*Shabnoor*

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 2012 OF 2025

SHABNOOR AYUB PATHAN
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Adesh Shivaji Narke

Age – 35 Yuears, Occupation : Agri.
R/at: S. No.80/1/16, Rutuja Park,
Balewadi Phata, Baner, Pune 411045. … Petitioner

**V/s.**

1. Shree Dnyaneshwar Maharaj Sansthan, Alandi

   Add: Alandi, Tal. Khed, District Pune.

2. Bhavarth Ramchandra Dekhane

   Age – 39 Years, Occu: Service
   R.at:- C-3/4, D.S.K. Chintamani,
   513, Sadashiv Peth,
   Appa Balwant Chowk, Pune – 411030.

3. Rajendra Baburao Umap

   Age – 55 years, Occu: Lawyer
   R.at:- S. No.49/2, First Floor, Pathare Complex,
   Chandannagar, Kharadi, Pune – 411014.

4. Yogi Niranjannath Gurushantinath

   Age – 48 Years, Occu: Business
   R.at:- Shree Dnyaneshwar Maharaj
   Sansthan Committee,
   Alandi Devachi, Pune – 412105.

5. President, Shree Dnyaneshwar Maharaj
   Sansthan Alandi, Pune, & Principal District
   & Sessions Judge, Pune

   (Persona Designata as per Shree Dnyaneshwar
   Maharaj Sansthan, Alandi Scheme, 1852) ..Respondents



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Mr. S. M. Gorwadkar, Sr. Advocate i/b Mr. Pratap Patil, for petitioner.

Mr. Rajesh Datar i/b Mr. Ravindra Pachundkar, for respondent Nos.1 to 4.

Mr. O. A. Chandurkar, Addl. Government Pleader with Mr. J. P. Patil, AGP for State – respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 28, 2025

PRONOUNCED ON : APRIL 22, 2025

JUDGMENT:

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has approached this Court assailing the judgment and order dated 5th December 2024 passed by the President of Shree Dnyaneshwar Maharaj Sansthan, Alandi, Pune, who also functions as the Principal District and Sessions Judge, Pune. The said order was passed below Exhibit 16 and Exhibit 31A in Persona Designata Civil Suit No. 1 of 2023, whereby the learned President was pleased to allow the application filed at Exhibit 16, thereby dismissing the suit filed by the petitioner, and simultaneously rejecting the application moved at Exhibit 31A.

2. The relevant factual backdrop, as presented by the petitioner, is briefly set out hereunder:

3. The present dispute concerns the manner and procedure for the appointment of trustees to respondent No.1, a public trust, namely Shree Dnyaneshwar Maharaj Sansthan, associated with the



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sacred Samadhi of Saint Dnyaneshwar Maharaj, Alandi. The legacy of this holy site is one that spans over seven centuries. Historically, the temple and its endowments have been under varying regimes. Initially, the Peshwa Government had granted an inam village to the temple for its sustenance. Thereafter, the administration passed successively into the hands of the Scindias of Gwalior and subsequently the East India Company.

4. In the year 1851, the place of worship at Alandi was formally declared to be a public trust. For the purpose of managing the affairs of the Samadhi and temple, the then Collector of Pune constituted a Panch Committee in 1852 and appointed six panchas (trustees) based on a list (yadi) prepared for that purpose. It is pertinent to note that this arrangement, though foundational, did not amount to a formal scheme under law.

5. Thereafter, by reason of the enactment of Act XX of 1863, the jurisdiction of the Government and Revenue authorities over religious institutions in the Bombay Province was abolished. Over the years, devotees initiated several legal proceedings before Civil Courts and even the High Court, seeking structured oversight, but all such attempts remained unsuccessful until 1934, when a Civil Suit No. 7 of 1934 was filed in the District Court, Pune under Section 92 of the Code of Civil Procedure, 1908. This suit sought the framing of a formal scheme for management of the trust.

6. By judgment and order dated 11th December 1937, the learned District Judge held that although the original Panch arrangement of 1852 was not a formal scheme under Section 92,



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the said structure, having endured the test of time, required no replacement but only supplementation through a proper scheme under Section 92 CPC. Consequently, the Court proceeded to modify and formalize the arrangement into a scheme. Clause (3) of the scheme provided that the appointment to vacancies in the body of trustees would be carried out by the District Judge acting as a Persona Designata. Further, by Clause (16) of the scheme, power was conferred upon the Panch Committee to frame Rules in respect of trust administration and religious observances, subject to sanction of the District Judge. These Rules, once sanctioned, were to carry the same force as that of the scheme.

**7.** This decree was challenged before the High Court in First Appeal No. 92 of 1938 by the existing trustees, and cross-objections were also filed by some devotees. However, vide judgment dated 16th November 1939, the High Court, taking note of a settlement between the parties, dismissed both the appeal and cross-objections and directed that the scheme be amended as agreed. Accordingly, Clause (15) was substituted.

**8.** Thereafter, on 5th April 1940 and again on 10th May 1940, the Panch Committee submitted proposed Rules under Clause (16) for the District Judge's approval. Despite objections from certain devotees (filed vide Exhibits 310 to 312, 391, and Exhibits 56 and 57), the District Judge approved the Rules on 8th June 1943. These came to be known as "Shree Dnyaneshwar Maharaj Sansthan Rules of 1945". The Rules laid down detailed provisions for the performance of puja, processions, customs, and overall administration of the Trust, all within the bounds of the larger



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scheme.

