

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13139 OF 2025

1. Kisan Kalu Khatal

Age : About 72 years Occ : Trustee  
R/o. At Post Shingve (Matobache),  
Taluka Chandwad, District Nashik.

2. Shivaji Nana Pawar,

Age : Abt. 70 Years, Occ : Trustee  
Having address at Sai Clinic, Manmad,  
Taluka Nandgaon, District Nashik.

...Petitioners

**Versus**

1. Usha Baburao Pawar

Age : Abt. 65 years, Occ:- household  
R/o. Fakira Niwas, Near Aakashwani  
Centre, Gangapur Road, Nashik.

2. Ramdas Ganpat Khatal,

Age : Abt. 75 years, Occ:- Trustee

3. Pandit Hari Khatal

Age : Abt. 60 years, Occ:- Agri,  
Both Nos. 2 & 3 R/o. At Post Shingve,  
Taluka Chandwad, District Nashik.

4. Joint Charity Commissioner,  
Nashik Division, Nashik.

5. Dy. Charity Commissioner  
Nashik.

6. H. K. Ghadge,

Inspector, Officer of Joint Charity  
Commissioner, Nashik Division, Nashik.

...Respondents

**WITH  
WRIT PETITION NO. 853 OF 2026**

1. Lahanu Ramchandra Pawar  
Age : 71 years Occ : Trustee  
R/o. Paras Bungalow, Plot No.47-B,  
Saraswati Nagar, Panchavati, Nashik,  
District Nashik.
2. Sambhaji Sahebrao Pawar,  
Age : 50 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
3. Balasaheb Sahebrao Pawar,  
Age : 55 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
4. Sharad Marotirao Pawar,  
Age : 46 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
5. Suman Marotirao Pawar,  
Age : 70 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
6. Ratna Sambhaji Pawar,  
Age : 44 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
7. Savita Balasaheb Pawar,  
Age : 48 Years, Occ : Trustee  
R/o. Sawargaon, Taluka Yeola,  
District Nashik.
8. Sandip Ramdas Kale,  
Age : 42 Years, Occ : Trustee  
R/o. Shingve (Matobache),  
Taluka Chandwad, District Nashik.

9. Suman Ramdas Kale,  
Age : 67 Years, Occ : Trustee  
R/o. Shingve (Matobache),  
Taluka Chandwad, District Nashik.
10. Sunil Waluba Kale,  
Age : 45 Years, Occ : Trustee,  
R/o. Shingve (Matobache),  
Taluka Chandwad, District Nashik.
11. Smita Bhaskar Nikam,  
Age : 40 Years, Occ : Trustee,  
R/o. A/P. Rahud,  
Taluka Chandwad, District Nashik.
12. Bhaskar Baburao Nikam,  
Age : 45 Years Occ : Trustee,  
R/o. A/P. Rahud,  
Taluka Chandwad, District Nashik.
13. Kusum Lahanu Pawar  
Age : 63 Years Occ : Trustee,  
R/o. Uswad,  
Taluka Chandwad, District Nashik.
14. Sunil Lahanu Pawar,  
Age : 44 Years, Occ : Trustee,  
R/o. Uswad,  
Taluka Chandwad, District Nashik.
15. Sandip Lahanu Pawar,  
Age : 38 Years, Occ : Trustee,  
R/o. Uswad,  
Taluka Chandwad, District Nashik.
16. Kavita Satish Deshmane,  
Age : 40 Years, Occ : Trustee,  
R/o. Denewadi,  
Taluka Chandwad, District Nashik.
17. Sumanbai Kisan Khatal,  
Age : 64 Years, Occ : Trustee,  
R/o. Shingve (Matobache),  
Taluka Chandwad, District Nashik.

18. Archana Dhanaji Thakare,  
Age : 44 Years, Occ : Trustee,  
R/o. Salsane, Taluka Chandwad,  
District Nashik
19. Dhanaji Nivrutti Thakare,  
Age : 50 Years Occ : Trustee,  
R/o. Salsane,  
Taluka Chandwad, District Nashik.
20. Hanuman Nivrutti Thakare,  
Age : 61 Years Occ : Trustee,  
R/o. Salsane,  
Taluka Chandwad, District Nashik.
21. Sunita Shivaji Pawar,  
Age : 63 Years Occ : Trustee,  
R/o. Uswad, Taluka Chandwad,  
District Nashik.
22. Prashant Pandurang Pawar  
Age : 47 Years Occ : Trustee  
R/o. Dadaji Kondeo Nagar,  
Near Nirmala Convent, Gangapur Road,  
Nashik.
23. Avinash Keshav Ufade,  
Age : 50 Years, Occ : Trustee,  
R/o. Sakore (Mig),  
Taluka Niphad, District Nashik.
24. Ramakant Keshav Ufade,  
Age : 48 Years, Occ : Trustee,  
R/o. Sakore (Mig),  
Taluka Niphad, District Nashik.
25. Sandip Pandurang Pawar  
Age : 45 Years, Occ : Trustee,  
R/o. Dadaji Kondeo nagar,  
Near Nirmala Convent, Gangapur Road,  
Nashik.
26. Dhondiram Laxman Kadnor

Age : 70 Years Occ : Trustee  
R/o. Dahegaon, (Manmad)  
Taluka Chandwad, District Nashik.

...Petitioners

**Versus**

1. Usha Baburao Pawar  
Age : Abt. 65 years, Occ:- household  
R/o. Fakira Niwas, Near Aakshwani  
Centre, Gangapur Road, Nashik.
2. Ramdas Ganpat Khatal,  
Age : Abt. 75 years, Occ:- Trustee
3. Pandit Hari Khatal  
Age : Abt. 60 years, Occ:- Agri,  
Both Nos. 2 & 3 R/o. At Post Shingve,  
Taluka Chandwad, District Nashik.
4. Joint Charity Commissioner,  
Nashik Division, Nashik.
5. Dy. Charity Commissioner  
Nashik.
6. H. K. Ghadge,  
Inspector, Officer of Joint Charity  
Commissioner, Nashik Division, Nashik. ...Respondents

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Mr. Sanjay P Shinde, for the Petitioners in both.

