



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1156 OF 2015

1. **Rizvi Education Society**]
A society registered under the Society]
Registration Act, 1960 and also under the]
provisions of Bombay Public Trust Act, 1950,]
having its existing office at Rizvi House, 1st]
Floor, Hill Road, Bandra [West], Mumbai –]
400 050.]
2. **Akhtar Hasan Rizvi**]
3. **Meena A. Rizvi**]
4. **Aziz Akhtar Rizvi**]
5. **Saqib Akhtar Rizvi**]
6. **Reshma Akhtar**]
7. **Sibte Hasan Rizvi Builders**]
8. **Javed Hasan**]
Respondent Nos. 2 to 8 are the office]
bearers of Rizvi Education Society, having]
their office at Rizvi House, 1st floor, Hill Road,]
Bandra [West], Mumbai – 400 050.]
9. **Kailash Seva Sadan Trust**]
Registered under the Bombay Public Trust]
Act, 1950 having their address at 3, Saraswati]
Niketan, Gurudeo CHS Ltd., Kashinath Dhuru]
Road, Near Kirti College, Dadar, Mumbai –]
400 028.]
10. **Sidheshwar D. B.**]
11. **Ravindra Bhaskar Nadkarni**]
12. **Dilip GondDas Sampat**]
13. **Kapoor Rajendra Krishna**]
14. **Pyarelal Tiwari**]
15. **Arvind Malkan**]
Appellant Nos. 10 to 15 are trustees of]
Kailash Seva Sadan Trust, having their]
address at 3, Saraswati Niketan, Gurudeo]
CHS Ltd., Kashinath Dhuru Road, Near Kirti]
College, Dadar, Mumbai – 400 028.] **...Appellants.**

Versus

1. **The Brihan Mumbai Municipal Corporation**]
a statutory body constituted under the]
provisions of the then Bombay Municipal]
Corporation Act, 1888, and having its office]
at Mahapalika Marg, Mumbai – 400 001.]
2. **The Assistant Charity Commissioner**]
Having his office at 2nd floor,]
Dharmadayukta Bhavan, 83, Dr. Annie Besant]
Road, Worli, Mumbai – 400 018.]
3. **The Charity Commissioner**]
Having his office at 2nd floor, Dharmadayukta]
Bhavan, 83, Dr. Annie Besant Road, Worli,]
Mumbai – 400 018.] **...Respondents.**

Mr. Mayur Khandeparkar, Mr. Anand Pai, Mr. Mahesh R. Mishra, Mr. Arun for Appellants.

Mr. Narendra Walavalkar, Senior Advocate a/w Mr. Rahul Soman, Ms. Vidya Vyavhare, Ms. Pallavi Khale i/b Ms. Komal Punjabi for Respondent-BMC.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 28th March, 2025

Pronounced on : 9th May, 2025.

Judgment :

1. The First Appeal impugns the judgment dated 8th May, 2015 passed by the City Civil Court in Charity Application No. 09 of 2013 quashing the order of amalgamation of Appellant No. 1 i.e. Rizvi Education Trust and Kailas Seva Sadan Trust dated 31st October, 2011 passed by the Assistant Charity Commissioner under Section 50A(2) of the Maharashtra Public Trusts Act, 1950 [for short, "***the Trusts Act***"].

FACTUAL MATRIX:

2. Kailas Seva Sadan Trust had entered into Agreement to Sell dated 30th June, 1984 with the Respondent No. 1-Corporation in respect of their immovable property pursuant to sanction accorded under Section 36 of Trusts Act. Certain disputes arose between Kailas Seva Sadan Trust and the Respondent No.1-Corporation regarding the transaction of sale of property.

3. On 12th May, 2005, an Application No. 44 of 2005 was filed by the Trustees of 'Rizvi Education Society' and 'Kailas Seva Sadan Trust' before the Assistant Charity Commissioner under Section 50A(2) of the Trusts Act seeking amalgamation of the two trusts and to approve and sanction the draft common scheme of amalgamation and to de-register Kailas Seva Sadan Trust. By order dated 2nd December, 2005, the Assistant Charity Commissioner ordered the amalgamation and settled the common scheme.

4. The Respondent No. 1-Corporation instituted Suit No 82 of 2006 seeking specific performance of Agreement to Sell in which Rizvi Education Society as well as Kailas Seva Sadan Trust were impleaded as Parties. After the order of amalgamation dated 2nd December, 2005, Rizvi Education Society filed Suit No. 1878 of 2006 seeking a declaration that the Agreement dated 30th June, 1984 has been validly terminated and for recovery of possession of the suit land from

Respondent No. 1-Corporation.