**9.** As per the scheme, the management of the Sansthan continued to vest in a body of six trustees referred to as pancha. Importantly, Rules 67 to 69 conferred specific powers upon the District Judge in addition to those under Clause (3). In exercise of these powers, the District Judge, Pune, by order dated 9th August 2006, discharged three trustees and appointed an advisory committee for recommending new appointments. In doing so, the District Judge reiterated that the discretion to appoint trustees vests exclusively in the office of the District Judge.

**10.** It is in this historical and legal background that the petitioner, claiming to be a devotee and a person interested in the proper management of the Trust, instituted Persona Designata Civil Suit No. 1 of 2023 before the Principal District Judge, Pune, who also functions as the President of respondent No.1 Sansthan. In this suit, the petitioner prayed for modification of Clause (3) of the scheme so as to enable appointment of trustees from a broader societal base, with due representation for women through reservation. The petitioner further sought that trustees henceforth should not be appointed solely on nominations made by the existing trustees.

**11.** On 27th April 2023, defendant No.3 moved an application below Exhibit 16 praying for dismissal of the suit on the ground that the remedy lay exclusively under Section 92 CPC and not before the District Judge as a Persona Designata. The petitioner filed his reply on 28th April 2023. Subsequently, the petitioner



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moved another application below Exhibit 31A dated 25th September 2024 praying for a direction to call all eligible applicants for interview in respect of proposed trustee appointments.

**12.** The learned President, Shree Dnyaneshwar Maharaj Sansthan, who is also the Principal District Judge, Pune, vide judgment and order dated 5th December 2024, allowed the application at Exhibit 16, holding the suit to be not maintainable before the Persona Designata forum and rejected the application at Exhibit 31A. Aggrieved thereby, the petitioner has invoked the extraordinary writ jurisdiction of this Court.

**13.** Shri Gorwadkar, learned senior counsel appearing for the petitioner, submitted that the learned District Judge has failed to correctly appreciate the true import and scope of clause (16) of the trust scheme. He submitted that clause (16) explicitly empowers the committee to frame Rules for the administration of the Sansthan, subject to sanction by the District Judge. Further, clause (16) also permits variation or modification of such Rules, again subject to the approval of the District Judge. The clause goes a step further by providing that once the Rules are so sanctioned, they shall have the same binding force as the scheme itself.

**14.** Learned counsel contended that the Rules framed and sanctioned by the District Judge on 8th June 1943, therefore, did not merely supplement the scheme, but became an integral part thereof. As such, the power to vary the Rules with the District Judge's sanction, by necessary implication, also includes the power



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to vary any part of the scheme itself, including clause (3) which governs the appointment of trustees.

**15.** He further submitted that when clause (16) is read harmoniously with Rules 67 to 69, which also derive their force from the scheme, it becomes clear that the District Judge is clothed with comprehensive jurisdiction to consider any proposal for amendment or variation of the scheme. According to him, such exercise of jurisdiction is not in the capacity of a regular civil court, but in the capacity of a Persona Designata, as specifically contemplated by clause (3) of the scheme.

**16.** To reinforce this submission, learned senior counsel placed reliance on the decision of the Hon'ble Supreme Court in *R. Venugopala Naidu & Ors. v. Venkatarayulu Naidu Charities & Ors., 1989 Supp (2) SCC 356*, to contend that where a scheme has been framed in a representative suit under Section 92 of the CPC, any person interested in the trust can seek modification thereof by appropriate proceedings.

**17.** He also relied upon the decision of this Court in *Minoo Rustomji Shroff & Ors. v. Charity Commissioner & Ors., 2005 (2) Mh.L.J. 1135*, to argue that schemes framed prior to the coming into force of the Bombay Public Trusts Act, 1950, retain their character and that the District Judge, acting as a Persona Designata, continues to possess the power to modify or alter the scheme under the express provisions of clause (16). He referred to the judgment of this Court in *Miscellaneous Application No. 17 of 2006 (arising from the same Minoo Shroff proceedings)*, and the



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Hon'ble Supreme Court's ruling in *Raje Anandrao v. Shamrao & Ors., AIR 1961 SC 1206*. He also drew attention to the Division Bench judgment in *Khojeste Mistree & Ors. v. Bombay Parsi Punchayet & Ors., (2008) 5 Mh.L.J. 783*.

**18.** Relying on this line of authority, Shri Gorwadkar urged that the impugned judgment of the learned District Judge deserves to be quashed and set aside, as it proceeds on a legally untenable interpretation of the scheme and the powers vested in the District Judge thereunder.

**19.** Per contra, Shri Datar, learned counsel appearing on behalf of the respondents, supported the impugned judgment and order in its entirety and submitted that it calls for no interference.

**20.** He submitted that on a plain reading of clause (3) of the scheme, the District Judge is designated only for the limited purpose of filling up vacancies among the trustees. This clause, according to him, does not confer upon the District Judge the power to amend or alter the scheme itself. To stretch the meaning of clause (3) so as to include within it the power to modify the scheme would be plainly impermissible.

**21.** He further submitted that clause (16), which provides for the framing and variation of Rules with the sanction of the District Judge, pertains only to internal administrative matters for the guidance of trustees. It does not empower the District Judge to modify the principal provisions of the scheme. In particular, clause (16) does not authorise any change in the mode of appointment of trustees as laid down in clause (3), nor does it enable any



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structural alteration of the scheme.

**22.** With respect to Rules 67 to 69, learned counsel submitted that they too are procedural in nature and do not contemplate any authority with respect to amendment of the foundational provisions of the scheme. He emphasized that the petitioner has not been able to point to any provision either in the original decree passed in Civil Suit No. 7 of 1934 or in the scheme as amended thereafter that expressly reserves such power of modification in the District Judge.