Mr. Surel Shah, Senior Advocate a/w Mr. Nikhil M Pujari, for  
Respondent Nos. 1 to 3 in both.

Mr. A C Bhadang, AGP for Respondents – State in  
WP/853/2026.

Ms. Sulbha Chipade, AGP for Respondents - State in  
WP/13139/2025.  
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CORAM : N. J. JAMADAR, J.  
RESERVED ON : 18<sup>th</sup> FEBRUARY 2026  
PRONOUNCED ON : 08<sup>th</sup> JUNE 2026

**JUDGMENT:**

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. These petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of a judgment and order dated 10<sup>th</sup> September, 2025, passed by the learned Joint Charity commissioner, Nashik in Appeal No. 78/2022 and 81/2022, whereby the appeals under Section 70 of the Maharashtra Public Trust Act, 1950 ("the Trust Act, 1950) against an order dated 02<sup>nd</sup> August, 2022, passed by the Deputy Charity Commissioner, Nashik in Change Report No. 451/2005, came to be disposed by appointing the Inspector in the Public Trust Registration office with a direction to conduct election to the Managing Committee of Dnyan Prasarak Mandal – the Public Trust, from amongst 13 members of the Trust.

3. Though the dispute has a chequered history with multiple rounds of litigation before the authorities under

the Trust, Act, 1950, yet, the background facts can be summarized as under :-

**3.1** Dyan Prasarak Mandal, Nashik, came to be registered as a Public Trust vide Registration No. F-2853/Nashik, in the year 1991. There were 16 members of the Trust. There was no controversy over the appointment of the first Managing Committee for the term 1991-1996. For the term 1996-2001, also the Managing Committee was appointed and the change, reported vide CR No. 3000/1996, was duly accepted.

**3.2** After the expiry of the term of Managing Committee in the year, 2001, purportedly change occurred in the Managing Committee of the Trust and Change Report Nos. 830/2001 and 302/2002 were filed. Those change reports were rejected.

**3.3** Another Change Report being CR No. 194/2004 was filed. However, in Appeal No. 20/2004, by a judgment and order dated 29<sup>th</sup> March, 2005, the learned Joint Charity Commissioner, Nashik, quashed and set aside the order passed by the Deputy Charity Commissioner in CR No. 194/2004 and directed the Deputy Charity Commissioner

to hold elections to the Managing Committee of the Trust, as per the by-laws after confirming the legal and valid members, who were entitled to vote at such an election.

**3.4** By a further order dated 15<sup>th</sup> April, 2005, the learned Joint Charity Commissioner was persuaded to modify the order dated 29<sup>th</sup> March, 2005 and give further directions to the Assistant Charity Commissioner in regard to the finalization and display of the list of legal and valid members of the Trust.

**3.5** Pursuant to the aforesaid directions, the Assistant Charity Commissioner published list of members of the Trust including the members who were purportedly added pursuant to the resolution passed by the Trust in its meeting dated 12<sup>th</sup> November, 2003.

**3.6** In the elections, which were held on 01<sup>st</sup> July, 2005, 9 members were elected unopposed, as the members of the Managing Committee for the term 01<sup>st</sup> July, 2005 to 30<sup>th</sup> June, 2010, including the Petitioner Nos. 1 and 2, in Writ Petition No. 13139/2025, and Petitioner Nos.1, 2 and 13, in Writ Petition No. 853/2026.

**3.7** A Change Report, being CR No. 451/2005, was filed to report the change that had so occurred in the Managing Committee of the Trust. The said change report was rejected by the Deputy Charity Commissioner, Nashik.

**3.8** Being aggrieved, an appeal was preferred before the Joint Charity Commissioner, being Appeal No. 31/2006. By a judgment and order dated 23<sup>rd</sup> January, 2008, the appeal was partly allowed and the order passed by the Deputy Charity Commissioner rejecting the change report was quashed and set aside and the said CR No. 451/2005 was remanded back to the Deputy Charity Commissioner for a fresh trial.

**3.9** Being aggrieved, the Respondent Nos. 1 to 3 herein and others preferred an application before the District Court, Nashik under Section 72 of the Trust Act, 1950, as it then stood. By a judgment and order dated 30<sup>th</sup> March, 2011, the learned District Judge dismissed the application and affirmed the order of the learned Joint Charity Commissioner.

**3.10** Post remand, the Deputy Charity Commissioner by a judgment and order dated 28<sup>th</sup> November, 2019 was again

persuaded to reject the change report opining that the persons who were admitted as members of the Trust in the meeting of the Managing Committee held on 12<sup>th</sup> November, 2003, were not lawfully admitted, and the resolution passed in the said meeting to admit those persons - the petitioners in Writ Petition No. 853/2026 was not legal and valid and, therefore, the election to the Managing Committee held on 01<sup>st</sup> July, 2005 was vitiated. Whilst rejecting Change Report No. 451/2005, the learned Deputy Charity Commissioner directed that the name of the members of the Managing Committee, purportedly elected for the term 2005-2011 be entered in the Schedule-I of the Trust as *de facto* trustees.

**3.11** Being aggrieved, the Petitioner Nos. 1 and 2 in Writ Petition No. 853/2026 preferred Appeal No. 1027/2019 and the Respondent Nos. 1 to 3 in Writ Petition No. 13139/2025 preferred Appeal No. 28/2020. By a common judgment and order dated 03<sup>rd</sup> December, 2020, the learned Joint Charity Commissioner allowed the appeals, set aside the order dated 28<sup>th</sup> November, 2019 in Change Report No. 451/2005 and again remanded the said Change Report No. 451/2005 to the learned Deputy Charity

Commissioner, Nashik for fresh inquiry about the legality of the membership.

**3.12** Post the second remand, the learned Deputy Charity Commissioner, Nashik again rejected the Change Report No. 451/2005 by a judgment and order dated 02<sup>nd</sup> August, 2022, holding *inter alia* that, the membership of Kisan Kalu Khatal and Shivaji Nana Pawar - the petitioners in Writ Petition No. 13139/2025, was terminated and the persons who were admitted as members of the Trust after the year, 2001, were not lawfully admitted and thus they were not the legal and valid members of the Trust.