5. The Respondent No. 1 challenged the order of 2nd December, 2005 permitting amalgamation of two Trusts by way of Charity Application No. 9 of 2008 in the City Civil Court under Section 72 of the Trusts Act. By order dated 21st December, 2009, the City Civil Court allowed the Charity Application No. 9 of 2008 and remanded the matter to the Assistant Charity Commissioner with direction to issue notice to Respondent No 1 and decide the matter afresh after hearing the parties on merits.

6. Upon remand, the Respondent No. 1 filed their objections in Charity Application No 44 of 2005 to which response was filed by the Appellant No. 1. After hearing the parties, vide order dated 31st April, 2011, the Assistant Charity Commissioner allowed the Application of Trustees and passed an order of amalgamation of two trusts. The order dated 31st April, 2011 was challenged by the Respondent No 1 before the City Civil Court by way of Charity Application No. 9 of 2013, which was allowed by the impugned judgment giving rise to the present Appeal.

FINDINGS OF CITY CIVIL COURT:

7. The City Civil Court held that Respondent No. 1 was 'person having interest' and was entitled to maintain challenge to the order of amalgamation. It further held that under the provisions of Section

50A(2), the publication of notice in the Official Gazette is mandatory and failure to follow the mandatory procedure prescribed by law vitiated the order of amalgamation. It was further held that order of Assistant Charity Commissioner does not reflect as to how the object or proper management would be served by amalgamation. It further noted that Kailas Seva Sadan Trust is entirely taken over by Rizvi Education Society and not a single Trustee is taken from the Board of Trustees of Kailas Seva Sadan Trust and it cannot be said to be a common scheme. It held that it is matter of champertous litigation prohibited by Section 23 of Contract Act. The City Civil Court further held that the objects of Rizvi Education Society and Kailas Seva Sadan Trust are not aligned and the amalgamation cannot be said to be in interest of the management and administration of the Trusts and allowed the Application directing Kailas Seva Sadan Trust to continue to exist as before.

SUBMISSIONS:

8. Mr. Khandeparkar, learned counsel appearing for Appellants submits that the Respondent No. 1 being an adversary in the proceedings filed against the Appellant Nos. 1 and 9 cannot have any say in internal affairs of the Trust. He submits that the issue is not about locus of Respondent No 1 but merits of the objections, which are not germane for the inquiry under Section 50A.

9. He submits that the order of amalgamation does not render the suit filed by Respondent No 1 infructuous in view of Section 19(b) of the Specific Relief Act, 1963. He submits that the Respondent No 1 is estopped from pleading the effect of amalgamation in view of its pleading in the plaint that Respondent No 1's rights are not affected by amalgamation. He would further submit that the impleading of the Appellant as well as Kailas Seva Sadan Trust in Suit No. 82 of 2006 indicates that Corporation did not consider the order of amalgamation as a fetter on its claim for specific performance of Agreement. He would submit that by reason of setting aside the order of amalgamation, the Appellant's Suit No. 1878 of 2006 has been effectually rejected.

10. He submits that the plea of non publication of notice in Official Gazette is not available to Respondent No 1 as it was heard while deciding the Application for amalgamation. He submits that in any event, the failure will not entail dismissal of the Application of amalgamation and at the most, the matter ought to have been remanded for complying with the said procedure.

11. He would further submit that the impugned judgment renders a factually incorrect finding that the objects of the Rizvi Education Society and Kailas Seva Sadan Trust are not aligned by pointing out the objects of the Rizvi Education Society which includes the object of

providing medical relief. He would further submit that the Application for amalgamation offers sufficient justification for amalgamation. He would assail the finding of champertous litigation by pointing out that the City Civil Court after rendering a finding that Kailas Seva Sadan Trust is not in a position to adopt appropriate steps for recovery of property, has thereafter, held that the scheme of amalgamation is prohibited under Section 23 of the Indian Contract Act, 1872, which is unsustainable. He would further submit that financing litigation is permissible under Order XXV, Rule 3 (Maharashtra Amendment) of Code of Civil Procedure, 1908. He would further point out the interim orders passed by the High Court in Suit No. 1878 of 2006 in which, the present Appellant's contentions were held to be well-founded. In support, he relies upon the following decisions :

Omprakash Gulabchand Partani vs. Charity Commissioner¹

Ramkrushna-Appa s/o Vishweshwar-Appa vs. Krushna s/o Udaybhanji Ingale²

Saiyad Mohammad Bakar El-Edroos vs. Abdulhabib Hasan Arab³

12. *Per contra*, Mr. Walavalkar, Learned Senior Advocate appearing for the Respondent Nos 1 and 2 Corporation would submit that under Section 50A of the unamended Act, the power to order amalgamation

1 2007 SCC OnLine Bom 429.

