

Formation of Trust, drafting of deed, Important Provisions under The MPT Act

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Brief background

In the state of Maharashtra legislation governing Public Trust is The Maharashtra Public Trusts Act (the MPT Act). The title of the Act changed from 'The Bombay Public Trusts Act 1950 (BPT Act) to 'The Maharashtra Public Trusts Act' with retrospective effect from 1st May 1960 by the Maharashtra (Change of short titles of certain Bombay Acts) Act 2011. BPT Act was enacted to regulate and to make better provisions for the administration of public religious and charitable trusts in the state of Bombay. The act is applicable to all the public religious and charitable trusts where office of administration and or substantial portion of its properties are situated in the state of Maharashtra. Its provisions are applicable to Societies registered under The Societies Registration Act, 1860 where their administrative office or substantial portion of properties of such society is situated in the state of Maharashtra. Certain organizations /person/ associations collecting money for charitable or religious objects are also governed by certain provisions of the MPT Act.

Meaning of the term "Trust": -

Term trust is not defined in the MPT Act therefore one has to go to the definition of Trust as given in sec 3 of the Indian Trusts Act 1882 which is as follows:-

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

*"author of the trust": "trustee" "beneficiary": "trust-property": "interest":
"instrument of trust": the person who reposes or declares the confidence is called the
"author of the trust": the person who accepts the confidence is called the "trustee": the
person for whose benefit the confidence is accepted is called the "beneficiary": the subject-
matter of the trust is called "trust-property" or "trust-money": the "beneficial interest"*

or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust".

However instrument of trust is separately defined under the MPT Act as follows:

Section 2 (7A) Instrument of trust

(7A) "Instrument of trust" means the instrument by which the trust is created by the author of the trust and includes any scheme framed by a competent authority or any memorandum of association and rules and regulations of a society registered under the Societies Registration Act, 1860, to its application to the State of Maharashtra.

Creation of Trust - A trust is created when the author of the trust indicates with reasonable certainty by any words or acts

- (a) an intention on his part to create a trust
- (b) the purpose of the trust
- (c) the beneficiary, and
- (d) trust property and

(unless the trust is declared by will or the author of the trust is himself to be the trustees) transfers the trust property to the trustee.

A trust can be created by word of mouth-

No formal language is necessary to constitute an effective declaration of trust, but the language used must be certain (1) that the settler intended to constitute a trust binding in law on himself or the person to whom the property is given (2) that he intended to bind definite property by the trust, and (3) that he intended to benefit a definite person or persons in a definite way.

Lawful purpose:- Trust must be for lawful purpose. Section 4 of the Indian Trusts Act, 1882 defines lawful purpose as follows: -

A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is

- (a) forbidden by law, or*
- (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or*
- (c) is fraudulent, or*
- (d) involves or implies injury to the person or property of another, or*

(e) the court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful and the two purposes cannot be separated, the whole trust is void.

A public trust is constituted for the benefit of either general public or a considerable portion thereof.

Deed of Trust -Declaration of Trust-contents

Author- settler – trustee - transfer of property, trust fund – office – objects – management - meetings –A/c Year- signatures - witnesses

Objects- Public religious

Charitable

Religious and Charitable

Trust can be formed for public religious or charitable purpose. Certain related terms as defined under the MPT Act are as follows: -

Sec 2 (13) “Public trust” means

An express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860;

A public trust must be for the benefit of either public at large, or some considerable portion of it, answering a particular description, i.e. the number of beneficiaries should be a fluctuating body.

Public purpose is not capable of precise definition. Whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purpose.

It is not necessary that object should be to benefit the whole of mankind or all the persons living in a particular country or province. It is sufficient if the intention is to benefit a sufficiently large section of the public as distinguished from specified individual

Charitable Purpose is defined U/s. 9

As per this definition – charitable purpose shall include

1. Relief of poverty or distress
2. Education
3. Medical Relief
4. Provision for facilities for recreation or leisure time occupation (including assistance for such provision) if these facilities are provided in the interest of social welfare and public benefit

However there is further condition that-

- a. the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended and
- b. either-
 - (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social or economic circumstances
 - (ii) the facilities should be available to the members of public at large
5. the advancement of any other object of general public utility. However it shall not include a purpose which relates exclusively to religious teaching or worship
6. provision of facilities at village hall, community centre and women's institutes and provision and maintenance of grounds and building to be used for purposes of recreation and leisure time occupation.