**3.13** Again feeling aggrieved, the Petitioner Nos. 1 and 2, in Writ Petition No. 853/2026, preferred Appeal No. 78/2022 and the Respondent Nos. 1 to 3, in Writ Petition No. 13139/2025, preferred Appeal No. 81/2022.

**3.14** By the impugned common judgment and order dated 10<sup>th</sup> September, 2025, the learned Joint Charity Commissioner, Nashik, dismissed the Appeal No. 78/2022 preferred by the Petitioner Nos. 1 and 2, in Writ Petition No. 853/2026, and partly allowed the Appeal No. 81/2022 and issued directions for holding the elections to the

Managing Committee of the Trust from amongst 13 original members of the Trust. The learned Joint Charity Commissioner did not find any infirmity in the order of the learned Deputy Charity Commissioner that the election process held on 01<sup>st</sup> July, 2005 was vitiated as the persons whose membership was terminated and who were not lawfully admitted as the members of the Trust, were considered the electorate.

**3.15** Being aggrieved, the petitioners in Writ Petition No. 13139/2025 have invoked the writ jurisdiction assailing the findings that their membership of the Trust stood terminated and they were not entitled to vote in the election to the Managing Committee, despite being the life members of the Trust.

**3.16** The petitioners in Writ Petition No. 853/2026 are also aggrieved by the impugned order as it declares that, they were not lawfully admitted as members of the Trust and are not the legal and valid members of the Trust and are, therefore, not entitled to vote in the elections to the Managing Committee of the Trust.

4. The private respondents who claimed to be the original members of the Trust, have filed affidavits-in-reply opposing the petitions. The contentions in the affidavits-in-reply are controverted by filing affidavits-in-rejoinder.

5. In the wake of the aforesaid facts, the orders passed in multiple proceedings and the pleadings in these petitions, I have heard Mr. Sanjay shinde, the learned Counsel for the petitioners, and Mr. Surel Shah, the learned Senior Advocate for private respondents, in both the petitions, and Mr. Bhadang, the learned AGP for the Respondent Nos. 4 to 6 - State in Writ Petition No. 853/2026 and Ms. Chipade, the learned AGP for the Respondents Nos. 4 to 6 - State in Writ Petition No. 13139/2025.

6. Before advertng to note the submissions canvassed on behalf of the rival parties, it may be apposite to note the uncontroverted facts so as to narrow down the controversy. Incontrovertibly, the Trust was initially incorporated as a Society under Societies Registration Act, 1860 and thereafter registered as a public trust vide PTR No. F-2853, in the year 1991. There is not much controversy over the

fact that, there were initially 16 members of the Trust. Nor there was any dispute over the constitution of the first Managing Committee of the Trust for the term 14<sup>th</sup> August, 1991 to 14<sup>th</sup> August, 1996, and the constitution of the Managing Committee for the second term commencing from 16<sup>th</sup> August, 1996 to 15<sup>th</sup> August, 2001.

7. Incontrovertibly, Dr. Baburao Fakira Pawar was the General Secretary of the Trust. Disputes arose after the demise of Dr. Baburao Pawar on 08<sup>th</sup> May, 2002. The petitioners claimed in the meeting of the Managing Committee of the Trust held on 12<sup>th</sup> November, 2003, the Managing Committee resolved to appoint Mr. Lahanu Ramchandra Pawar – Petitioner No. 1 in Writ Petition No. 853/2026, as the General Secretary of the Trust, and also admit new 29 life members of the Trust - the Petitioner Nos. 2 to 26 in Writ Petition No. 853/2026 and others. The legality and validity of these resolutions in the meeting dated 12<sup>th</sup> November, 2003 and the resolutions purportedly passed by the Managing Committee on 03<sup>rd</sup> July, 1996 and 07<sup>th</sup> December, 1998 terminating the membership of Kisan Kalu Khatal and Shivaji Nana Pawar – the petitioners in

Writ Petition No. 13139/2025, are at the heart of the controversy.

8. The learned Deputy Charity Commissioner and the learned Joint Charity Commissioner have returned the findings that, the membership of the petitioners in Writ Petition No. 13139/2025 was lawfully terminated on account of default in payment of life membership fee of Rs.1,000/- each, and the induction of the Petitioner Nos. 2 to 26 in Writ Petition No. 853/2026 was illegal and, thus, issued directions to hold the elections for the Managing Committee of the Trust from amongst original 13 members of the Trust. Whether these findings are legally sustainable?

9. Mr. Shinde, the learned Counsel for the petitioners, canvassed a two-pronged submission. Qua Kisan Khatal and Shivaji Pawar, the petitioners in WP/13139/2025, Mr. Shinde would urge, incontrovertibly, the petitioners are the life members of the Trust. The petitioners were also elected unopposed for the term 2005-2010. Thus, the direction to hold the elections to the Managing Committee by excluding

the petitioners who are the founder members of the Trust is completely illegal and wholly unsustainable.

10. Mr. Shinde would submit that, the claim of the private respondents and the findings of authorities under the Trust Act, 1950 that the petitioners membership stood terminated are not borne out by the material on record. On the contrary, the witness of respondents had conceded during the course of cross-examination that the petitioners were the life members of the Trust. A subterfuge of termination of membership of the petitioners on account of the non-payment of life membership fees, was made. Neither the said contention could be substantiated by cogent evidence, nor the by-laws of the Trust, empowered the Managing Committee to terminate the life members. Therefore, the authorities have committed a gross error in law in holding that, the termination of the life membership of the petitioners was an uncontroverted fact.

11. Mr. Shinde would further submit that, the stand of the private respondents in the change report proceeding qua the petitioners membership was at variance with their stand in the proceeding initiated against the petitioners

and others for their removal under Section 41 D of the Trust Act, 1950. In the said case, it was contended that, Kisan Khatal and Shivaji Pawar - the Respondent Nos. 6 and 7 therein, were expelled from the Trust as they remained absent for meetings of the Trust. This glaring inconsistency in the stand of private respondents in regard to the reason for the alleged termination of membership of the petitioners, singularly demolishes the case of the private respondents that the petitioners ceased to be the life members of the Trust.