2 2005(3) Mh.L.J. 729.

3 (1998) 4 SCC 343.

vested in the Charity Commissioner and not the Assistant Charity Commissioner. He submits that the Application for amalgamation is filed with an oblique motive demonstrated from the fact that in the amalgamated trust, there is not a single Trustee of Kailas Seva Sadan Trust. He submits that the underlying object of filing of the Application of Amalgamation is to get out of the rigors of Section 36 of Trusts Act, as Rizvi Education Society could not have entered into agreement for sale of the property in view of the agreement executed by Kailas Seva Sadan Trust with Respondent No 1.

13. He would submit that the application for amalgamation under Section 50A(2) is not competent. He submits that Section 50 and Section 50A are two modes provided for amalgamation of trusts and filing of proceeding is contemplated under Section 50 of Trusts Act. He submits that the order under Section 50A(2) can be passed only upon subjective opinion of the Charity Commissioner and that too after following the prescribed procedure. He draws attention of this Court to sub-section (1) of Section 50A which is prefaced with a non-obstante clause and is missing in Section 50A(2). He submits that sub-sections (1) and (2) of Section 50A are independent provisions and the requirements of Section 50A(1) cannot be read into Section 50A(2). He would further submit that both sub-sections deal with different situations and therefore the judgments relied upon by Mr.

Khandeparkar, interpreting the scheme and scope of Section 50A(1) are inapplicable.

14. Pointing out sub-section (2) of Section 50A, he submits that the Charity Commissioner can alone act after forming an opinion that such amalgamation is in the interest of the Trusts and manner in which the Charity Commissioner has to act on forming such opinion is after its publication in the Official Gazette which is jurisdictional fact and as the Gazette notification is not published, he will not have jurisdiction to proceed further.

15. He would further draw the attention of this Court to Rule 26 and Rule 27 of the Trusts Rules and would submit that the fact that there is no format of Application and no register maintained in the office Charity Commissioner for such Application would demonstrate that filing of Application is not contemplated under Section 50A(2). He submits that there is no enabling provision in the Act permitting invocation of powers by way of an Application except Section 50 of Trusts Act.

16. He would further submit that it is the finding in the impugned judgment that the Appellant has purchased litigation and that the amalgamation is against the public policy and is fraud on statute. He submits that the Appellants could not have acquired the title in the property by purchase in view of pendency of the suit and hence,

method of amalgamation is resorted. He submits that submission on provisions of Order XXV, Rule 3 was not raised before any authority and in any event, the present case, is not a case of financing, but is a case of extinguishing Kailas Seva Sadan Trust and obtaining its property without purchasing the same. He submits that as the order of amalgamation was in force, when the Corporation filed a suit for specific performance, both Rizvi Education Society and Kailas Seva Sadan Trust were impleaded as Defendants, which cannot operate as estoppel against the Corporation. In support, he relies upon the following decisions:-

***Kulsum R. Nadiadwala vs. State of Maharashtra*⁴**

***Taker Alimohohamad Poonawala vs. Quizar Shaikh Nomanbhoy*⁵**

***Hussein Ghadi ally alias M.H.G.A. Shaikh vs. State of Gujarat*⁶**

17. In rejoinder, Mr. Khandeparkar would submit that by notification of 2nd October, 1986, the State Government in exercise of powers under Section 8(2) of the Trusts Act has delegated all the powers of Charity Commissioner to Assistant Charity Commissioner.

18. He would further submit that the remedy under Section 50A(2) is a remedy available in addition to Section 50A(2) and applies in

4 2012 (3) SC 575.

5 1995 (1) Mh.L.J. 906.

6 (2014) 8 SCC 425.

situations beyond clause (i) to (iv) of Section 50. He submits that the plea of maintainability was not raised earlier. According to him, suit filed under Section 50(k) seeks framing of common scheme whereas an Application under Section 50(A)(2) of the Trusts Act applies where a prospective draft scheme of amalgamation is put up before the Assistant Charity Commissioner for his subjective satisfaction and it is for this reason that no form or particular format under Rule 26 of the Maharashtra Public Trust Rules has been provided. He would further submit that Section 50A does not in any way limit the jurisdiction of the Assistant Charity Commissioner to receive Application from Trustees for the purpose of framing common scheme. He would further submit that the plea that a Public Charitable Trust should apply under Section 50 and not under Section 50A(2) cannot be raised by third party who is an adversary and two trusts who are *dominus litis* are entitled to choose the course required to be adopted.