**23.** He further contended that even if the scheme was originally framed prior to the enactment of the Bombay Public Trusts Act, 1950, that by itself is not sufficient to confer jurisdiction on the District Judge to entertain and decide a prayer for amendment of the scheme. He submitted that the original scheme was framed by the Collector of Pune and was subsequently settled by the District Judge, Pune in the suit of 1934, which was affirmed in First Appeal No. 92 of 1938 on the basis of a consent settlement between the parties. Thus, in the absence of any express reservation of power to modify the scheme, the District Judge cannot assume such jurisdiction by implication.

**24.** Learned counsel also contended that Section 92 of the CPC has no application in the present case, as recourse to it is barred by Section 52 of the Bombay Public Trusts Act, 1950. The petitioner, if aggrieved, must resort to the remedy available under Section 50 of the said Act.

**25.** He placed reliance upon paragraphs 9 and 10 of the



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judgment in *Minoo Rustomji Shroff (supra)*, contending that they actually support the respondent's case that there is no inherent power of the District Judge to modify the scheme, unless such power was expressly reserved at the time of framing the scheme. This view, according to him, was also affirmed by the Division Bench in *Khojeste Mistree (supra)*, which had distinguished the Supreme Court's decision in *R. Venugopala Naidu (supra)*, on the ground that the said judgment did not consider the bar contained in Section 52 of the Bombay Public Trusts Act, 1950.

**26.** With respect to the judgment in *Raje Anandrao (supra)*, he submitted that it was rendered in the peculiar facts of that case and has no direct application here. He also placed reliance on Miscellaneous Petition No. 17 of 2007 arising from *Minoo Shroff (supra)*, to submit that the present petition is misconceived.

**27.** In view of the above submissions, Shri Datar submitted that the impugned judgment and order passed by the learned District Judge, Pune is consistent with law and warrants no interference by this Court in its writ jurisdiction.

**28.** The rival contentions raised by the learned counsel for the parties now fall for determination.

**29.** It is easy to understand that when a Court frames a scheme for the management of a trust, it may not always be possible to anticipate every situation or difficulty that may arise in the future. Life is uncertain, and trusts often have to deal with changing circumstances in the form of new challenges, emergencies, or unforeseen developments. The Court, therefore, may consciously



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choose not to fix every single detail for all time to come. Instead, it may decide to limit its immediate directions to what is necessary and practical at that point of time and leave room for future adjustments.

**30.** This approach is often based on the Court's past experience that rigid, one-time schemes may become unworkable when circumstances change. Rather than trying to predict everything, the Court may wisely reserve the right to itself to review and decide how the trust should be run when new situations actually arise.

**31.** To ensure flexibility, the Court may say that the scheme will work for a limited period—say ten years—and that it will review the working and administration of the trust again after that period. Sometimes, instead of fixing a number of years, the Court may say that the scheme will remain in force until something specific happens, such as a change in law, significant change in circumstances, or some difficulty in implementation. The idea is to allow the trust to function properly, and at the same time retain control to adapt the scheme as required by future realities.

**32.** These principles show that even when the scheme appears to be changed later, in substance, the Court is not altering what it had already done, but is simply extending or supplementing the scheme in light of new developments. What was originally framed by the Court was not meant to be permanent or final for all time, but rather a first stage to be added to or expanded later, as needed.

**33.** So when the Court frames a second set of directions after a



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certain time or upon certain developments, it is not going back on its earlier order. It is adding to the scheme, not revising what was already in place. The original part of the scheme continues to operate for the period it was meant for. The new directions begin where the earlier ones stop.

**34.** It is, therefore, wrong to think that such additions are like reviewing or appealing against the Court's own earlier order. They are more like continuations or adjourned decisions, kept pending by the Court with full awareness that the complete picture would emerge only over time. It is important to understand that a scheme is a special kind of judicial order, not rigid like a final decree in a civil suit, but designed to evolve over time as the needs of the trust change.

**35.** The argument that a Court-framed scheme must remain unchangeable for all time rests on the assumption that the Court had already provided for every possible future situation, and had followed all necessary procedures to do so. But in reality, as seen earlier, Courts do not always aim to regulate the trust forever in one go. They may exercise jurisdiction gradually, first dealing with the present and reserving the right to decide about the future when the need arises.

**36.** Thus, even when the Court appears to "alter" the scheme later, what it actually does is to fill in the gaps left earlier. It is not rewriting what was already decided, but simply completing what was left unfinished, because the original framing had intentionally kept those matters open.



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37. Much of the confusion in understanding the District Judge's role comes from mixing up his two separate capacities, one as a judicial officer heading a Court, and another as an individual given special responsibilities under a trust scheme. When the Court frames a scheme for a trust, it may decide that the trust should not be left entirely in the hands of trustees alone. It may feel that some outside supervision is necessary, and may choose to assign this supervisory role to someone trustworthy—often a judicial officer like a District Judge.

38. However, when a District Judge is appointed under such a scheme to supervise or regulate the trust, he is not acting as a Judge of a regular Court. He is acting in a special capacity, as a nominated person, given specific functions under the scheme. His role is administrative, not judicial, though it is conferred on him because he holds a judicial office and is expected to discharge his duties with impartiality and competence.

39. It would be more accurate if such an officer were described using a different term such as a "referee" or "controller" to show that he is not acting in his capacity as a presiding Judge in a Court, but as a designated functionary under the scheme. This helps clarify that his powers come from the scheme itself, and that his decisions are part of the trust's administrative framework, not judgments of a civil court.

40. The fact remains, however, that the Court while framing the scheme has full authority to divide responsibilities between trustees and such a controlling officer. The trustees may be given



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primary powers of administration, while certain residual powers such as removal, suspension, or approval of actions may be vested in the District Judge or similar officer to ensure accountability and protect the interest of the trust.