Since it is an inclusive definition it shall cover and include other activities, which can be called Charitable, so one has to look at various legal decisions in this respect.

Sec 2 (17) defines "**Temple**" as follows: -

"Temple" means A place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship

Sec 2 (9) defines “**Math**” as follows: -

“Math” means an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions or rendering spiritual services to a body of disciples or who exercises or claims to exercise headship over such a body and includes places of religious worship or instructions which are appurtenant to the institution;

◆ **Religious purpose** is not defined under the MPT Act. Religious purposes would include the advancement, support or propagation of a religion and its tenets.

◆ Thus trust can be formed for carrying out public religious or charitable or both purposes.

◆ Private religious trusts are not covered under the provisions of the MPT Act.

Stamp Duty applicable: -

The trust deed is required to be stamped and the relevant Articles of the Maharashtra Stamp Act as applicable to Maharashtra are Articles 4, 55 and 61 of Schedule I, are as follows:

	Stamp Duty
Article. 4. Affidavit or declaration in writing	Rs.100/-
Article 55. Settlement: - A. Instrument of - including a deed of dower, - (i) where the settlement is made for a religious or charitable purpose (ii) in any other case	Ten rupees for every five hundred rupees or part thereof of a sum equal to the amount settled or the market value of the property settled.

Article 61 Trust

- A. Declaration of -of, or concerning,
any property when made by any writing
not being a Will, -

- (a) Where there is disposition of Property, ---
- (i) where the trust is made for a religious or charitable purpose; Ten rupees for every five hundred or part thereof of sum equal to the amount settled or the market value of the property settled.
- (ii) in any other case.....
- (b) where there is no disposition of the property,--
- (i) where the trust is made for a religious or charitable purpose. The same duty as a Bond (Article 13)... but not exceeding two hundred rupees.
- (ii) in any other case

Registration of Public Trust (Sec 18 & Rule 6)

Once the Public Trust is formed it is required to be registered under the provision of the MPT Act. Where it is formed as society and registered under the Societies Registration Act, 1860 it is again required to be registered as Public Trust under the MPT Act. Provisions related to registration of Public Trust are contained in sec 18 & Rule 6 of the MPT Act & The Bombay Public Trusts Rules,1951 which are broadly as follows: -

1. Application for registration of the Public Trust is required to be made by the trustee to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.
2. Such application shall be made in writing, in form as per Schedule II. Affix court fee stamp of Rs.100/-
3. Such application shall be made within 3 months of creation of the public trust.

4. Such application shall among other things contain the following particulars:

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- (i) name of the public trust,
- (ii) the names and addresses of the trustees and the manager
- (iii) the mode of succession to the office of the trustee;
- (iv) the list of the movable and immovable property of the trust and such descriptions and particulars of the property as may be sufficient for the identification thereof;
- (v) the approximate value of such movable and immovable property;
- (vi) the gross average annual income of the trust estimated on the basis of income of past three years. If trust is in existence for less than 3 years, average should be based on number of year's income for which trust is in existence since the creation of the trust.
- (vii) similarly estimated expenditure to be given
- (viii) the address to which any communication to the trustees or manager in connection with the public trust should be sent;
- (ix) such other particulars which may be prescribed:

5. Application for registration shall be signed and verified in the manner prescribed by Rule 6, Sub rule 4 of the BPT Rules 1951 (the rules) by the trustee or his agent specially authorized by him in this behalf.

6. It shall be accompanied by a copy of an instrument of trust and copy of scheme in operation, (if any).

7. Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or ask him to disclose therein full particulars of the trust, and resubmit it within such period as is specified in such direction.

8. Along with the application for registration, the trustee have to produce an extract from the property register, record of rights and municipal records in order that officer holding the inquiry can ascertain if the property stands in the name of the trustee or the vahivatdar, or whether it stands in the name of a stranger. If it is found out that property is standing in the name of a stranger, it would be the duty of the Deputy / Assistant Charity Commissioner to issue notice to such persons and ascertain the facts.