POINTS FOR DETERMINATION :

- (i) Whether the objections raised by Respondent Nos. 1 and 2- Corporation to the amalgamation of the two Trusts are germane to the inquiry to be conducted under Section 50A of the Trusts Act?
- (ii) Whether the plea of non publication of notice in Official Gazette is available to Respondent No 1 and 2, who were granted an opportunity of being heard?

- (iii) Whether the jurisdictional condition of formation of opinion by the Assistant Charity Commissioner stands satisfied upon such opinion being framed on basis of draft scheme of amalgamation placed for consideration by an application?
- (iv) Whether the publication of formation of opinion by the Assistant Charity Commissioner was a jurisdictional condition sans which the Assistant Charity Commissioner could not have proceeded further?
- (v) Whether in view of absence of non-obstante clause in Section 50A(2), the remedy of Appellant was to institute proceedings under Section 50 of Trusts Act?
- (vi) Whether the amalgamation of the two trusts was in interest of the proper management and administration of the trusts?

REASONS AND ANALYSIS:

OBJECTIONS RAISED BY RESPONDENT-CORPORATION:

19. A joint application for amalgamation was filed by the Trustees of Rizvi Education Trust and Kailas Seva Sadan Trust on 12th July, 2005 before the Assistant Charity Commissioner under Section 50A(2) of Trusts Act. The unamended provisions of Section 50A read as under:

“50A. Power of Charity Commissioner to frame, amalgamate or modify schemes :

(1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an

application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust the opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

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

(a) publishing a notice in the *Official Gazette* and also in at least two newspapers (one in English, and the other in the language of the region) with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard, frame a common scheme for the same.

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent court under section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50."

20. By order of 21st December, 2009, the matter was remanded to the Assistant Charity Commissioner to issue notice to Respondent No 1 and 2 Corporation and decide the issue of amalgamation afresh. Accordingly, objections were filed by the Corporation. Before perusing the objections to the amalgamation raised by the Corporation, it needs to be borne in mind that the statutory provisions provide for granting a hearing only to specified class of persons i.e. the trustees of the Trusts and all other interested persons which is to ensure that the objections to amalgamation are referable to the interest of the trusts and sets out the grounds as to why the amalgamation of the trusts is not in the

interest of proper management and administration of the trusts.

21. The issue as to whether the Respondent No. 1-Corporation was a person interested is not longer under consideration as the matter was remanded to hear the Respondent Corporation, which order has attained finality. Coming now to the objections raised by the Respondent Corporation, the objections sets out the relevant facts about the Agreement for Sale executed by the Respondent No 1 and the filing of the suit for specific performance. The objections of Respondent No. 1 -Corporation MCGM can be broadly summarized as under:

(a) As Kailas Seva Sadan Trust could not get possession of the subject property from MCGM, the application for amalgamation has been filed.

(b) The amalgamation is with an oblique motive and has been filed as counterblast to the suit for specific performance.

(c) The objects of the two trusts are not aligned as Rizvi Education Society has been functioning in the field of education whereas Kailas Seva Sadan Trust is constituted with the object of providing medical relief.

(d) The motive of amalgamation is to exploit the commercial potential by converting the hospital into commercial building.

(e) The amalgamation will jeopardize the interest of Respondent No. 1 - Corporation and and members of public. It will also affect the pending

litigation between the Respondent No 1 and Defendants to the suit.

(f) There is no notification in the Official Gazette informing the proposed amalgamation.