**41.** It is also necessary to consider an issue as to whether the District Court when exercising the powers under the scheme framed for administration of the public religious trust acts as the Court of law or merely as "persona designata". In the facts of the case, the scheme framed uses of expression "District Judge" and not "District Court". Under the CPC and the Bombay Civil Courts Act, the "District Court" refers to legal institution while the "District Judge" refers to the individual presiding over it. Both are well-recognized legal expressions, they must be interpreted in their accepted legal sense unless the context indicates otherwise. The use expression "District Judge" in place of "District Court" appears to be intentional indicating that the Court framing scheme wanted to confer the power of an individual officer not as a judicial body. Moreover, the scheme categorically refers to the District Judge as "persona desigata" for the purpose of making appointment and supervisory trust's affairs. A plain reading of the scheme indicates that similar designation extends to the other functions assigned to the District Judge.

**42.** It is well-settled that a persona designata is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character" the test is whether the authority is intended to act judicially as a Court or in an individual capacity. It is also well



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settled that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The distinguishing between the person designated, and the Court may broadly be stated that the Court acts in its judicial capacity whereas a person designated i.e. an individual authorised to act not as Court but in his personal capacity designated by the statute or the scheme. Once the scheme expressly mentioned as "persona designata" such designation must be held for other reference to the District Judge throughout the scheme. Therefore, he is not acting as a judicial forum of the Court system under CPC. Where the functions conferred on the District Judge are supervisory, administrative, as per clauses (3) and (16), and Rule 69 of the scheme, the District Judge acts not as the Court but as "persona designata". The power exercised under the said clauses are administrative, supervisory and no adjudication of inter-se between parties rights akin to civil suit was undertaken.

**43.** Upon perusal of the documentary record and the history of the proceedings, it is evident that the origin of the trust scheme can be traced back to the Yadi prepared by the then Collector of Pune on 24th May 1852. That Yadi had nominated six individuals as Panchas for the management of the Samadhi of Saint Dnyaneshwar Maharaj and for the administration of revenue from the allotted village. However, even at that stage, the Civil Court had observed that the Yadi did not amount to a formal scheme within the meaning of law, and merely comprised certain general instructions concerning appointment of Panchas and maintenance



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of accounts.

**44.** Subsequently, a regular proceeding came to be instituted as Civil Suit No. 7 of 1934 under Section 92 of the Code of Civil Procedure, 1908. This suit culminated in a judgment and decree dated 11th December 1937 passed by the learned District Judge, Pune. The Court held that the appointment of the then trustees was valid and there was no necessity to remove them. It was further held that though the Yadi of 1852 did not constitute a formal scheme, it required supplementation rather than replacement. Accordingly, the Court issued directions under Section 92 CPC and framed a formal scheme based on the existing practice, thereby giving it legal sanctity.

**45.** The scheme thus framed was appended to the judgment as an annexure and was to govern the functioning of the Sansthan thereafter. In First Appeal No. 92 of 1938, this Court approved certain modifications to the scheme based on consent terms arrived at between the parties. As a result of those modifications, the revised and operational framework came to be known as the Shree Dnyaneshwar Maharaj Sansthan Alandi Scheme.

**46.** On 8th June 1943, the District Judge, acting under clause (16) of the scheme, approved a set of Rules framed by the trustees. These are known as the Shree Dnyaneshwar Maharaj Sansthan Rules of 1945. Under the amended scheme, the administration of the Sansthan was vested in a body of six trustees, referred to as Panchas, to be appointed and replaced in accordance with clause (3) of the scheme. Thus, from a plain reading of the operative part



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of the decree in Civil Suit No. 7 of 1934 and the judgment itself, particularly paragraph 23, it is evident that what began as an informal structure in 1852 matured into a judicially sanctioned scheme prior to the coming into force of the Bombay Public Trusts Act, 1950.

**47.** The petitioner has specifically relied upon clauses (3) and (16) of the scheme to urge that the District Judge, in the capacity of a Persona Designata, is empowered to amend or modify the scheme. In order to examine the tenability of this contention, it would be appropriate to reproduce the said clauses herein:

> Clause (3): Any vacancy in the committee shall be filled up by the District Judge, Pune (as a Persona Designata), from among those nominated for co-option by the committee, provided that the committee nominates not less than five names for each vacancy. The District Judge shall also have the right to call for additional names from the trustees if deemed necessary. The clause further lays down disqualifications for appointment as trustee.
>
> Clause (16): Subject to the sanction of the District Judge, the committee shall frame rules for the guidance of the trustees in the administration of the Sansthan and in the observance of customs such as puja and processions, as per traditional practices. These rules may be varied from time to time with the sanction of the District Judge. Once sanctioned, the rules shall have the same force as the scheme.



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48. On a plain reading of clause (3), it is manifest that the District Judge has been appointed as a Persona Designata specifically and exclusively for the purpose of filling up vacancies in the committee of trustees. The power conferred is procedural and not substantive. It is further limited by the requirement that nominations for such appointments must come from the existing trustees, and the District Judge can only select from among the nominees, or seek additional names. The clause also lists disqualifications to ensure that trustees meet a standard of eligibility. It does not, by any stretch, confer a power to amend the scheme itself.

49. Likewise, clause (16) authorizes the committee to frame administrative rules to ensure proper functioning of the trust, particularly in relation to religious observances and traditional practices. These rules are to be submitted for the approval of the District Judge, whose sanction is a condition precedent for the rules to attain binding force. The clause also allows for the rules to be varied, but again, only with the sanction of the District Judge. Importantly, the rules so sanctioned are to be treated as having the same status as the scheme, but clause (16) does not say that the District Judge has the power to alter the scheme itself.