Inquiry for registration by Deputy or Assistant Charity Commissioner (Sec 19)

On the receipt of an application for registration under section 18 of the MPT Act, the Deputy or Assistant charity commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining-

1. Whether a trust exists and whether such trust is a public trust?
2. Whether the property as shown in the application is the property of the trust and what is the estimated value of the movable and of the immovable property?
3. Whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction?
4. What are the names and addresses of the trustees and managers of the trust?
5. What is the mode of succession to the trusteeship and manager ship?
6. What are the objects of the trust?
7. What is the gross average annual income and expenditure of the trust?
8. What are the particulars of documents creating the trust?
9. What are the particulars other than documents about the creation or origin of trust?
10. What are the sources of income of the trust?

11. What are the particulars of the encumbrances, if any, on trust property?
12. What are the particulars of the Scheme, if any, relating to the trust? What are the particulars of title deeds pertaining to the trust property and the names of trustees in possession thereof?
13. Whether the particulars stated in the application are correct?

The above enquiry can also be conducted upon an application made by a person having interest or on his own motion by the Deputy or Assistant Charity Commissioner.

Findings of Deputy or Assistant Charity Commissioners (Sec20)

On completion of the inquiry as provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefore and may make an order for the payment of the registration fee.

On payment of registration fees a certificate of registration is issued under the hand of Deputy or Assistant Charity Commissioner.

Date of Registration of the trust: -

The date of Registration of the trust shall be date of passing of the order and not from the date of application.

Entries in register (Section 21)

The Deputy or Assistant Charity Commissioner shall make entries in the Register of Public Trust kept under section 17 (i.e. in Schedule I) in accordance with the findings recorded by him under section 20. If any appeals or applications against the finding of the Deputy or Assistant Charity Commissioner is made then the Deputy or Assistant Charity Commissioner shall make entries in this register in accordance with the final decision of the competent authority in the matter.

Public trust created by will (Sec 29)

In the case of the public trust which is created by a will, the executor of such will shall within 1 month from the date on which the probate of the will is granted or within 6 months from the testator's death [whichever is earlier] make an application for the registration in the manner provided in section 18 and all the provisions of the MPT Act & Rules in respect of registration shall apply to the

registration of such trust. However in appropriate cases the period prescribed as above for making an application for registration may, for sufficient cause can be extended by the Deputy or Assistant Charity Commissioner concerned.

Submission of Change Report (Sec 22 & Rule 13)

- (1) Where any change occurs in any of the entries recorded in the Register of Public Trusts in Form of Schedule I, maintained by the office of deputy or Assistant Charity Commissioner, the trustee shall within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such change report shall be in the Form of schedule III and shall be verified in the manner provided in sub rule (4) of Rule 6.
- (2) The Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner for ascertaining whether any change has occurred in any of the particulars recorded in the register.
- (3) If the Deputy or Assistant Charity Commissioner, is satisfied that: -
 - (a) a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or
 - (b) that the trust should be removed from the register due to the reason that the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly.
- (4) Any such finding shall be appealable to the Charity Commissioner.
- (5) The Deputy or Assistant Commissioner shall amend or delete the entries in the Register of Public trusts in accordance with the finding, and if appeals or applications were made against such finding, the Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the final decision of the

competent authority provided by the Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

- Other Points – The following points should be noted
 1. Though Section 22 talks about any change, change report needs to be filed on changes in managing committee, changes in Trustee, acquisition of immovable property and for such major changes only.
 2. Enquiry U/s 22 is judicial process and cannot be mere factual process or one purely of a formal nature. Investigation into legality and validity of the change is necessary.
 3. Where change relates to appointment of new trustees or changing old trustees, legality needs to be verified by the Deputy or Assistant Charity Commissioner in filing of change Report.
 4. Old body does not continue automatically for delay or due to non-filing of change report by new body.
 5. There is no law, which requires that application for condonation of delay must accompany the change report. The person applying for change may be under a bonafide impression that change report is filed in time. It is only when the office raises an objection that the applicant may become aware that there is delay that he may need to file the delay condonation application and explain the delay
 6. It is well settled that court should be liberal in condoning the delay. It is not necessary to explain each day's delay.
 7. The delay in filing of a change report should therefore be condoned as a matter of course unless there are special reasons not to do so.
 8. When after election new trustee were elected it was not necessary in every case to issue notice in respect of change report on outgoing trustees. If consent letters of outgoing trustees are annexed along with affidavits pertaining to no objection for such change then after examination of the same if Asst. Charity commissioner is satisfied regarding genuineness of the

document and change report then decision can be given after recording the reasons without issuing notices. Also why such notices are not issued the reason is required to be recorded by Asst./ Dy. Charity Commissioner. Therefore in the absence of such consent letter the notices were required to be issued.