22. The pre-dominant purpose of the hearing was to ascertain whether the amalgamation is in interest of the Trusts or not and therefore it was not open for the Respondent Corporation, in a hearing under Section 50A(2) of Trusts Act, to raise objections which are adverse to the interest of the Trusts. The summary of objections indicates that the same is premised on the ground that the amalgamation will impact the specific performance suit of Respondent No. 1 and the intent is to protect the interest of Respondent No. 1- Corporation under the Agreement for sale, which can effectively be adjudicated in the civil suit pending between the parties. The issue of amalgamation of the Trusts and the pending civil litigation are distinct and separate issues and have no bearing on each other. Most pertinent is the specific objection raised by Respondent No1 that the amalgamation will totally jeopardize the interest of the objectors and will affect the pending litigation between the Objectors and the Trusts, which makes the intent obvious. The objection that the amalgamation is with an oblique motive to circumvent Section 36 of Trusts Act is a self serving argument. Even otherwise, the Appellant can claim right to the property only upon final decision of the suit and if the outcome

was favourable to Kailas Seva Sadan Trust, there was no impediment of Section 36 of Trusts Act. The crucial factor is the pending litigation and the efforts of the Respondent Corporation is to ensure that no aid and assistance be received by Kailas Seva Sadan Trust. Considering the mandate of Section 50A(2), the objections designed to protect the interests of Respondent Corporation cannot be said to be germane to an inquiry under Section 50A(2). The objections are in nature of a challenge by a party aggrieved by the order and not by a party with the purpose of showing that the beneficial interest of the Trusts is better served by its independent existence. The hearing before the Assistant Charity Commissioner was not an adversarial litigation where challenges can be raised on grounds alien to the interest of the Trusts and designed to resolve *inter se* disputes. The resistance by the Respondent No 1 Corporation is aimed to secure the suit property and cannot form basis to object to the amalgamation of the Trusts.

NON-PUBLICATION OF NOTICE IN OFFICIAL GAZETTE:

23. Under the unamended Sub-section (2) of Section 50A, it was upon the formation of opinion by Charity Commissioner that amalgamation could be ordered by framing a common scheme. Though some arguments were advanced on exercise of the power under Section 50A(2) by the Assistant Charity Commissioner, in view of the Notification dated 2nd October, 1986 delegating the powers of

Charity Commissioner to the Assistant Charity Commissioner, the same is no longer in question.

24. The statutory scheme is that before the amalgamation of two trusts by framing of common scheme takes place, it is necessary (a) that an opinion is formed by the Charity Commissioner that it was in the interest of proper management or administration of the Trusts (b) which opinion is required to be published in in Official Gazette and if necessary in any newspaper and (c) opportunity of hearing to trustees of such trust and all other interested person is given. As far as newspaper publication is concerned, the same is required only if deemed necessary by the Assistant Charity Commissioner. However, the publication in Official Gazette is a requirement which has not been met in the present case. The Respondent No. 1-Corporation has raised a specific objection to the non publication of notice in the Charity Application No 9 of 2008, which resulted in remand of the matter. Despite specific plea being raised, the City Civil Court did not direct publication in Official Gazette and directed notice to Respondent No. 1-Corporation and to hear them and the Respondent No. 1-Corporation was heard by the Assistant Charity Commissioner, the City Civil Court and by this Court.

25. Though it cannot be disputed that the publication of notice in Official Gazette was necessary, the intent behind the publication is to

make all parties interested aware of the proposed amalgamation. It was the duty of the Assistant Charity Commissioner to cause the publication of notice in the official Gazette. In absence of publication in the official gazette, the usual course would be to remand the matter and to direct publication. However, in facts of this case, where the remand was confined to hearing Respondent No 1 upon issuance of notice, who has been substantially heard, I am not inclined to remand the matter once again for purpose of publication of notice in official gazette, which would not serve any purpose. The publication of notice is not a mere formality but is backed with the purpose of hearing parties interested in the Trusts and in the present case it is not shown that by reason of non publication of notice in the Official Gazette, other persons interested in the Trusts lost the opportunity of being heard. In any event, the plea of non publication of notice cannot be considered at the instance of Respondent No. 1-Corporation who has been heard in the matter.

26. The publication of notice in official Gazette is sought to be elevated to the status of a jurisdictional condition for exercise of power under Section 50A(2). I am not inclined to accept the said submission as in my view, it is the formation of *prima facie* opinion that the proposed amalgamation is in interest of proper management or administration of trusts which is the jurisdictional fact for the Assistant

Charity Commissioner to proceed further. The publication of notice is for giving notice to all concerned and hearing them before framing a common scheme, which is procedural aspect.