**12.** Mr. Shinde further submitted that, in any event, the authorities under the Trust Act, 1950 could not have gone into the legality and validity of the membership of the Trust while deciding the question as to whether there was a legal and valid change in the Managing Committee of the Trust. To buttress these submissions, Mr. Shinde placed reliance on the judgments of the Supreme Court in the case of *Kattinokkula Murali Krishna Vs. Veeramalla Koteswara Rao & ors.*<sup>1</sup>, and this Court in the case of *Laxman Baburao Avale & ors. Vs. Surendra & ors.*<sup>2</sup>.

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1 (2010) 1 SCC 466

2 2017 SCC OnLine Bom 10417

13. Qua the petitioners in WP/853/2026, Mr. Shinde submitted that, the petitioners were lawfully admitted as the life members of the Trust, pursuant to the resolution passed in the meeting of the Managing Committee held on 12th November, 2003. Mr. Shinde urged with a degree of vehemence that, the learned Deputy Charity Commissioner and the learned Joint Charity Commissioner committed a manifest error in law in holding that, the Managing Committee which was elected in the year 2001 had no authority to admit new members. The fact that the Change Report No. 830/2001 was not accepted by the Assistant Charity Commissioner did not imply that the Managing Committee had no power.

14. Inviting the attention of the Court to Rules and Regulations of the Trust, Mr. Shinde would submit that, till the next Managing Committee took charge of the affairs of the Trust, the members of the erstwhile Managing Committee were entitled to discharge the functions of the Managing Committee. Therefore, no fault could be found with the resolution passed in the meeting of the Managing Committee held on 12th November, 2003, in which the new

life members were admitted. Moreover, for over 20 years, few of those persons have been acting as members of the Managing Committee. Therefore, the impugned orders debarring those persons from participating in the election to the Managing Committee of the Trust, are legally unsustainable.

15. Mr. Shah, the learned Senior Advocate for private respondents, countered the submissions on behalf of the petitioners. First and foremost, Mr. Shah would urge, the petitioners had not assailed the order passed by the Deputy Charity Commissioner in CR No. 451/2005 before the learned Joint Charity Commissioner. Therefore, the petitioners in WP/13139/2025 cannot be permitted to assail the impugned order passed by the learned Joint Charity Commissioner in appeal. Secondly, Mr. Shah would submit, the authorities under the Trust Act, 1950 have returned concurrent findings based on objective material that the persons who were not members of the Trust, constituted the electorate in the purported meeting held on 01st July 2005 and, thus, elected the Managing Committee. The election process was completely vitiated.

16. Amplifying the submissions, Mr. Shah urged that, there was no challenge, at any stage, and before any forum to the termination of the membership of the petitioners in WP/13139/2025, pursuant to the resolutions passed in the meeting of the Managing Committee dated 03rd July, 1996, and 07th December, 1998. Thus, all the parties proceeded on the premise that, there was no dispute over the fact that the petitioners - Kisan Khatal and Shivaji Pawar were terminated as members of the Trust.

17. Mr. Shah banked upon the observations in Paragraph No. 33 of the impugned order passed by the Deputy Charity Commissioner that, during the course of arguments, the parties conceded that the membership of Kisan Khatal and Shivaji Pawar was terminated and they had not assailed the said termination.

18. In regard to the challenge to the legality and validity of the membership of Petitioner Nos. 2 to 26 in WP/853/2026, the persons who were allegedly inducted as members of the Trust, pursuant to the resolution dated 12th November, 2003, Mr. Shah would urge that, the said resolution was passed by the Managing Committee, the

change in respect of constitution of which was never accepted by the Assistant Charity Commissioner. Simply put, Mr. Shah would urge, the Managing Committee which purportedly passed the resolution dated 12th November, 2003, was not competent to admit new life members of the Trust and thereby create an irretrievable situation.

19. Refuting the submissions of Mr. Shinde that, Clause 4 of the Rules and Regulations of the Trust empowered the Managing Committee to take all lawful decisions even in respect of admitting new members, Mr. Shah would submit that, an entity entrusted with discharge of the essential functions by way of a stop-gap arrangement, cannot take policy and far reaching decisions. Therefore, the authorities under the Trust Act, 1950, have correctly taken a view that, 29 persons were not lawfully admitted as the members of the Trust. Mr. Shah urged, reliance on clause 4 of the Regulations was completely misplaced. Clause 4, according to Mr. Shah, cannot be repository of as important and significant a power as to admit new life members of the Trust.

20. Lastly, Mr. Shah submitted that, the learned Joint Charity Commissioner is statutorily enjoined to examine the legality and validity of the reported change. To appreciate whether the change in the Managing Committee of the Trust had occurred in consonance with law, the Charity Commissioner was required to examine whether the electorate was valid and competent to elect the new Managing Committee. If those electors did not fulfill the criteria of being the valid members of the Trust then it cannot be said that, the Charity Commissioner has ventured into examining the legality and validity of the membership of the Trust.

21. To lend support to the submissions that, in an inquiry under Section 22 of the Trust Act, 1950, the Charity Commissioner can legitimately examine the aspect of membership so far as it bears upon the legality and validity of the change by a process of election, Mr. Shah placed reliance on the judgment of a learned Single Judge of this Court in the case of ***Subhash Pandurang Bandiwadekar & ors. Vs. The State of Maharashtra & ors.***<sup>3</sup> and the connected matters decided on 21st January, 2025.

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3 WP/648/2025

Reliance was also placed a judgment of a learned Single Judge of this Court in the case of *Sandeep Ram Meghe & ors. Vs. Pundlikrao Balaji Gohad (dead) & ors.*<sup>4</sup> wherein it was enunciated that, the Enquiry Officer is under obligation to examine as to whether the members of the executive council whose names are to be recorded in the schedule are validly elected or not, and that the executive council whose term has expired cannot remain in office. Such executive council remains in office only by way of necessity. A judgment of the Supreme Court in the case of *Babasaheb Wasade & ors. Vs. Manohar Gangadhar Muddeshwar & ors.*<sup>5</sup>, was also pressed into service.