Submission of budget by Public Trust (Section 31A & Rule 16A): -

Trustees of certain trusts are required to submit budget to Charity Commissioner. Relevant provisions are contained in Section 31A & Rule 16A, which are as follows: -

1. A trustee of a public trust, which has an annual income exceeding
 - (a). Rs. 5000/- in the case of a trust for a public religious purpose, and
 - (b.) Rs. 10000/- in other cases shall,at least one month before the commencement of each accounting year, prepare and submit to the Charity Commissioner, a budget in form VII-A showing the probable receipts and disbursements of the trust during the following year.

2. Every such budget shall make adequate provision for carrying out the objects of the trust, and for the maintenance and preservation of the trust property.

Maintenance of Accounts (Section 32)

Balancing and auditing of accounts (Section 33)

Auditor's duty to prepare balance sheet & to report irregularities, etc (Section 34)

Maintenance of accounts under Section 32 (Rule 17)

Certain powers for facilitating audit (Rule 18)

Contents of auditors report (Rule 19)

Investment of public trust money (Section 35)

1. Where the trust property consists of money and it cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall, notwithstanding any direction contained in the instrument of the trust, deposit the money in:

- (a) Any Scheduled Bank as defined in the Reserve Bank of India Act, 1934,
- (b) in the Postal Savings Bank or
- (c) in a co-operative bank approved by the State Government for the purpose or
- (d) to invest it in public securities.

*Public securities have been defined u/s 2 (12) as follows: -
"Public securities" means-*

(a) Securities of the Central Government or any State Government;

(b) Stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central or any State Government;

(c) Debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or State Legislature;

(d) A security expressly authorized by an order, which the State Government makes in this behalf;

- (e) in the first mortgage of immovable property situate in any part of India provided property is not leasehold for a term of years and the value of the property exceeds by one-half of the mortgage money (i.e. if mortgage money is 1 lakh value of property should be more than Rs.1.50 lakh)

Exception: Above stated restriction as to investment in modes prescribed in (a) to (e) are not applicable in cases any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act 1954 and that

such investment or deposit is made in accordance with a direction contained in the instrument of the trust. However any interest, dividend or amount received on maturity, which is received after coming into force of the said amendment Act of 1954 shall be invested in the modes prescribed in (a) to (e).

2. Apart from this the Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner.

Alienation of immovable property (Section 36 & Rule 24)

Provisions related to alienation of immovable property of public trust are contained in Section 36 & Rule 24 which are as follows: -

1. Irrespective of anything contained in the instrument of trust previous sanction of the Charity Commissioner is must-
 - a. for sale, exchange or gift of any immovable property belonging to the trust and for granting lease for a period exceeding ten years in the case of agriculture land or for granting lease for a period exceeding three years in the case of non agriculture land or a building belonging to a public trust, Application is required to be made to the Charity Commissioner for getting such sanction. The Charity Commissioner may give such sanction subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;
 - b. Similarly for disposing of any immovable property of the trust an application is required to be made to the Charity Commissioner. On such application the Charity Commissioner may authorize any trustee to dispose of such property. However the Charity Commissioner may impose such conditions as he thinks fit to impose, regard being had to the interest or benefit or protection of the trust.
2. The Charity Commissioner can revoke the sanction given for sale exchange, gift or for granting lease as stated in para 1a above on the ground that such sanction was obtained by fraud or misrepresentation made to him or was

obtained by concealing from the Charity Commissioner, facts material for the purpose of giving such sanction.

He can further direct the trustee to take such steps for recovery of the property within a period of 180 days from the date of revocation or within such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine.

3. However before revoking such sanction the person in whose favour such sanction has been made shall be given a reasonable opportunity to show cause why the sanction should not be revoked.
4. If the Charity Commissioner is of the opinion that the trustee has failed to take effective steps within period specified or it is not possible to recover the property with reasonable effort or expense the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.