MAINTAINABILITY OF APPLICATION:

27. Coming to the issue of competency of an application seeking amalgamation, there are two limbs to submission of Mr. Walavalkar - firstly that as Section 50A(2) is not pre-faced with non-obstante clause, the remedy of Section 50 is the only remedy where amalgamation is sought by way of application and secondly plain reading of Section 50A(2) does not admit of filing of application for amalgamation. The statutory scheme of Trusts Act provides for two modes for amalgamation of trusts i.e. Section 50 and Section 50A(2). It will be apposite to reproduce Section 50(1) which reads thus:

“50. Suit by or against or relating to public trusts or trustees or others.—

In any case,—

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, ex-trustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee;

(iii) where the direction of the Court is deemed necessary for the administration of any public trust, or

(iv) for any declaration or injunction in favour of or against a

public trust or trustee or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs

- (a) an order for the recovery of the possession of such property or proceeds thereof;
- (b) the removal of any trustee or manager;
- (c) the appointment of a new trustee or manager;
- (d) vesting any property in a trustee;
- (e) a direction for taking accounts and making certain enquiries;
- (f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;
- (g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (h) a direction to apply the trust property or its income *cypres* on the lines of section 56 if this relief is claimed along with any other relief mentioned in this section;
- (i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary;
- (j) the settlement of a scheme, or variations or alterations in a scheme already settled;
- (k) an order for amalgamation of two or more trusts by framing a common scheme for the same;
- (l) an order for winding up of any trust and applying the funds for other charitable purposes;
- (m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;
- (n) an order exonerating the trustees from technical breaches, etc;
- (o) an order varying, altering, amending or superseding any instrument of trust;
- (p) declaring or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases ; or
- (q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in

the interest of the trust:

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

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

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under subsection (4) of section 1."

28. Section 50(1) provides for filing of suits in eventualities mentioned in Clauses (i) to (iv) of Section 50(1) by the Charity Commissioner or with the consent of Charity Commissioner by two or more persons having interest for obtaining reliefs set out in clauses (a) to (q), which includes the relief of an order for amalgamation of two or more trusts.

29. In ***Saiyad Mohammad Bakar El-Edroos vs. Abdulhabib Hasan Arab***⁷, the provisions of Trusts Act was considered by the Hon'ble Apex Court in context of considering whether the proceedings under Section 50A of the Trusts Act abates for non-substitution of one of the deceased Applicant. The Hon'ble Apex Court noted Section 50A of Trusts Act and held in paragraph 7 as under:

"7. Section 50-A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in the interest of proper management of a public trust. This is exercised either *suo motu* when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust makes an application to him in

⁷ (1998) 4 SCC 343.

writing in prescribed manner. This merely enables the Charity Commissioner to initiate proceedings for settling a scheme for the proper management or administration of a public trust. In the background of the setting of various provisions, the object of the Act, the Charity Commissioner being clothed with sufficient power to deal with all exigencies where a public trust or its trustees stray away from its legitimate path and where the materials are before him or placed before him by the said two persons, then to hold abatement of proceedings on application of any procedural laws not only would amount to curtailment of his power but make him spineless and helpless to do anything in the matter of a public trust eroding the very object of the Act. This is too restrictive interpretation to be accepted."

30. The Hon'ble Apex Court recognized that the power vested in the Charity Commissioner under Section 50A is in addition to the power under Section 50 to frame, amalgamate or modify any scheme in proper management of public trust. Before the provisions of Section 50A can be invoked, the conditions contained in clauses (i) to (iv) are required to be satisfied whereas under Section 50A, there are no such restrictions placed. The power exercised by the Charity Commissioner under Section 50A is of framing of scheme for the trusts, whether under Section 50A(1) for an individual trust or framing of common scheme under Section 50A(2) for two trusts by amalgamation. The primary and essential requirement under both the sub sections is formation of opinion backed by necessary facts and material that the framing of scheme is in interest of proper management or administration of public trust. The manner in which the statement of facts and material is brought to the notice of the Assistant Charity

Commissioner for formation of opinion will not render the formation of opinion *non est*. Section 50A is the repository of power of the Assistant Charity Commissioner to frame, amalgamate and modify the scheme for the public trusts. The statutory provisions does not impose any fetters on power of Assistant Charity Commissioner to form an opinion based on examination of material placed for consideration by way of application. Reading of such restriction in Section 50A(2) would defeat the avowed object of the Act which is to regulate and make better provision for the administration of public, religious and charitable trusts. Can it be said that though it was in interest of better management and administration of the Trusts, the common scheme by amalgamation of two trusts cannot be ordered since it was not *suo motu* opinion but based on application filed by the Trustees themselves. Even if such application is filed, the discretion is vested with Assistant Charity Commissioner whether to frame a common scheme or not, which can always be tested in Appeal. In my view, such a pedantic view cannot be accepted.

