observed as under in the said judgement :

It would appear from the provisions contained in secs. 22 and 22A that they provide for the changes to be made where such changes appear to be necessary either as a result of a change having occurred subsequent to the date of the entry or as a result of some particular having been left out of consideration in the previous inquiry. The word particular mentioned in sec. 22A would mean any information or detail as to a trust which has not been considered in a previous inquiry under sec. 19. If information is furnished to the Assistant or the Deputy Charity Commissioner which was not before him at an earlier inquiry or which was suppressed by a trustee for example for the purpose of avoiding a property to be declared to be property belonging to a public trust it can be inquired into under sec. 22A. An application under sec. 22A can be made even by a third party and such party would inter-alia have to satisfy the Deputy or Assistant Charity Commissioner that certain property suppressed fraudulently and/or dishonestly belonged to a public trust. Since that would be a particular relating to a public trust which was not the subject-matter of the previous inquiry under sec. 19 on being so satisfied it would be open to the Deputy or the Assistant Charity Commissioner to record his findings and make entries in the register in accordance with the decision arrived at (Vide KUBERBHAI V. PURSHOTTAMDAS II Guj.Law Reporter 564.

Thereafter in C. R. A. 558/69 which is decided on 16-3-73 the same view has been expressed by P. D. Desai J. It is thus evident that in a series of decisions this court has consistently taken a view that the connotation of the word particular is any information or `detail with

regard to the concerned public trust. If this is so and if it is found that the said particular was not the subject matter of inquiry under sec. 19 it is difficult to hold that the Deputy Charity Commissioner or Assistant Charity Commissioner who conducts inquiry under sec. 22A has no jurisdiction to make such an inquiry.

9. *We find that contrary view is taken by the High Court of Bombay in SHRI ADINATH TIRTHANKAR JAIN MANDIR & ORS V. SHANTAPPA DADA MADNAIK & ORS. AIR 1967 BOMBAY 86. However in view of the consistent decisions given by this court on various occasions on this point and also in view of the fact that the interpretation of the word particular which is made by this court is reasonable and correct we see no reason not to follow the above referred decisions of this court."*

34. In view of above settled provisions of law, the contention of learned advocate Mr. Rao that the inquiry was initiated beyond the period of limitation as well as Assistant Charity Commissioner had no jurisdiction to initiate inquiry u/s 22A of the Act of 1950 remains unsustainable and cannot be accepted. Notwithstanding mention of property in inquiry u/s 19 of the Act of 1950 when question arise to decide that a particular property is trust property or otherwise, it can be dealt and done u/s 22A of the Act of 1950

35. Term "bona fide purchaser" is defined in section 19(b) of the Specific Relief Act. Section 19 provides for list of a person against whom specific performance of the contract may be enforced. Clause (b) of section 19 stipulates that specific performance would be enforced against any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his

money in good faith and without notice of the original contract. Therefore, transferee for value who has paid his money in good faith and without notice of the original contract is as good defence, which takes the purchaser from the purview of enforceability of the contract against him.

36. Learned senior Counsel Mr. Shalin Mehta appearing for the appellants – claimed as bona fide purchasers submitted that the appellants are the bona fide purchasers of the disputed land and therefore, they are not bound by decision in the inquiry and such inquiry report cannot be enforced against the subsequent purchasers / bona fide purchasers. However, while arguing so, learned senior Counsel Mr. Mehta in same breath submitted that the Court may not decide that whether other appellants are bona fide purchasers or not. This Court may left the issue to be dealt with in appropriate proceedings that whether the other appellants are bona fide purchasers or not. While doing so, let me refer the recent judgment of the Hon'ble Apex Court in case of **K.S.Manjunath And Others Versus Moorasavirappa @ Muttanna Chennappa Batil, Since Deceased By His Lrs And Others, 2025 INSC 128**, whereby the Hon'ble Apex Court thoroughly examined the argument of bona fide purchaser or that he acted in good faith without notice of previous contract or previous proceedings. The Hon'ble Apex Court in para 68 to 73 examined the word willful abstention from inquiry or search etc. Said paras read as under:-