◆ Application under section 36 for sanction of alienations: -

1. Every application for sanction of alienation shall contain information among other things on the following points.
 - (i) Whether the instrument of trust contains any directions as to alienation of immovable property.
 - (ii) What is the necessity for the proposed alienation.
 - (iii) How the proposed alienation is in the interest of the public trust.
 - (iv) In the case of a proposed lease, the terms of the past leases, if any,
 - (v) Such application shall be accompanied, as far as practicable, by a valuation report of an expert.
2. The Charity Commissioner, before according or refusing sanction, may make such inquiry, as he may deem necessary.
 - Purchaser can also apply in accordance with law for an early sanction by Charity Commissioner.

- It is admitted position that as a matter of practice the Charity Commissioner invites offers or tenders and upon the scrutiny, sanctions such alienation, which will result into maximum benefit to the trust.
- Taking into consideration the various provisions of the Act, which make the Charity Commissioner as the main protector of the public trusts and the guardian custodian of the properties of the public trusts. The Charity Commissioner under the provision of section 36 has the exclusive jurisdiction to deal with the matters provided therein.
- After completion of transaction post facto sanctions cannot be granted by Charity Commissioner.
- The trust had no funds for expansion-construction of temple- therefore, the offer was received by the Public Trust from purchaser of land at much higher price than the price of land shown in Valuation Reports. The Charity Commissioner accepted the fact that the trust is short of funds but recorded his observation that nation requires more educational institutions than temples and financial problem can be solved by obtaining loans from banks and other financial institutions. The D.B. observed that the Charity Commissioner is required to consider whether there is bonafide need and whether such property is being sold in the interest of the Trust. But he is not supposed to substitute his own ideas and views in the matters of functioning of the Trust. The order passed by the Charity Commissioner was quashed and set aside. [Suburban Educational Society & Anr. v. Charity Commissioner of Maharashtra State & Ors., 2004 (2) All MR 575, 2004 (2) Mh.L. J. 792]
- . The Charity Commissioner has no power to require the trustees to lease or sale the trust land to anyone other than the person selected by them.[A.R. Khan Construct well Company v. Youth Education & Welfare Society, Nashik, 2005 (1) All MR511, 2005(2) Bom.L.R.325]
- No appeal lies against order of Charity Commissioner granting or refusing sanction-remedy against such order lies in presenting a writ petition to the High Court

Powers and duties of, and restrictions on, trustees (Section 36A)

Section 36A of the MPT Act talks about powers and duties of trustees and restrictions on powers of the trustees. Relevant provisions are as follows: -

1. A trustee of every public trust is required to administer the affairs of the trust and apply the funds and properties of the trust for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or court may issue in respect thereof and trustee should exercise same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.
2. The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.
3. No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner. The Charity Commissioner while according such sanction may impose such conditions and limitations in the interest or protection of the trust as he deems fit.
4. No trustee can borrow money for his own use from any property of the public trust of which he is a trustee.

Register of movable and immovable properties (Section 36B & Rule 24A)

A public trust is required to maintain register of movable and immovable properties owned by it. Related provisions are contained in Section 36B of the MPT Act & Rule 24A of the BPT Rules, which are as follows: -

1. A public trust shall prepare and maintain a register of all movable and immovable properties (not being property of a trifling value) of such trust in form of schedule X-AA giving all such information, as is prescribed by the Charity Commissioner.
2. Such register shall show the jewels, gold, silver, precious stones, vessels and utensils and all other movable property belonging to trust with their description, weight and estimated value.
3. Such register shall be prepared within 3 months from the expiry of the accounting year.
4. Every year within 3 months from the date of balancing the accounts, the trustees or any person authorized by him shall scrutinize such register, and shall bring it up-to-date by showing alterations, omissions or additions to the same
5. Such register shall be signed by all trustees or by any person duly authorized by trustees in this behalf after verifying its correctness,
6. Such register shall be made available to the auditor for the purpose of auditing if the accounts are required to be audited.
7. The auditor shall mention in the audit report whether such register is properly maintained or not, and the defects or inaccuracies, if any, in the said register. The trustees shall comply with the suggestions made by the auditors and rectify the defects or inaccuracies mentioned in the audit report within a period of 3 months from the date on which the report is sent to the trustees.

Schedule X-AA Part I- Immovable Property

**Part II- Movable Property, ornaments, gold and silverwares
and other valuables**

Part III- Shares, Debentures, Public Securities, Deposits, etc.