22. At this juncture, it is necessary to bear in mind that, the underlying proceedings i.e. CR No. 451/2005 pertained to the change reported in the Managing Committee of the Trust for the term 01st July 2005 to 30th June 2010. The term expired years ago and, yet, the change report awaited adjudication.

23. On first principles, the Managing Committee which was purportedly elected on 01st July 2005 could not have

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4 2013 (4) Mh.L.J. 703

5 (2024) 11 SCC 705

continued beyond the expiry of the term of five years i.e. 30th June 2010. The learned Joint Charity Commissioner thus found that, for the smooth and efficacious administration of the affairs of the Trust, it was necessary to have fresh election to the Managing Committee of the Trust. With the said objective, the learned Joint Charity Commissioner directed the Inspector, Charity Commissioner Office to hold the election to the Managing Committee of the Trust from amongst original 13 members of the Trust, only. To the extent, the learned Joint Charity Commissioner directed holding of a fresh election to elect the Managing Committee of the Trust, the impugned order can hardly be questioned.

**24.** The controversy essentially boils down to the question of the composition of the electorate. Should the original 16 members of the Trust (excluding the person who has resigned from the membership of the Trust and the petitioners in WP/13139/2025; whose membership was allegedly terminated) only, or the petitioners in both the petitions also, be allowed to participate in the election to elect the Managing Committee of the Trust ?

**25.** Upon appraisal of the evidence and the material on record, the authorities have arrived at the findings that, the petitioners were not the legal and valid members of the Trust and were thus not entitled to participate in the election process. Whether the aforesaid determination is beyond the remit of the inquiry under Section 22 of the Trust Act, 1950 is the primary question that wrenches to the fore.

**26.** For an answer, it is necessary to comprehend the nature of the jurisdiction exercised by the learned Charity Commissioner under Section 22 of the Trust Act, 1950. By a catena of precedents, it is well neigh settled that, the inquiry into the change, contemplated by Section 22 of the Trust Act, 1950, is a judicial inquiry. The scope of inquiry under Section 22 is not limited to the factum of change as such; *de hors* the legality and validity thereof. The change to be accepted by the Charity Commissioner and recorded in the Public Trust Register (PTR) must be such change which has been lawfully made and not merely a change which has, in fact, been made. Therefore, the Charity Commissioner is enjoined to pose unto himself a question

as to whether there has been a change *de jure* and not merely *de facto*. The reported change must be a legal one in the sense that, the change has been made in conformity with the instrument of the Trust like constitution and/or rules and regulations governing the mode of succession, where the change is reported in the Trustees/members of the Managing Committee of the Trust.

**27.** Did the authorities under the Trust Act, 1950 examine the legality and validity of the change reported vide CR No. 451/2005 on the aforesaid barometer ?

**28.** Mr. Shinde, the learned Counsel for the petitioners, would urge that, the membership disputes are beyond the remit of inquiry under Section 22 of the Trust Act, 1950. Since the resistance to the change report principally revolved around the legality and validity of the membership of the petitioners in WP/853/2026, the learned Deputy Charity Commissioner and the learned Joint Charity Commissioner could not have examined the legality and validity of the membership in the proceedings under Section 22 of the Trust Act, 1950, submitted Mr. Shinde.

29. I find it rather difficult to accede to the aforesaid submissions sought to be canvassed by Mr. Shinde. There is subtle yet significant distinction between the challenge to the membership as such of a particular member of the Trust and the challenge to the reported change on the ground that the persons who constituted the electorate were not the legal and valid members of the Trust. The later aspect is inextricably intermingled with the *de jure* change which only can be accepted by the Charity Commissioner. If the electorate was not constituted by the persons who were the lawful members of the Trust, the very integrity of the electoral process is destroyed. In that case, the inquiry into the legality of the membership is an inseparable facet of the examination of the legality and validity of the change.

30. A useful reference in this context can be made to a judgment of this Court in the case of *Krishnarao Kanhaiya Naidu & ors. Vs. Jeevraj Bhairavlal Agrawal & ors.*<sup>6</sup>, wherein it was enunciated that, the Charity Commissioner has power to decide the question of validity of enrollment of

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6 2010 (2) Mh.L.J. 31

members since the question would always be whether the office bearers were elected by the valid electorate. If the persons, who are not validly included in the electoral roll, elect, then election by such persons would be invalid. Therefore, the Charity Commissioner would certainly have the right to go into the question of validity of the electoral roll if called upon to discharge the same.

31. In the case of *Narendra Namdev Mulik & ors. Vs. Ananda Demji Chougale & ors.*<sup>7</sup>, this Court repelled an identical challenge observing *inter alia* as under:-

"26. Mr. Bhavake criticized the aforesaid approach of learned Joint Charity Commissioner. It was submitted that the legality of the membership of the petitioner Nos. 1 to 11 was not within the remit of inquiry envisaged by section 22 of the Trust Act, 1950. The issue of legality of the membership was never agitated by respondent Nos. 1 to 8 and adjudicated by the competent authority. Therefore, the said issue could not have been inquired into by the authorities under Trust Act, 1950, especially in the proceedings under section 22 of the Trust Act, 1950.

27. I find it rather difficult to accede to the aforesaid broad submission sought to be canvassed by Mr. Bhavake, especially in the facts of the case at hand.

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7 (2024) 5 Mh. L.J. 286

As noted above, one year's membership of the trust is the qualification to be an elector for, and also get elected to, the managing committee. The petitioner Nos. 1 to 11 were allegedly inducted as the members of the trust on 13th July, 2008 and, exactly one year thereafter on 14th July, 2009, the petitioner Nos. 1 to 11 were allegedly elected as members of the managing committee and none from the original 23 members was elected. Almost instantaneous election of the petitioners no sooner than they acquired the membership qualification is a matter which is required to be appreciated in the light of concomitant circumstances.