31. I am supported in my view by the decision relied upon Mr. Walavlakar of ***Taker Alimohohamad Poonawala vs. Quizar Shaikh Nomanbhoy*** (supra), where this Court considered the statutory scheme of Section 50A of the Trusts Act and laid down the guidelines inherent and implicit in the Section 50A(1) and 50A(2). The Court read the

words' reason to believe" occurring in Section 50A(1) in Section 50A(2) by necessary application and held that the Charity Commissioner is required to record his reasons in order sanctioning initiation of *suo motu* proceedings made either of the two sub-sections. The Co-ordinate Bench clarified in paragraph 15 as under:

"15. It is hereby clarified that this order shall not preclude the Charity Commissioner from starting *de novo* inquiry under Section 50A(1) or section 50A(2) of the Act provided the Charity Commissioner has reason to believe that a common scheme or a single scheme should be settled in the interest of proper management or administration of the two trusts or either of them. If the Charity Commissioner decides to exercise any such powers hereafter, the Charity Commissioner must follow the procedure as indicated in the foregoing part of this judgment and must give real and effective reasonable opportunity to the trustees of the two trusts. If two or more persons having interest in the said trust make an application to the Charity Commissioner for settlement of a common scheme for the two trusts or for settlement of a scheme in respect of one of the trusts, such persons shall also be under an obligation to disclose factual data, formulated grounds and the material sought to be relied upon the application made to the Charity Commissioner on the basis of which the Charity Commissioner can objectively come to a conclusion as to whether a *prima facie* case was made out for issue of show cause notice or for invoking of statutory powers under Section 50A(2) or Section 50-A(1) of the Act....."

(emphasis supplied).

32. The Co-ordinate Bench read Section 50A as repository of power of Charity Commissioner and underscored the importance of formation of opinion based on factual data, which can be placed by way of application. Mr. Walavalkar would draw attention of this Court to the Rule 26 and 27 providing for particulars to submit that the Rules do not provide for format of an Application under Section 50A(2). The

decision noted above is a complete answer to the submission on maintainability of application under Section 50A(2).

WHETHER AMALGAMATION IS IN INTEREST OF TRUST:

33. Dealing now with the core issue as to whether in the interest of proper management or administration, the two trusts should be amalgamated. The application pleads that Kailas Seva Sadan Trust is desirous of reviving the activities of the Trust and take back possession of the property from BMC and that the amalgamated trust will take requisite legal steps to recover possession of land from BMC and to revive the hospital activities of Kailas Seva Sadan Trust.

34. The Assistant Charity Commissioner by its order dated 31st October, 2011 has rightly considered that BMC intends to object only in order to frustrate the claim made by Rizvi Education Society on the basis of amalgamation order. The Assistant Charity Commissioner held in paragraph 15 and 16 as under:

"15) It appears to me that objector intends to object the present proceedings only in order to frustrate the claim made by Rizvi Education Society on the basis of amalgamation made of two trusts. It is clear from record that Kailash Seva Sadan Trust due to weak financial position, can not protect their rights to the property inspite of default made by the B.M.C. I see nothing wrong to protect the trust property by approaching the Hon'ble High Court, with the claims made on behalf of the trusts. I do agree in submissions made by advocate, M. A. Kadam, that objector has come to oppose the proceedings so that Kailash Seva Sadan Trust due to weaker financial position can not independently fight for their claim, rights and interest in the trust properties, which is being fought with the help of Rizvi Education Society, such intention of B.M.C is improper. I therefore hold that apprehension made

by B.M.C. that their claim made in property will be jeopardize in the hands of Rizvi Education Society, can not sustain and same is incorrect. I therefore answer point no.2 in negative.

16) I am of the opinion that application for amalgamation of two trusts is altogether different subject than the pending dispute in respect of the trust properties. The above dispute is pending in the Hon'ble High Court, Bombay and shall get decided. However, since there is no objection from anybody in getting two trusts amalgamated and in view of the other circumstances as to avoid separate books of accounts and to keep records of meetings, separate minutes, records of the activities for running both the trusts. It is necessary to reduce administrative expenses. It is also necessary to allow application to carry out activities more effectively and in better manner, as per present requirement, for public at large, therefore, the amalgamation of this trust is necessary and hence answered the point No. 3 in affirmative."

35. The findings of the Assistant Charity Commissioner are based on observations that the objects of both trusts are common, that Kailas Seva Sadan Trust could not run the hospital due to financial crisis, that though the hospital was sold to BMC for Rs 65 lakhs, only Rs 12 lakhs was paid, that there is no objection from anybody to the amalgamation and to reduce administrative expenses and to carry out activities more effectively and in better manner, the amalgamation is necessary.