Part IV- Dead stock and other movables

Part V- Live Stock

Op.total – increase – decrease - cl. total

Power of Charity Commissioner to issue directions for proper administration of the trust (Section 41A)

- The Charity Commissioner has been given power to issue directions for proper administration of the trust U/s. 41A.
- No power to remove- appoint trustee - ad-hock committee -new committee

Power of the Charity Commissioner and State Government to issue directions in respect of hospital, etc. to earmark certain beds etc., for poorer patients to be treated free of charge or at concessional rates. (Section 41AA & Rule 25A)

The Charity Commissioner subject to orders issued by State Government in this respect can issue directions for earmarking certain beds, facilities etc for poor and indigent patients. Division Bench of Mumbai High Court has approved scheme under this section.

Maintenance of register by a medical center under Section 41AA: -

The Governing body of a medical center referred to in section 41AA of the MPT Act, shall maintain a register for recording the category of a patient, in the form of Schedule X-AAA.

Power to institute inquiries (Section 41B)

The Charity Commissioner or Deputy Commissioner has power to make enquiries.

Generally- for particular purpose- on complaint- suo motu-report

Persons (other than Public Trusts) collecting moneys, etc. for religious or charitable purpose to inform Charity Commissioner of such collections forthwith etc. (Section 41C)

This section seeks to regulate collection of money subscription etc by persons other than Public Trust. Relevant provisions are as follows:-

1. Any person, (not being a public trust registered under this Act) who collects any money subscription, donation or other property for religious or charitable purpose is required to inform the Charity Commissioner in

writing of such collection and the purpose for which such collection is made.

2. On receipt of such information, the Charity Commissioner may, make such inquiry as he deems fit.
3. Thereafter Charity Commissioner may permit such collection to be continued subject to such condition as he deems fit, or he may, after recording his reasons in writing direct such person to stop making such collections and can require such person to give account of the collection made by such person.
4. It shall be the duty of every such person to comply with the directions or any order made by the Charity Commissioner under this section.

Suspension, removal and dismissal of trustees (Section 41D)

Charity Commissioner has powers of suspending, removing or dismissing of any trustee under various situations. Relevant provisions contained in section 41D.

Persistent default in submission- willfully disobeys lawful orders under the act- continuously neglects duty-commits breach of trust-misappropriates-convicted of an offence involving moral turpitude

Power of Charity Commissioner to act for protection of charities (Section 41E):

The Charity Commissioner has powers to grant injunction, stay or such orders for protection of property of the Trust. Relevant provisions contained in section 41E.
-where property is in danger of being wasted, damaged, improperly alienated

Power of the Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees. (SECTION 47)

The Charity Commissioner has power to appoint, suspend, remove or discharge trustee. Relevant provisions in this respect are contained in section 47.

-when- disclaims or dies-continuous absent from India for 6 months without leave of CC-leaves India for residing abroad- declared insolvent – desires to be

discharged-refuses to act as trustee-becomes unfit- physically incapable-convicted

**Power of the Charity Commissioner to frame, amalgamate or modify schemes.
(Section 50 A)**

1. In the interest of proper management or administration of a Public Trust the Charity Commissioner can
 - suo motu or
 - on application of 2 or more persons having interest in the public trust. after giving the trustees of such trust opportunity of being heard may frame a scheme for proper management and administration of such public trust. (Subsection 1)
2. Amalgamation of Trust: -

To rescue financially weak trusts Sec. 50 A (2) lays down the provisions for legally amalgamating two or more trusts with similar objects by framing common scheme.
3. Such scheme/s can be subsequently modified by the Charity Commissioner
4. Any person aggrieved by the decision of the Charity Commissioner u/s 50 A, can within 60 days from the date of the decision apply to the court to set aside the decision

Rule 26: Application under section 50A sub section (1)

Regarding power of the charity commissioner to frame, amalgamate or modify schemes.

1. Every application to the Charity Commissioner under sub-section (1) of section 50A shall set out concisely the material facts about the public trust and shall contain among other things the following particulars.
 - (a) Approximate value of the trust property
 - (b) Approximate annual income of the trust
 - (c) Nature of applicant's interest in the trust

- (d) A statement explaining how the proposed scheme is necessary in the interest of the proper management or administration of the public trusts.
2. The application shall be accompanied by a draft scheme and shall be signed and verified in the manner provided in sub-rule (4) of rule 6.
 3. There shall be maintained in the office of the Charity Commissioner a register of such applications in the form of Schedule X-A.