50. A conjoint reading of clauses (3) and (16) reveals that while the District Judge does perform certain supervisory functions, including appointment of trustees and approval of rules, neither clause confers jurisdiction to alter or amend the substantive terms of the scheme. The scheme itself was framed by the Civil Court in exercise of powers under Section 92 CPC. Any modification or



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variation to such a scheme would necessarily require recourse to the same process which is subject to Section 52 of the Act, unless the scheme expressly reserves the power of modification to the District Judge.

**51.** In the light of the above, I am of the considered opinion that the petitioner's reliance on clauses (3) and (16) to urge a modification of the scheme is wholly misplaced and unsustainable in law. The District Judge, acting as Persona Designata, is not conferred with any express or implied power to amend the scheme. The authority under the scheme is limited to appointment of trustees and approval of rules framed by the committee, not to alter the fundamental structure of the scheme itself.

**52.** Shri Gorwadkar, learned Senior Advocate appearing on behalf of the respondents, has next submitted that Clause 16 of the Scheme expressly empowers the Committee to frame rules for the administration of the Sanstha, subject to the sanction of the learned District Judge. The said clause further provides that upon such sanction, the rules so framed shall have the same binding force as the Scheme itself. Thus, the learned Senior Advocate contends that the rules, once sanctioned by the District Judge, are to be treated as an integral part of the Scheme. The learned Advocate for the petitioner next submitted that Rules 67 to 69, framed under the authority of clause (16) of the scheme, confer upon the Sansthan Committee and the District Judge the power to amend, alter, or modify the scheme.



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**53.** In my opinion, the said submission deserves to be examined in the light of the authoritative pronouncement of the Division Bench of this Court in the case of *Shankarlal Purshottam v. Dakor Temple Committee, AIR 1926 Bom 179*. In the said case, the Division Bench was dealing with a scheme framed for the management of the Dakor Temple, wherein sub-clauses (7) and (8) of Clause 12 specifically provided that all rules framed by the Committee and sanctioned by the District Court at Ahmedabad "shall have the same force as if they were part of the Scheme". For clarity, sub-clauses (7) and (8) of Clause 12 of the Scheme read thus:

> "(7) The Committee shall have power to have all the rules framed by them sanctioned by the District Court, Ahmedabad, to the intent that the rules, when sanctioned, shall have the same force as if they were part of the Scheme."
>
> "(8) The Committee shall have power to modify, alter and rescind any of the rules made by them with similar sanction."

**54.** The Division Bench observed that upon a plain reading of sub-clause (7), it is evident that the legislative intent behind the incorporation of such a provision was to create a legal fiction, whereby the rules framed by the Committee, once sanctioned by the District Court, would assume the same legal force and status as that of the Scheme itself. The Division Bench, in no uncertain terms, held that the expression "shall have the same force as if they were part of the Scheme" must not be interpreted in a narrow or restrictive manner. Rather, the said phrase confers upon the



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rules the character of being co-extensive in authority and binding nature with the parent Scheme. The Court further held that as a matter of both logic and law, once such rules are sanctioned by the competent authority, they cannot be treated as subordinate or inferior to the Scheme; they acquire parity in enforceability. Consequently, it was held that such rules are also subject to the same modifying or amending powers as may be applicable to the Scheme itself.

**55.** In the facts of the present case, Clause 16 of the Scheme empowers the Committee to frame rules for administration, subject to the sanction of the District Judge, Pune. The clause further declares that once sanctioned, such rules shall have the same force as the Scheme. Following the ratio laid down by the Division Bench in *Shankarlal Purshottam* (supra), it would be reasonable to hold that the rules framed under Clause 16, once sanctioned, would attain the same binding character as the Scheme itself.

**56.** In order to appreciate the nature and extent of these Rules, it is necessary to reproduce them as follows:

> "Rule 67**:** In case of any ambiguity or in respect of matters for which there is no specific rule, the committee shall have the power to regulate and decide the same, and its decision shall be final unless set aside by a competent court of law at the instance of an aggrieved person.
>
> Rule 68: The Sansthan Committee shall have, subject to any restrictions, all residuary powers regarding the management



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and final control in all matters.

Rule 69: The Committee is at liberty to take directions from the District Judge, if necessary, from time to time, in the working of the scheme, and shall also have the right to make any necessary changes due to emergency and other unforeseen events."

**57.** On a careful and conjoint reading of the above three rules, it is evident that these provisions have been inserted to facilitate day-to-day functioning and administrative decision-making by the Sansthan Committee. Rule 67 contemplates situations where ambiguity exists or where the scheme or rules are silent. In such cases, the committee is vested with temporary and provisional authority to regulate and decide, subject to judicial oversight. This rule does not authorize the committee to modify the substantive provisions of the scheme itself, but merely to address lacunae on operational issues until clarified through legal recourse.

**58.** Rule 68 further vests the committee with residuary management powers, which are subject to restrictions laid down elsewhere in the scheme. These powers relate to administrative matters which are not expressly covered by other provisions. Again, such authority is to be exercised within the contours of the existing scheme, and not to alter its core structure or modify its legal framework.

**59.** Coming to Rule 69, which is central to the petitioner's submission, it is necessary to distinguish between the nature of directions that may be taken from the District Judge and the extent



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of changes the committee may make in emergencies.