36. The record indicates that Kailas Seva Sadan Trust was recorded in PTR as defunct. It is also not disputed that the property which is subject matter of the pending litigation was the sole property of Kailas Seva Sadan Trust. The order of City Civil Court directs the continued existence of Kailas Seva Sadan Trust which cannot exist unless the property comes in the hands of the Trust and its activities are revived.

The amalgamation was essential for revival of the now defunct Kailas Seva Sadan Trust and for its proper management and administration. By virtue of rejection of scheme of amalgamation, Kailas Seva Sadan Trust has been deprived of the benefit of resources of Rizvi Education Trust to revive its hospital activities and recover possession of its sole property. It is not the order of rejection which would be in best interest of the Trust but the order of amalgamation.

37. The City Civil Court held that Kailas Seva Sadan Trust has been entirely taken over by Rizvi Education Society and is in fact extinction of Kailas Seva Sadan Trust as not a single Trustee is taken on the Board of Trustee from Kailas Seva Sadan Trust. The said finding overlooks the fact that upon amalgamation, the two separate Trusts cease to exist as legal entities and new legal entity in form of new amalgamated Trust emerges. It is not the extinction of any one Trust but the merging of two different Trusts into a new Trust. The common scheme provides for the first Trustees of the amalgamated Trust and the absence of appointment of the Trustee of Kailas Seva Sadan Trust cannot be a ground for rejection of order of amalgamation.

38. As far as the finding that it is matter of champertous litigation which is prohibited under Section 23 of Contract Act, considering that public policy is involved in determining the validity of champertous contract, recourse is usually taken to Section 23 of Indian Contract Act,

1872 which reads thus:

“23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

In case of ***Bar Council of India vs. A.K. Balaji***⁸, the Hon’ble Apex Court held in paragraph 38 as under:

“38. In India, funding of litigation by advocates is not explicitly prohibited, but a conjoint reading of Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim) and Rule 22 (participating in bids in execution, etc.) would strongly suggest that advocates in India cannot fund litigation on behalf of their clients. There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. In USA, lawyers are permitted to fund the entire litigation and take their fee as a percentage of the proceeds if they win the case. Third-Party Litigation Funding/Legal Financing agreements are not prohibited. In UK, Section 58-B of the Courts and Legal Services Act, 1990 permits litigation funding agreements between legal service providers and litigants or clients, and also permits Third-Party Litigation Funding or Legal Financing agreements, whereby the third party can get a share of the damages or “winnings”.”

39. It therefore cannot be countenanced that third party funding of litigation is per se illegal and violates Section 23 of Contract Act, apart

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from the fact that such contemplation is alien to an inquiry under Section 50A (2) of Trusts Act.

40. The Application for amalgamation gives the justification for the amalgamation that the objects of the trusts are common and upon amalgamation, the income the Trusts can be utilised for furtherance of objects of the Trusts more effectively. Annexure III to the application shows that Kailas Seva Sadan Trust is defunct for the present.

41. The City Civil Court failed to note that one of the objects of Rizvi Education Society was to provide medical relief and the objects of both the trusts were aligned. The direction to continue existence of Kailas Seva Sadan Trust which was defunct and without any financial resources to recover possession of its sole asset resulted in extinction of the said Trust. The City Civil Court has failed to apply the requisite parameters for consideration of the order of amalgamation i.e. whether the same is in interest of proper administration or management of the Trusts. The apprehension of Corporation that the intent of Rizvi Education Society is to convert the hospital into commercial building is not backed by any material and cannot be considered, particularly when the intent of Corporation in objecting the amalgamation was to frustrate the claim for recovery possession of the subject property by the amalgamated Trust. The direction to continue the existence of Kailas Seva Sadan Trust which is now defunct

and fighting for revival of its activities and for recovery of its sole property with depleting financial resources cannot be said to be in the interest of the Trust.

42. In light of the above, the First Appeal is allowed. The impugned judgment dated 8th May, 2015 passed in Charity Application No 09 of 2013 is quashed and set aside. Resultantly, order of 30th October, 2011 of amalgamation stands revived.

[Sharmila U. Deshmukh, J.]

43. At this stage, request is made for the stay of the impugned judgment and order for period of 12 weeks. The said request is opposed by learned counsel for Respondent. The impugned judgment is stayed for a period of 12 weeks.

[Sharmila U. Deshmukh, J.]