**28.** The factors adverted to by the Joint Charity Commissioner (referred to in paragraph No. 25 above) are relevant and germane for the determination of the controversy. The reporting trustee in an affidavit in lieu of examination in chief filed on 20th June, 2011 could not have affirmed that there were only 23 members of the trust, when the petitioner Nos. 1 to 11 were allegedly inducted as members of the trust in the year 2008. Clause-6(b) of the constitution provides that to become a member of the trust a person was required to give an application. Apart from an extract of membership register, no documents were placed before the authorities under the Trust Act, 1950 to substantiate the claim that the petitioner Nos. 1 to 11 had made such application to become members of the trust and they were so admitted as the members of the trust in the AGBM allegedly held on

13th July, 2008. To add to this, Mr. Mulik, petitioner No. 1 conceded in the cross examination that in Change Report No. 269 of 2008, there is an endorsement that the original membership register was verified on 12th October, 2010, and the names of the petitioners No. 1 to 11 were not included therein as members of the trust. Cumulatively, all these factors erode the claim of the petitioner Nos. 1 to 11 that they were inducted as members of the trust, a year prior to the alleged meeting held on 14th July, 2009."

(emphasis supplied)

32. In the case of *Subhash Pandurang Bandiwadekar (supra)*, on which reliance was placed by Mr. Shah, after adverting to the judgments in the cases of *Krishnarao Kanhaiya Naidu (supra)* and *Narendra Namdev Mulik (supra)*, it was observed that, it is permissible to decide the issue of validity of enrollment of the members in an inquiry under Section 22 of the Trust Act, 1950. The learned Single Judge went on to further clarify the legal position as under :-

"46. I therefore hold that though enquiry into the validity of enrollment of members can be conducted by Assistant/Deputy Charity Commissioner while deciding change Report under Section 22 of the Act, mere rejection of the Change Report would not automatically entail termination of membership of newly enrolled members

unless the Assistant/Deputy Charity Commissioner in an enquiry under Section 22 holds that they were not validly enrolled. To paraphrase, loss of membership to a Trust would result only on the basis of finding to that effect recorded by Assistant/Deputy Charity Commissioner in enquiry conducted under Section 22 and mere rejection of a Change Report relating to change in Governing Council, in absence of any enquiry into the validity of enrollment of new members, would not entail automatic termination of their membership."

(emphasis supplied)

**33.** In the light of the aforesaid enunciation of law, the legality, propriety and correctness of the impugned order deserves to be examined.

#### **WRIT PETITION NO. 853/2026**

**34.** To begin with, the legality of the claim of the Petitioner Nos. 2 to 26 in Writ Petition No. 853/2026 that they were lawfully enrolled as the members of the Trust pursuant to the resolution passed in the meeting of the Managing Committee of the Trust held on 12<sup>th</sup> November, 2003, is required to be evaluated. From the perusal of the material on record, it becomes evident that, the members who were allegedly newly enrolled had filed applications on

30<sup>th</sup> and 31<sup>st</sup> October, 2023. A notice of the meeting of the Managing Committee was issued on 04th November, 2023.

**35.** Item 3 of the agenda of the said meeting was to empower the Secretary of the Trust to discharge the functions of the General Secretary of the Trust as the vacancy arose on account of death of Baburao Fakira Pawar. Item 4 of the agenda of the said meeting was to take a decision on the applications for membership of the Trust. In the said meeting, the Managing Committee passed a resolution to authorize Lahanu Ramchandra Pawar, the then Secretary of the Trust, to discharge the functions of the General Secretary till fresh elections were held to elect the Managing Committee and a General Secretary was appointed.

**36.** What is of critical salience is the fact that, the Resolution No.3 recorded that, further time was required to elect the new Managing Committee; therefore, till the new Managing Committee was elected and General Secretary was appointed, the Secretary was authorized to perform the duties of the office of the General Secretary. The Resolution No.3 clearly indicates that, the Managing

Committee was alive to the fact that, the term of the said committee had already expired and further time was required to hold the election process and elect the new Managing Committee.

**37.** The conferring of the authority on the Secretary to perform the duties of the office of the General Secretary was clearly envisaged as a measure in the interregnum. The aforesaid resolution, thus, bears upon the submissions now sought to be canvassed on behalf of the petitioners that, the Managing Committee (whose term had expired) had the competence to admit new life members.

**38.** Interestingly, the resolution on agenda Item 4 to admit new life members of the Trust, proceeds as if the Managing Committee had the full authority and mandate to admit new members. It records that, in the interest of the Trust and expansion of its sphere of activities, it was necessary to induct new members. Thus, the Managing Committee proceeded to enroll 29 new members.

**39.** Plainly the Managing Committee whose term had already expired in the year 2001, and the change reports reporting the change in the nature of election of a new

Managing Committee, were rejected, could not have proceeded to enroll new life members of the Trust as if it was a lawfully elected body.

40. The resolution passed by the Managing Committee on agenda Item 2 in the very meeting dated 12th November, 2003, completely demolishes the case of the petitioners. In the said meeting, the Managing Committee discussed the fall out of the rejection of the Change Report No. 830/2001, 302/2002 and 305/2002. It was *inter alia* recorded that, as of that date, the Managing Committee which was elected for the term 1996-2001 was in office. In accordance with the Constitution of the Trust till the new Managing Committee came in office, the erstwhile Managing Committee could discharge the functions of the Managing Committee. In the said meeting, it was suggested that, the fresh elections to elect the Managing Committee be held. The Managing Committee resolved that, another meeting of the Managing Committee would be held wherein the election programme to elect the new Managing Committee would be declared.

41. The legality and validity of the Resolution No.4 to admit the new life members of the Trust, in the considered view of this Court, cannot be considered *de hors* the resolutions on agenda Items 2 and 3. Both the resolutions betray a clear and unequivocal acknowledgment on the part of the Managing Committee that it was discharging the duties of the Managing Committee as a care-taker body till the new Managing Committee was lawfully elected.

42. Mr. Shinde, the learned Counsel for the petitioners, attempted to wriggle out of the situation by banking upon the clause 4 of the Rules and Regulations of the Trust. Clause 4A, *inter alia*, provides that, the term of the office of the Managing Committee would be five years. The Managing Committee would be elected in the General Body Meeting of the Trust by secret ballot. Only the life members of the Trust would be entitled to vote to elect the Managing Committee. However, till the new Managing Committee takes charge of the office, the erstwhile members shall discharge the lawful functions.