**60.** The first part of Rule 69 permits the committee to seek directions from the District Judge, if necessary, for the purpose of working the scheme. This clearly contemplates administrative supervision and interpretative assistance, but not the power to substantively amend the scheme. Directions contemplated under this rule are advisory or clarificatory in nature and meant to resolve issues relating to the implementation of the existing scheme. They cannot be construed as judicial orders passed in exercise of power to amend the scheme, which would require a formal judicial process with due notice to stakeholders and an opportunity of hearing, as contemplated under the legal framework applicable to public trusts.

**61.** The second part of Rule 69 refers to the committee's power to make necessary changes due to emergency and unforeseen events. This part must be interpreted in a practical and purposive manner. The phrase "necessary changes" must be understood in the context of the emergency or unforeseen circumstances that may arise during administration. These changes are clearly temporary and administrative in nature, meant to ensure continuity and smooth functioning of the Sansthan.

**62.** Examples of such permissible changes would include rescheduling of a religious procession due to inclement weather, temporary relocation of meetings, extension of procedural deadlines owing to natural calamities, or similar adaptations in the interest of public safety or religious propriety.



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**63.** However, the appointment of trustees, alteration in eligibility criteria, change in the number or composition of the Panchas, or any such act that impacts the structure, representation, or legal rights of stakeholders, would clearly fall within the category of scheme modification, which can be effected only through judicial proceedings under the authority originally invoked for the creation or amendment of the scheme i.e. under Section 50 or Section 50A of the Bombay Public Trusts Act, 1950, where applicable.

**64.** Therefore, Rule 69 cannot be interpreted to confer a general or residuary power upon the District Judge to modify the scheme outside the formal judicial framework. Nor can the committee invoke it to make permanent or structural alterations. To interpret otherwise would be to dilute the sanctity of judicially framed schemes and allow their alteration without due process.

**65.** Accordingly, I am of the considered view that Rule 69 does not confer upon the District Judge the power to amend the scheme, nor does it authorize the committee to effect structural changes under the garb of emergency management. The scope of Rule 69 is confined to functional continuity and administrative adjustments, and does not extend to modification of the foundational provisions of the scheme.

**66.** However, a significant distinguishing feature in the present Scheme, as opposed to *Shankarlal Purshottam* (supra), is the absence of a specific enabling clause equivalent to sub-clause (8) of Clause 12 therein, which expressly empowered the District Court to modify, alter or rescind the rules with sanction. Moreover,



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Clause 20 of the Dakor Temple Scheme conferred upon the District Court the power to modify the Scheme itself. In contrast, in the present Scheme, there is no express conferment of such power on the District Judge, either to amend the Scheme or to modify the rules post-sanction.

67. Thus, while the rules framed and sanctioned under Clause 16 acquire the same legal status and binding force as that of the Scheme, in the absence of a specific provision empowering the District Judge to modify such rules, it cannot be inferred by implication that the District Judge (as a persona designata) is competent to alter, amend, or rescind the said rules. The legal fiction created by Clause 16 ends with the conferment of binding force, but does not extend to confer modification powers, which would require express legislative authorization, either under the Scheme or by statute.

68. In the present case, much emphasis was placed on the general clause of the Scheme, which states that the Committee may seek directions from the District Judge in the working of the Scheme and that the Committee shall have the right to make necessary changes due to emergency and other unforeseen events. It was sought to be contended that such a clause indirectly or inferentially authorizes the District Judge to effect modifications in the rules, which by virtue of sanction, have become part of the Scheme.

69. However, this submission must be rejected. The distinction between giving *directions* for working of the Scheme and



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*modifying* the Scheme or rules which are treated as part of the Scheme must be clearly maintained. The power to issue directions for proper implementation or functioning of the Scheme cannot be equated with or expanded into a power to alter the substantive provisions of the Scheme or its annexed rules. The modification or alteration of a scheme, or of the rules incorporated therein, affects the foundational rights and obligations created thereunder, and hence, such power must flow either from statute or from a specific clause under the Scheme expressly conferring such power. Absent such express conferment, it would not be legally permissible to imply such a power.

**70.** Where a scheme creates a mechanism for exercising a particular power, any modification or amendment must be made only by adhering to that express mechanism and cannot be assumed by implication.

**71.** Therefore, the absence of a clause similar to Clause 20 of the Dakor Scheme (which empowered the District Court to modify the Scheme), or sub-clause (8) of Clause 12 (which authorized modification of rules by the District Court with sanction), leads to an inevitable conclusion that the District Judge, Pune, in the facts of the present case, lacks jurisdiction to amend or rescind the rules which, once sanctioned, are treated as part of the Scheme.

**72.** The legal fiction enacted under Clause 16 of the Scheme is limited to granting equal binding force to the rules as that of the Scheme. It does not extend to endowing the District Judge with an amending power over the same. A legal fiction cannot be extended



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beyond the purpose for which it was created, and its operation must be confined strictly to the terms of the clause creating it.

**73.** In view of the aforesaid discussion, it must be held that Rules 67 to 69, framed by the Committee and sanctioned by the learned District Judge, Pune, form part of the Scheme by virtue of Clause 16. However, in the absence of a provision akin to Clause 20 or sub-clause (8) of Clause 12 of the Dakor Temple Scheme, it would not be permissible to interpret any provision of the Scheme as conferring upon the District Judge the power to modify such rules once sanctioned. Such power cannot be read by necessary implication.

**74.** As already discussed above, the scheme in question was framed and subsequently modified by the learned District Judge, Pune in Civil Suit No. 7 of 1934, in exercise of powers under Section 92 of the Code of Civil Procedure, 1908. This fact has not been disputed and finds support from the records as well as the judgment dated 11th December 1937. Once it is accepted that the scheme was framed under Section 92 CPC, it becomes necessary to examine the effect of Section 52 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the 1950 Act"), which deals with the applicability of Section 92 of CPC to public trusts after the 1950 Act came into force.

