IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 767 OF 2026
WITH
INTERIM APPLICATION NO. 4688 OF 2026
IN
FIRST APPEAL NO. 767 OF 2026

Chetan Parasmal Lunawat And Ors. ...Applicants/ Appellants

Versus

Rajendrakumar Chandulal Mandlecha And Ors. ...Respondents

Mr. Vivek Vijay Salunke a/w Mr. Pritam Ranwal, for the Appellant.
Mr. Ajinkya Jaibhave, for the Respondent Nos. 1, 6, 9, 10, 24, 25 and 31.
Mr. Ashwin Shete a/w Mr. Abhay Dhadiwal, Mr. Rohit Jain i/b Jayakar and Partners, for the Respondent Nos. 2 and 8.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 29, 2026

ORAL JUDGMENT :

1. The present Appeal has been preferred against the judgment and order dated 9th May, 2024 passed by the Joint Charity Commissioner-II in Inquiry Application No. 27 of 2023, by which twenty-one trustees, who are the Respondents herein, were appointed as trustees under Section 47 of the Maharashtra Public Trust Act, 1950 (for short '**Trust Act**'). By the impugned judgment, twenty one trustees

were appointed for a period of three years, and a direction was issued to appoint office bearers from among the appointed trustees.

2. Learned counsel for the Appellant submits that the Joint Charity Commissioner, though noted the factum of the elections having been held on 25th March, 2022, thereafter, proceeded to exercise powers under Section 47 of the Trust Act. He would submit that the proper course for the Respondents was to file a change report before the Charity Commissioner and instead, Section 47 application came to be filed, which was entertained erroneously. He points out to the findings in the impugned order, which specifically records that the Respondents were looking after the affairs of the trust and were elected in the elections held on 25th March, 2022. He submits that the filing of the application under Section 47 of Trust Act, was an indirect method by which the Respondents have extended their term which was initially for three years as per the sanctioned scheme to a further period of three years from date of the impugned order.

3. He would further point out to the various clauses of the sanctioned scheme and clause 11 as regards the appointment of the trustees. He submits that as per sanctioned scheme, which has not been set aside, the trustee as well as the office bearers were required to be elected by the members in a general body meeting, whereas by the impugned order the Joint Charity Commissioner has directed the

office bearers to be elected by the Respondents from amongst them, which is contrary to the sanctioned scheme.

4. Learned counsel for the Respondent would support the impugned order and would submit that the application came to be filed as only in respect of Applicant Nos. 9, 10, 16, and 21, the police clearance was granted. He submits that it was in these circumstances, for the purpose of protecting the election of the trustees, that the application was filed under Section 47 of the Trust Act.

5. He would further submit that it is not disputed that the Respondents are elected trustees and there is no allegation of any misappropriation or misadministration of the trust. He submits that the Respondents in exercise of the powers of the trust have scheduled the Chaturmas program which is significant function in Jain community, which would commence on 28th July, 2026 and would end on 24th November, 2026. He submits that the Respondents are not averse to holding of the elections, however, in view of the proposed religious function, which is of some prominence in Jain community, the elections can be held after Chaturmas 2026 is concluded.

6. In rejoinder, learned counsel for the Appellant would submit that there is no necessity of disturbing the program and the elections can be held simultaneously.

7. The following points would arise for consideration:

(i) Whether the Joint Charity Commissioner could have exercised the powers under Section 47 of the Trusts Act when the trustess were duly elected as per the sanctioned scheme ?

(ii) Whether the impugned order appointing the trustees and directing the appointment of the office bearers from amongst the elected trustees is liable to be set aside ?

ANSWER TO POINT NO. (i) and (ii)

8. The application came to be filed under Section 47 of the Trust Act which vests the Charity Commissioner with the power to appoint new trustees, and provides that any person interested in the public trust may apply to the Charity Commissioner for appointment of a new trustee where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled. The *sine qua non* for exercise of power under Section 47 is the absence of any trustee and the need for administration of the trust by filling up the vacancy by appointing trustees.

9. In the present case, the Joint Charity Commissioner has specifically noted that the trust is being administered by the Respondents. It has further noted that in the elections held on 25th March, 2022, twenty one Respondents have been elected as trustees. The scheme which has been sanctioned provides for election of the trustees and the office bearers in the general body meeting/special

general body meeting to be held, with the term of three years, either unanimously or otherwise by secret voting. Accordingly, the elections were held on 25th March, 2022 and the Respondents came to be elected as trustees as well as the office bearers were elected, which is undisputed fact.

10. Despite noting the said fact, the Joint Charity Commissioner proceeded to exercise powers under Section 47 of the Trust Act when the pre-requisite for exercise of the power was absent.

11. The contention that only some of the elected trustees had police clearance as noted in the impugned order is without substance as there is no such requirement where the election has taken place in accordance with the sanctioned scheme.

12. The observations of the Joint Charity Commissioner about the rejection of the change report and the absence of the elected trustees being recorded in the official records is immaterial once it has noted that the elections have been duly held on 25th March, 2022 and the trustees were elected.

13. There is substance in the contention raised by learned counsel for the Appellant, that by filing of the said application under Section 47, which power could not have been invoked in the present case, there is indirect extension of term for further period of three years contrary to the sanctioned scheme.

14. The impugned judgment and order exercising powers under Section 47 of Trust Act, and appointing trustees is therefore clearly unsustainable and is liable to be quashed and set aside.

15. The Joint Charity Commissioner's directions contained in Clause 3 of the operative order directing appointment of the office bearers from the elected trustees is contrary to the Clause 11 of the sanctioned scheme and deserves to be quashed and set aside.

16. It is specifically set out in the reply to the Interim Application that there is an upcoming important religious function scheduled to commence from 28th July, 2026. Upon query by this Court, Mr. Salunke, learned counsel for the Appellant, is not able to deny that the function which is scheduled is of significant importance to the Jain community. In my view, the trustees can be permitted to continue for some time so that there is no impediment in the scheduled event. As and by way of indulgence in view of the upcoming religious function, the present trustees as well as the office bearers are permitted to function till the holding of the fresh elections. The trustees came to be elected on 25th March, 2022 and their term would have ended in the year 2025. It is by reason of the impugned order that the term continued beyond 2025. It is therefore necessary for directions to be issued for conducting elections of Trust.

17. In light of the above, the present trustees who are appointed

pursuant to the elections held on 25th March, 2022 and the order dated 9th May, 2024 are directed to hold the general body meeting/special general body meeting of the Trust on 1st October, 2026 in which the election programee to be announced. The elections to be held in accordance with the sanctioned scheme.

18. The impugned judgment dated 9th May, 2024 is hereby quashed and set aside. The First Appeal is allowed with above directions.

19. Interim Application does not survive for consideration and stands disposed of.

[SHARMILA U. DESHMUKH, J.]