43. Mr. Shinde made an strenuous effort to cling to last the part of clause 4A which authorizes the outgoing

Managing Committee to discharge the functions till new Managing Committee is elected.

**44.** I am afraid to accede to the aforesaid submission. Not only the term of the Managing Committee elected for the second term i.e. 1996-2001, had expired but even the change reports reporting the election of the new Managing Committee were rejected. What exacerbates the situation is the clear acknowledgment on the part of the then Managing Committee, that its term had expired and it was discharging the functions as a stop-gap arrangement and elections were required to be held to elect the Managing Committee. As noted above, the Resolution Nos.2 and 3 passed in the meeting of the Managing Committee dated 12th November, 2003, record the status of the said Managing Committee in clear and explicit terms. By no stretch of imagination, it could be urged that, such a Managing Committee whose term had already expired, could take a major and far reaching policy decision to enroll as many as 29 members of the Trust. The Managing Committee had no mandate to take such a decision.

45. In the case of *Sandeep Ram Meghe (supra)*, the facts of which have some resembles to the facts of the case at hand, a learned Single Judge of this Court held in no uncertain terms that, the executive council after expiry of its term, could not have inducted 49 members. The observations in Paragraph No.25 are material and, hence, extracted below:-

"25. Learned Joint Charity Commissioner in his judgment at paragraph 23 has referred to the judgment of this Court in *Mohd. Maqbool vs. State*, reported at 1982 *Mh.L.J.* 417 = *AIR 1982 Bom.* 312 and has come to a conclusion that once the term of executive council had expired it would not automatically stand extended beyond that. The executive council can remain in office till the new executive council is elected only to take care of day to day business of the trust. The learned Joint Charity Commissioner has held that the executive council whose term had expired on 14th December, 2005 could not have inducted 49 members on 2nd March, 2006. It was a decision of far reaching consequence and had changed the whole fabric of the general body. Such a decision to my mind could not have been taken by the caretaker executive council. Though Rule 20 of Rules and Regulations and Memorandum of Association do not specifically state the functions of the outgoing council after

expiry of its term, it is matter of common sense and is applicable to all such bodies that the executive body whose term has expired would be care taker body and would refrain itself from taking any policy decisions. As a matter of fact, the executive council whose term has expired cannot remain in office. Such executive council remains in office only by way of necessity. As such, the period during which the executive council is in office by way of necessity is obviously only for the purpose of taking care of the property of the trust and its day to day affairs. In the present case, the executive council after the expiry of its term could not have inducted 49 members. Therefore, I do not find any error in the finding given by the learned Joint Charity Commissioner and the District Judge that the executive council after expiry of the term was purely caretaker/ ad-hoc body and could not have taken a policy decision particularly serious decision like induction of 49 members which could change the whole fabric of the general body and could influence the result of elections to a large extent.”

(emphasis supplied)

46. The aforesaid being the position in law, the learned Deputy Charity Commissioner and the learned Joint Charity Commissioner have correctly appraised the legal implications of enrollment new life members by the

erstwhile Managing Committee whose term had already expired. Thus, no fault can be found with the impugned order. Resultantly, the claim of the Petitioner Nos.2 to 26 that they are entitled to participate in the election process on the premise that they were lawfully inducted as life members of the Trust, is unworthy of acceptance. Resultantly, the Writ Petition No. 853/2026 deserves to be dismissed.

#### **WRIT PETITION NO. 13139 OF 2025**

47. The fate of this petition hinges upon the question; whether the life membership of the Petitioners was lawfully terminated ? At the outset, it is necessary to note that, the authorities have proceeded on the premise that the fact that, the membership of Petitioner Nos. 1 and 2 was terminated was not in dispute. In the order dated 02nd August, 2022, the Deputy Charity Commissioner in terms recorded that, both the parties admitted that, the membership of the Petitioner Nos. 1 and 2 was terminated and the Petitioner Nos. 1 and 2 had not challenged the said termination (Paragraph No.33).

48. Mr. Shinde made an endeavor to urge that the said finding was recorded *sans* any material. The Petitioner Nos.1 and 2 were not parties to the said change report and, thus, the petitioners cannot be bound down by the said observation of the learned Deputy Charity Commissioner.

49. Per contra, Mr. Shah submitted that, since the petitioners did not assail the said order before the learned Joint Charity commissioner, the petitioners cannot be permitted to challenge the impugned order.

50. It is trite, if an incorrect observation is made by a Court or Tribunal, the proper course is to approach the very authority which has purportedly recorded an incorrect observation. A useful reference in this context can be made to the judgment of the Supreme Court in the case of *State of Maharashtra Vs. Ramdas Shrinivas Nayak & anr.*<sup>8</sup>, wherein the Apex Court expounded the law as under :-

"3. ....We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges

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8 AIR 1982 SC 1249

say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

**51.** Nevertheless, since the Petitioner Nos. 1 and 2 are agitating their right to participate in the election process in their purported capacity of the life members of the Trust, this Court considered it appropriate to examine the issue, notwithstanding the fact that the petitioners had not assailed the order passed by the Deputy Charity Commissioner before the Joint Charity Commissioner.

**52.** Recourse is required to be made to the Rules and Regulations of the Trust. Clause 2 provides for the

membership of the Trust. Clause 2B provides for the types of the members of the Trust. *Inter alia* a life member of the Trust is the member who has paid a sum of Rs. 1,000/- or more to the Trust. The petitioners claimed to be the life members of the Trust.

**53.** The petitioners allegedly did not pay the subscription to become the life members of the Trust. Thus, their membership was allegedly terminated, by the resolution passed in the meeting of the Managing Committee.

**54.** The first resolution was passed in the meeting of the Managing Committee dated 03rd July, 1996. In the said meeting, the Managing Committee for the term 1996-2001 was elected unopposed. The second agenda item of the said meeting was regarding the membership of the petitioners. The resolution on Item 2 records that, despite intimation to the petitioners to pay the life membership fee of Rs.1,000/-, the petitioners committed default. Therefore, the Managing Committee again decided to give an oral notice to the petitioners to deposit the membership fee. In the meeting held on 07<sup>th</sup> December, 1998, again the item of termination of the membership of the petitioners was

placed on agenda. The Resolution No.3 of the said meeting records that, despite repeated intimation the petitioners did not pay the membership fee and, therefore, their membership was terminated.