**75.** For proper understanding, the relevant provision is extracted below:

> Section 52 of the 1950 Act – Non-application of Sections 92 and 93 of the Code of Civil Procedure to public trusts:



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(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the provisions of Sections 92 and 93 of the said Code shall not apply to public trusts.

(2) If, on the date of the application of the Act to any public trust, any legal proceedings in respect of such trust are pending before a Civil Court of competent jurisdiction to which the Advocate General or the Collector is a party, the Charity Commissioner shall be deemed to be substituted in such proceedings.

(3) Any reference to the Advocate General made in any instrument, scheme, order, or decree of any Civil Court shall be construed as a reference to the Charity Commissioner.

**76.** A plain reading of Section 52 of the 1950 Act makes it abundantly clear that after the coming into force of the said Act, Sections 92 and 93 of the CPC cease to apply to public trusts governed by the Act. In other words, after the commencement of the 1950 Act, any scheme framed for a public trust, whether before or after the Act, can no longer be modified or challenged by invoking Section 92 CPC, as was permissible earlier. Instead, the procedure laid down in the 1950 Act must be followed.

**77.** Further, sub-section (3) of Section 52 clarifies that any reference in a scheme, order, or decree passed by a Civil Court before the Act came into force, to the Advocate General, shall now be read as a reference to the Charity Commissioner. This substitution is not limited to formal appearances but carries substantive implications. It signifies that where a Court earlier reserved control or supervisory authority to an officer like the



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Advocate General or Collector, such functions shall now be exercised by the Charity Commissioner.

78. In this context, it was, therefore, necessary for the petitioner to approach the Charity Commissioner under the provisions of the 1950 Act, if he desired any variation, amendment, or modification of the scheme. The appropriate forum for redressal after the enactment of the 1950 Act is now the Charity Commissioner or a competent authority under the Act, and not the District Judge acting as a persona designata, unless such authority was expressly preserved or continued under the scheme or under the Act itself.

79. Furthermore, on examining the scheme of the 1950 Act, it becomes evident that the only provisions that deal with settlement or modification of schemes for public trusts are Sections 50 and 50-A. Section 50 permits a suit to be filed in respect of a public trust, including for the purpose of modifying, altering, or replacing a scheme, but only after obtaining the prior consent of the Charity Commissioner. In other words, without the Charity Commissioner's sanction, a civil suit for this purpose is not maintainable. Section 50-A, on the other hand, empowers the Deputy or Assistant Charity Commissioner to frame or modify a scheme, but only in limited circumstances and subject to procedural safeguards. Sub-section (3) of Section 50-A allows modification of a scheme that was either framed by the Deputy/Assistant Charity Commissioner under Section 50-A(1), or by a Court under Section 50-A(2), i.e., schemes falling under the Act's domain.

80. There is no provision in the Act which permits a person to



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approach the District Judge in his capacity as persona designata for seeking alteration of a scheme after the 1950 Act has come into force, particularly where the original scheme was framed under Section 92 CPC and now stands governed by the overriding provisions of Section 52.

**81.** In the present case, therefore, the petitioner's act of filing a suit before the District Judge, as persona designata, praying for modification of Clause (3) of the scheme, is clearly not sustainable in law. The proper course would have been to approach the Charity Commissioner under Section 50 or Section 50-A, and only in accordance with the statutory procedure laid down therein.

**82.** In view of the above discussion, it must be held that the District Judge lacked jurisdiction to entertain the suit, and the petitioner's grievance regarding the scheme could have been addressed only before the Charity Commissioner under the 1950 Act.

**83.** Shri Gorwadkar, learned Senior Advocate appearing for the petitioner, placed reliance on the decision of this Court in *Minoo Rustomji Shroff & Ors. (supra)*, to argue that since the original scheme in the present case was framed prior to the enactment of the Bombay Public Trusts Act, 1950, and in the said decree, the power to modify the scheme was not expressly vested in the Charity Commissioner, only the District Judge acting as persona designata would continue to have the authority to amend or alter the scheme. However, upon careful reading of the facts in *Minoo Shroff's* case, it becomes clear that the scheme involved there had



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been framed by this Court under Sections 92 and 93 of the Code of Civil Procedure, 1908, and it specifically related to the election of trustees and management of immovable properties of the Bombay Parsi Panchayat. Crucially, in that case, the scheme itself expressly reserved the power to amend or modify its provisions. This Court, therefore, held that because the scheme itself provided a clause enabling amendment, an application filed before the same Court (and not under Section 50 or 50A of the 1950 Act) was maintainable. In short, the Court's jurisdiction to entertain a request for modification flowed directly from the express terms of the scheme itself.

84. However, in the present case, as discussed earlier, the scheme framed in Civil Suit No. 7 of 1934 does not contain any express clause which reserves power in the District Judge, as persona designata, to amend or alter the scheme. In the absence of such an express reservation, the principle laid down in *Minoo Shroff* has no application to the facts of this case. Reliance placed on that judgment is therefore misplaced and does not advance the petitioner's case.

85. The petitioner has also relied upon the decision in Khojeste Mistree & Ors. (supra), where the issue concerned whether the Charity Commissioner could modify a scheme framed by this Court under Section 50A(3) of the 1950 Act. In that case, the Court had framed the scheme on 18th June 2010, and the question arose as to whether the Charity Commissioner could alter the scheme framed by the High Court. The Division Bench rightly held that once a scheme is judicially settled by the High Court, it cannot be



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modified by the Charity Commissioner under Section 50A(3). The ratio of the said judgment is therefore limited to the question of jurisdictional competence, i.e. once the High Court frames a scheme, the Charity Commissioner cannot interfere with it unless expressly permitted.