Bequest under will for benefit of public trust (Section 53)

1. Where under any will a bequest has been made in favour of a public trust or where such bequest itself creates a public trust, it shall be the duty of the executor under the will to forward a copy of such will to the Deputy or Assistant Charity Commissioner of the region or sub-region where such trust is required to be, registered. (Sub-section (1))
2. No probate of any such will or letters of administration annexed with such will shall be granted by any Court whatsoever unless it is satisfied that a copy of such will has been forwarded to the Deputy or Assistant Charity Commissioner as provided by sub-section (1).
3. A record of bequests is maintained in the form in schedule XII
 - See also sec 29 -the executor has to apply for registration

Dharmada (Section 54 & Rule 30)

1. Where according to the custom or usage of any business or trade or the agreement between the parties relating to any transaction any amount is charged to any party to the said transaction or collected under whatever name, as being intended to be used for a charitable or religious purpose the amount so charged or collected as per the MPT Act called - "Dharmada" shall vest in the person charging or collecting the same as a trustee.
2. Any person charging or collecting such sums shall within 3 months from the expiration of the year for which his accounts are ordinarily kept submit an account in form of schedule XIII to the Deputy or Assistant Charity Commissioner.

3. The Deputy or Assistant Charity Commissioner shall have power to make such enquiry as he thinks fit to verify the correctness of the account submitted and may pass order for the disposal of the amount in the manner prescribed.
4. The Deputy or Assistant Charity Commissioner may, for the purpose of verifying the correctness of the account, call for the books of account of the person charging or collecting the Dharmada and, if he thinks it necessary, have them audited by any person whom he may appoint in this behalf and direct that the expenses of such audit be paid out of such account.
5. If the Dharmada is intended for a specific charitable or religious purpose and is not used or used only in part for such purpose the Deputy or Assistant Charity Commissioner can direct that the amount available shall be used for such charitable or religious purpose.
6. If in any other case, it is necessary in the opinion of the Deputy or Assistant Charity Commissioner to obtain the direction of the court for the appropriation of the amount under section 55 (Cy- press) he shall make a report to the Charity Commissioner and pending the decision of the court, direct that the amount shall be deposited in such manner as he thinks fit.
7. The provisions of Chapter IV of the MPT Act (i.e. of Registration) shall not apply to Dharmada and as such Dharmada is not required to be registered under the provision of the MPT Act.
8. A register of Dharmada in his region or sub-region shall be maintained by the Deputy or Assistant Charity Commissioner in the form of Schedule XIV.

Cy - press (Section 55): -

When to give effect to charitable and religious trust is impossible and impracticable initially or becomes so subsequently, the court will save the trust from failing by invoking Cy- press doctrine and utilize the trust property for some other charitable and religious purpose as near as possible

to the object of the trust mentioned by the settler. Relevant provisions are contained in section 55.

Contribution to the Charity Commissioner (Section 58)

A public trust (other than one which is exempt) having gross annual income (from all sources) exceeding Rs. 25000/- has to pay contribution to the Public Trust Administration Fund @ 2%

Gross annual income excludes corpus donations.

Contribution is payable @ 2% on the gross annual income after making the deductions prescribed in Rule 32 which are stated hereunder:

Deductions:

- a) Donations received from other public trusts and Dharmada.
- b) Grants received from Government and local authorities
- c) Interest on sinking and depreciation fund
- d) Amount spent for secular or other education/ medical relief/ veterinary treatment of animals.
- e) Expenditure incurred from donations for relief of distress caused by scarcity, drought, flood, fire, or other natural calamity.
- f) Deduction of land revenue, rent payable to landlord, cost of production out of income from land used for agriculture purpose.
- g) Deductions of municipal taxes, ground rent, cesses, insurance premia, repairs @ 10% of gross rent and cost of collection at 4% of gross rent of let out buildings out of income from land used for non agriculture purposes.
- h) Cost of collection of Income or receipts from securities, stock etc. @ 1% of such income.
- i) Deduction in respect of repairs of building (yielding no income) @ 10% of estimated gross annual rent.