"68. In such circumstances referred to above, the

subsequent purchasers are seeking to bring themselves within the status of a bona fide purchaser under Section 19(b) of the Act of 1963. Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. In the case of ***Ram Niwas v. Bano, reported in (2000) 6 SCC 685*** *, this Court had set out three factors that a subsequent transferee must show to fall within the excluded class: (a) he has purchased for value the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale specific performance of which is sought to be enforced against him. The court observed that "notice" can be (i) actual notice or (ii) constructive notice, or (iii) imputed notice. As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it. The relevant observation is as under:*

"3. Section 19 provides the categories of persons against whom specific performance of a contract may be enforced. Among them is included, under clause (b), any transferee claiming under the vendor by a title arising subsequently to the contract of which specific performance is sought. However, a transferee for value, who has paid his money in good faith and without notice of the original contract, is excluded from the purview of the said clause. To fall within the excluded class, a transferee must show that:
(a) he has purchased for value the property (which is the subject matter of the suit for specific performance

of the contract);
(b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale (specific performance of which is sought to be enforced against him).

4. The said provision is based on the principle of English law which fixes priority between a legal right and an equitable right. If 'A' purchases any property from 'B' and thereafter 'B' sells the same to 'C' the sale in favour of 'A', being prior in time, prevails over the sale in favour of 'C' as both 'A' and 'C' acquired legal rights. But where one is a legal right and the other is an equitable right "a bona fide purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law". (Snell's Equity - 13th Edn., p. 48.)

This principle is embodied in Section 19(b) of the Specific Relief Act.

5. It may be noted here that "notice" may be (i) actual, (ii) constructive, or (iii) imputed. " (Emphasis Supplied)

*69. Similarly, **in Durg Singh v. Mahesh Singh, reported in 2004 SCC OnLine MP 9** , the Madhya Pradesh High Court had observed that there are two factors that are necessary for the adjudication of suit for specific performance of the contract where the subject matter property has been sold to a subsequent purchaser: (i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree, and (ii) that whether subsequent transferee was having prior knowledge of the earlier agreement executed in favour plaintiff. Both these factors need to have nexus with the facts of each case and conduct of parties. The relevant observation is as under:*

"11. In a suit of specific performance of the contract

where the property in dispute has been sold to the subsequent purchaser, two things are necessary for the adjudication, they are; (i) that whether the plaintiff remained always ready and willing to perform his part of the contract to purchase the suit property and the readiness and willingness should exist till the date of the passing of the decree; and (ii) whether the subsequent transferee was haying prior knowledge of the earlier agreement executed in favour of plaintiff. In other words, we may say that if plaintiff fails to plead and prove by his conduct the readiness and willingness to purchase the suit property and if the subsequent purchaser was a bona fide purchaser without prior notice of the original contract who had paid the value of the suit property to the vendor, the suit of specific performance cannot be decreed. Both these essential ingredients are having nexus with the facts of each case as well as the conduct of the parties of that case. No straightjacket formula can be framed in this regard and each case should be tested on the touchstone of its own facts and circumstances coupled with the evidence. Thus, I shall now examine the present case in that regard." (Emphasis Supplied)

70. The expression "wilful abstention from inquiry or search" recalls the expression used by Sir James Wigram VC in the case of Jones v. Smith, reported in (1841) 1 Hare 43, wherein the High Court of Chancery of England & Wales had held that constructive notice is basically a manifestation of equity which treats a man who ought to have known a fact, as if he had actually known it. The court noted that:

"It is, indeed, scarcely possible to declare a priori what shall be deemed constructive notice, because, unquestionably, that which would not affect one man may be abundantly sufficient to affect another. But I believe, I may, with sufficient accuracy for my present purpose and without danger assert that the cases in which constructive notice has been established resolve themselves in two classes:

First, cases in which the party charged has had actual

notice that the property in dispute was in fact charged, encumbered or in some way affected, and the court has thereupon bound him with constructive notice of facts and instruments, to a knowledge of which he would have been (sic) led by an enquiry after the charge, encumbrance or other circumstances affecting the property of which he had actual notice; and secondly, cases in which the court has been satisfied from the evidence before it that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice [...]" (Emphasis Supplied)

71. Similar to the importance of the term "notice" used in Section 19(b) of the Act of 1963, the term "good faith" which is also used in Section 19(b) is equally important. The term "good faith" is defined in Section 3(22) of the General Clauses Act, 1897 (for short, "GC Act") as well as Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 (for short, "BNS"). Section 3(22) of GC Act defines "good faith" is defined in the following terms:

"3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not."

72. Section 2(11) of the BNS defines "goodfaith" in the following terms:

"2(11). "Good faith - Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention"

*73. Therefore, in order to come to a conclusion that an act was done in good faith it must have been done with (i) due care and attention, and (ii) there should not be any dishonesty. This Court recently in case of **Manjit Singh v. Darshana Devi, reported in 2024 SCC OnLine 3431** , wherein one of us, J.B. Pardiwala, J., forming a part of the Bench, construed the usage of the term "good faith" under Section 19(b) of the Act of 1963 in the above sense and held that each of the abovementioned aspects is a complement to the other*

and not an exclusion of the other. This Court observed that the definition of the BNS emphasizes due care and attention whereas the definition of the GC Act emphasizes honesty. The relevant observation is as under:

"13. Section 3(2) of the General Clauses Act defines 'good faith' as follows:-

3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.

14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023 defines "good faith", as follows:-

2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;

15. The abovesaid definitions and the meaning of the term 'good faith" indicate that in order to come to a conclusion that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.

16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in ***Ram Niwas v. Bano, (2000) 6 SCC 685*** *[...]*

17. In the case reported in ***Kailas Sizing, Works v. Municipality, B. & N., reported in 1968 Bombay Law Reporter 554*** *, the Bombay High Court observed as follows:-*

A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite

of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence." *(Emphasis Supplied).”*

G. CONCLUSION

37. Before parting with the order, let me observe that present First Appeals are glaring example of unscrupulous desire of litigant to put a case in endless litigation and to pursue the Court proceedings to keep the deity’s property under cloud forever. Such persistence and prolonged litigation is not only strained judicial resource, but also consumed court’s precious time. The deity i.e. Yavteshwar Mahadev has been kept in the limitless litigation from claiming legitimacy of the immovable property vested in Yavteshwar Mahadev by the then Maharaja of the Baroda State, HH Shri Govindrao Gaekwad. Such an attempt has burdened this Court since 1991 and such an attempt directly intervened with the general administration of justice and hampered the court’s precious time.

37.1 The judgments relied upon by learned advocates for the

appellants are factually different and distinguishable and thus, failed to help to the case of the appellants.

37.2 In nutshell, the present First Appeals are bereft of merit and this Court do not find any error much less an error of substantial nature in the impugned concurrent findings.

37.3 In the result, the First Appeals fail and stand ***DISMISSED***. Interim relief, if any, granted earlier stands vacated forthwith. Consequently, connected civil applications also stand disposed of.

38. R & P to be sent to the concerned Court immediately.

39. Registry to maintain copy of this order in each matter.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

FURTHER ORDER

After pronouncement of the judgment, learned advocate Mr. Ninad Shah appearing for some of the appellants requests to stay execution, implementation and operation of the aforesaid judgment for a period of four weeks so as to approach the higher forum. Learned AGP Ms. Tripathi vehemently opposed grant of stay on the judgment. Considering the facts and circumstances, implementation & execution of the judgment is kept in abeyance for a period of four weeks. Till then, both the parties are directed to maintain *status quo* with regard to title and possession of disputed property.

(J. C. DOSHI,J)

SHEKHAR P. BARVE