**55.** At this juncture, it is necessary to note that, those resolutions were passed when there was apparently no controversy over the management of the affairs of the Trust and the Managing Committees were elected unopposed. Evidently, the petitioners never raised any dispute about the aforesaid resolutions. Nor any proceeding seems to have been instituted by the petitioners to assail the legality and validity of the aforesaid resolutions. Under the Rules and Regulations of the Trust, to become a life member of the Trust, the essential qualification is to pay a subscription of Rs.1,000/- or more. The aforesaid resolutions record that, the petitioners did not pay the said amount despite repeated intimations.

**56.** Mr. Shinde submitted that, in the Application No.17/2011 filed under Section 41D for the removal of the trustees, an altogether different stand was taken. Attention of the Court was invited to the observations in Paragraph

No. 27 of the judgment dated 13th January, 2023. The learned Joint Charity Commissioner has recorded that, the applicants therein alleged that, the petitioners herein (Respondent Nos.6 and 7 therein) were expelled from the Trust in the year, 1996 as they remained absent consecutively for meetings and their membership was cancelled and, yet, they were inducted in the Managing Committee.

57. At the first blush, the aforesaid submission, appears attractive. However, on a close scrutiny, the submission does not carry much substance. It would be contextually relevant to note that, in the very same inquiry, the Inspector had submitted a report, under Inspector Inquiry No.19/2023. The Inspector had examined the record of the Trust. The names of the persons who were enrolled as members of the Trust with description of payment of the membership fee were furnished under the caption of list of members. Against the name of the Petitioner No.1 Kisan Kalu Khatal, there is an endorsement that, the receipt of payment was cancelled. There was no entry in the day-book (कीर्द) and ledger (खतावणी) of payment. There is a further remark that, the Petitioner No.1 had acted as the

Secretary of the Trust. Against the name of Shivaji Nana Pawar, the Petitioner No.2, the Inspector has recorded that, there is no mention of the amount paid by the Petitioner No.2. The receipt contains an endorsement 'cancelled'. There was no entry in day-book and ledger about the payment of membership fee.

**58.** The resolutions passed in the meetings held on 03<sup>rd</sup> July, 1996, and 07<sup>th</sup> December, 1998, are required to be considered in juxtaposition with the aforesaid report of the inspector based on the examination of the original record. Thus, the fact that in the proceeding under Section 41D it was contended that the petitioners were expelled for a different reason, does not warrant that the case of the private respondents that the membership of the petitioners was terminated for non-payment of membership fee and the said decision remained un-challenged, be thrown overboard.

**59.** Mr. Shinde next submitted that, the Rules and Regulations of the Trust do not provide for the termination of membership of the Trust for non-payment of membership fee. In the alternative it was submitted that,

the membership could have been revived by payment of the amount of Rs.1,000/-, even if it was admitted for the sake of argument that, the petitioners did not pay the membership fee. To this end, Mr. Shinde placed reliance on the observations of the Supreme Court in the case of ***Babasaheb Wasade (supra)***, which was pressed into service by Mr. Shah to assail the tenability of the challenge at the instance of the petitioner who did not assail the order of the Deputy Charity Commissioner before the Joint Charity Commissioner.

**60.** Mr. Shinde banked upon the following observations of the Supreme Court in the case of ***Babasaheb Wasade (supra)*** :-

"**23.** It is a fact that under the bye-laws of the Society, there was no provision that a member defaulting in payment of membership fee and duly covered by the proviso to Section 15 of the Registration Act, would automatically lose his membership or in effect would cease to be a member of the Society. Be that as it may the only limited status left of such members would be that their name would continue to be in the Roll of the Society and at best by clearing of the arrears of the membership fee in addition to any penalty or fine liable to be charged for being reinstated as valid members would survive to them. Such defaulting members could have applied that they are ready and willing to pay their arrears and upon such

application and payment being made, the effect of the proviso to Section 15 of the Registration Act could be considered by the appropriate officer/Committee of the Society. Till such time they would continue to remain as suspended members having no right to participate in any meeting.

**24.** The Executive Body or any other body competent under the bye-laws could take up their matter and give them a show cause notice and opportunity to save their membership by fulfilling their obligations failing which their membership would be terminated. When despite the same, they would not fulfill their obligations their membership would be declared to have been terminated."

(emphasis supplied)

**61.** The aforesaid submission of Mr. Shinde does not merit countenance. It is imperative to note that, under clause 2B of the Rules and Regulations of the Trust, a person can become a life member of the Trust only upon payment of a sum of Rs.1,000/- or more. Secondly, the resolutions adverted to above categorically record that, the petitioners were repeatedly informed to deposit the life membership fee and they committed default therein. Thirdly, the report submitted by the Inspector lends credence to those resolutions as, unlike other members who had paid the life membership fee, the record maintained by the Trust did not indicate that, the

petitioners had paid the said amount. The receipts were cancelled. There were no entries in the day-book and the ledger against the names of the petitioners only.

**62.** In these circumstances, the petitioners cannot assert their right as life members of the Trust and insist that they be allowed to participate in the election process. It is, however, clarified that, the petitioners would be at liberty to work out their remedies in regard to the termination of their membership of the Trust, if so advised.

**63.** The upshot of aforesaid consideration is that the challenge to the impugned order at the instance of the petitioners in both the petitions fails.

**64.** Hence, the following order.

**:: O R D E R ::**

- i] The Writ Petitions stand dismissed.
- ii] Rule discharged.
- iii] No costs.

**[N. J. JAMADAR, J.]**

At this stage, Mr. Shinde, the learned Counsel for the petitioners, seeks continuation of the ad-interim relief dated 15<sup>th</sup> October, 2025 in Writ Petition No. 13139/2025.

In the light of the reasons recorded in this judgment and the fact that, the CR No. 451/2005 pertained to the term 2005-2010, the prayer for further continuation of the ad-interim relief, does not merit acceptance.

Thus, the oral application for stay stands rejected.

**[N. J. JAMADAR, J.]**