The following trusts are exempt from payment of contribution –

- a) Public trusts exclusively for advancement/ propagation of secular or other education/ medical relief/ veterinary treatment
 - b) Public trusts having gross annual income of Rs. 25000/- or less.
 - c) Recognized public libraries and reading rooms
 - d) Public trusts exclusively for the purpose of relief of distress caused by scarcity, drought, flood, fire or other natural calamity.
- Every auditor, auditing the accounts of the Public Trust u/s 33(2) shall annex statement of the income of the trust liable, to contribution in form of Schedule IX-C to the copy of Balance Sheet and Income & Expenditure A/c required to be forwarded to the Deputy or Assistant Charity Commissioner.

Penalties (Section 66): -

By section 66 substituted by Maharashtra Act No 20 of 2009 w.e.f. 18.5.2009 maximum fine payable is substantially increased from Rs. 1000/2000 to Rs.10000.

Maximum fine of Rs. 10000 is payable on-

failure to apply for registration within time,

failure to report a change,

failure to keep regular accounts,

failure to pay contribution,

failure to invest money in Public Securities,

Failure to send memoranda of immovable property within time etc.

Punishment for contravention of provisions of Section 36 (Sec 66A): -

Where any one alienates or attempts to alienate immovable property of the trust, without previous sanction of the Charity Commissioner can be punished with simple imprisonment, which may extend to 6 months and fine, which may extend to Rs. 25000 or with both.

Punishments for contravention of provision of Sec 41AA- (Sec 66B): -

Failure without reasonable cause to comply with Sec. 41 AA (i.e. reserving hospital beds for poor patients etc) attracts penalty, which may extend to Rs. 20000/- and simple imprisonment, which may extend to 3 months or both.

Penalty for contravention of other provisions of Act or Rules (Sec 67): -

For contravention of any of the MPT Act or Rules or for failing without reasonable cause to comply with any order passed or direction issued under the provisions of the Act by the Charity Commissioner, Joint Charity Commissioner or Deputy or Assistant Charity Commissioner. A fine upto Rs.10000/- can be levied.

Compounding of offence (Sec 67A): -

Compounding of offence is possible by officer not below the rank of Assistant Charity Commissioner in fit cases; composition amount shall not exceed $\frac{1}{4}$ th of the maximum amount of fine provided under the respective sections.

Court fee to be paid as prescribed by Schedule 'B' (Section 79 D): -

Where various application or submissions are made to various authorities under the MPT Act court fee stamp of prescribed value to be affixed to such application etc as specified in schedule B to the MPT Act.

Miscellaneous Provisions

Rule 6: Manner of verification of applications, memorandum etc.

Sub-rule 4: Every person signing the application shall subscribe on solemn affirmation before the Deputy or Assistant Charity Commissioner, a Justice of the Peace, an Executive Magistrate or a Notary appointed under the Notaries Act, 1952 for the State of Maharashtra that the facts mentioned in the said application are true to the best of his information and belief.

Inspection of entries in the Public Trusts Register and other documents. (Rule 22)

1. By making an application any person having interest or permitted in this behalf by the Charity Commissioner can take inspection of any entry or

- portion thereof, in the Register of Public Trusts or of any statement, notice, intimation, account, audit report or any other document filed under the Act.
2. The application for inspection shall specify the particulars of the documents and should contains sufficient information as may be necessary for identifying the documents required for inspection.
 3. Nominal fee is charged for allowing such inspection by Charity Commissioners Office.
 4. Such inspection is allowed during office-hours only.

**Grant of copies of entries in the Public Trusts Register & other document.
(Rule 23)**

On application made by a person having interest or any other person permitted in this behalf and on payment of nominal fees the Charity Commissioner or Deputy or Assistant Charity Commissioner or an officer authorized by any of them in this behalf shall give certified copies to such person of: -

- a) Any entry or portion thereof, in the Register of Public Trusts or any statement, notice, intimation, account, audit report or any other document filed under the Act.
- b) Proceedings of any inquiry under the Act.
- c) Proceedings of any appeal before the Charity Commissioner.
- d) Any certificate issued by the Charity Commissioner, Deputy or Assistant Charity Commissioner.

Rule 65: Buildings to be insured

All buildings constructed, purchased or otherwise acquired shall be insured with an insurance concern approved by the State Government.

----- THANK YOU -----