86. This principle too, however, does not apply to the present case. Here, the question is not whether the Charity Commissioner can override a High Court scheme, but whether a District Judge as persona designata can entertain a modification application when the scheme itself does not reserve such a power.

87. Coming next to the decision of the Supreme Court in Raje Anandrao (Supra), the legal issue was whether modification of a trust scheme framed in 1935 could be permitted by the District Judge based on a clause in the scheme itself, without requiring the parties to file a fresh suit under Section 92 CPC. The High Court in that case had relied on the view taken by the Madras High Court, which held that any modification to a scheme framed under Section 92 must be done only by a fresh suit, and that no power of modification could be reserved or exercised outside such a process. However, the Supreme Court disagreed with that restrictive approach and endorsed the view taken by the Bombay, Allahabad, Patna, and Calcutta High Courts. The Court held that where the scheme itself contains a clause permitting future modification, such a clause is legally valid and serves a practical purpose. It allows the Court to provide flexibility in the working of the trust and to make administrative changes without compelling the parties to engage in repeated litigation through fresh suits. The



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Supreme Court also clarified that the power to settle a scheme under Section 92 CPC inherently includes the power to provide for its modification. In doing so, the Court recognised the realities of trust administration and held that such clauses facilitate efficient and responsive management of public charitable trusts.

88. In view of this legal position, the principle that emerges is clear: modification of a scheme can be made by the Court or Charity Commissioner only if such a power is expressly reserved in the scheme itself. Where no such power is reserved, the general procedure under the 1950 Act must be followed, including approaching the Charity Commissioner under Section 50 or 50A. In the present case, as already observed, the scheme framed in 1937 and modified in 1939 does not contain any clause reserving the power of modification to the District Judge. Hence, unlike in *Raje Anandrao(Supra)*, the present case does not involve the exercise of an expressly reserved power, and therefore, the principle laid down by the Supreme Court cannot be extended to assist the petitioner.

89. The petitioner has also placed reliance on the decision of this Court in Miscellaneous Application No. 17 of 2006 and the earlier case of Minoo Rustomji Shroff (supra), to contend that the Charity Commissioner has no authority to modify a scheme framed by a Court, and that only the Court or District Judge can do so. However, a closer reading of both these judgments shows that the principle laid down therein is more nuanced. What the judgments clarify is that if a scheme has been framed by the Charity Commissioner, then its modification or alteration can be sought



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before the same authority under the powers given in the Bombay Public Trusts Act, 1950, particularly under Sections 50 and 50-A. On the other hand, if the scheme was framed by the High Court in a suit under Section 92 of the Code of Civil Procedure, then its modification is not within the purview of the Charity Commissioner, and would have to be dealt with by the Court that framed it, if the scheme itself reserves such power.

**90.** However, the present case is distinguishable. The scheme in question was indeed framed by the District Court under Section 92 CPC before the 1950 Act came into force, but nowhere in the scheme is there an express clause reserving the power of modification to the District Judge, either in his judicial capacity or as persona designata. Therefore, the judgment in *Minoo Shroff* does not assist the petitioner, because the central requirement, that the scheme itself must reserve such a power, is not satisfied in the present facts.

**91.** The last judgment relied upon by the petitioner is the decision of the Supreme Court in R. Venugopala Naidu (supra). In that case, the core issue was whether the term "parties" mentioned in Clause 14 of the scheme-decree referred only to the named plaintiffs and defendants in the suit or included all persons interested in the trust, given the representative nature of the suit. The Supreme Court held that since the suit was filed in a representative capacity under Section 92 CPC, the plaintiffs were not acting in their individual capacity but were representing the interests of the public who had a stake in the trust. Therefore, it was observed that all persons interested in the trust would be



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treated as parties to the scheme and would be bound by it.

**92.** However, the present case turns not on the question of who is bound by the scheme, but on the question of who is empowered under the scheme to apply for modification or appointment of trustees. In the present scheme, as this Court has already found, clauses (3), (16), and Rule 69 clearly vest that authority in the committee alone. These provisions empower the committee to nominate persons for appointment as trustees and to seek administrative guidance from the District Judge when needed. The scheme does not confer any right or power on a "person interested" to independently apply for modification or appointment. Importantly, the scheme in *Venugopala Naidu* expressly contained Clause 14, which permitted such persons to invoke the Court's jurisdiction. No such clause exists in the present case. Therefore, in the absence of an enabling provision in the scheme, the judgment in *R. Venugopala Naidu* is clearly distinguishable and does not aid the petitioner's case.

**93.** In the result, it must be held that:

(i) The rules framed by the Committee and sanctioned by the District Judge under Clause 16 of the Scheme attain the same binding force as the Scheme itself.

(ii) However, in the absence of any specific provision under the Scheme or rules conferring upon the District Judge the power to modify, alter, or rescind such scheme or rules, it is not open to the District Judge to entertain or decide any application seeking modification of the same.



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**94.** In light of the above detailed discussion and for the reasons recorded hereinabove, this Court is of the considered view that the judgment and order passed by the District Judge does not suffer from any legal infirmity or jurisdictional error. The District Judge rightly held that in the absence of a specific power reserved in the scheme, and in view of the provisions of the Bombay Public Trusts Act, 1950, the application filed by the petitioner for modification of the scheme was not maintainable before the District Judge as persona designata.

**95.** Hence, the writ petition stands dismissed. There shall be no order as to costs.

**96.** Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)



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