



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
President, N.C.D.R.C., New Delhi.

Chairman, Gujarat State Law Commission

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No.GSLC/2018/PS(L)-LPAD/40

Date: 21st March, 2018

Dear Shri *Sanjay Prasadji,*

Government of Gujarat, Legislative and Parliamentary Affairs Department, vide its Resolution No.LAC/2006/44/110/Law Cell, dated 31st December, 2013; had appointed the undersigned as the Chairman of the State Law Commission.

Till date, the Commission has submitted in all ten reports on various points for consideration and further needful actions.

Today, the Commission submits its Eleventh Report, namely, "Recommendations for suitable amendments in The Gujarat Public Trusts Act, 1950".

Two sets of hard copies and C.Ds. thereof are enclosed herewith for consideration and for needful action.

With warm regards,

Yours sincerely,

Justice M. B. Shah (Retd.)
Chairman

Encl. : Two sets of hard copies and C.Ds. of the Eleventh Report.

Shri Sanjay Prasad
Additional Chief Secretary
Legislative and Parliamentary Affairs Department,
Block No.4, Fourth Floor, Sardar Bhavan,
Nava Sachivalaya, Gandhinagar.



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**RECOMMENDATIONS
FOR SUITABLE AMENDMENTS
IN
THE GUJARAT PUBLIC TRUSTS ACT, 1950**

21st MARCH, 2018

M. B. Shah

**JUSTICE M. B. SHAH
FORMER JUDGE, SUPREME COURT OF INDIA
AND
CHAIRMAN, GUJARAT STATE LAW COMMISSION**

**RECOMMENDATIONS
FOR SUITABLE AMENDMENTS
IN THE GUJARAT PUBLIC TRUSTS ACT, 1950 ("GPTA")**

CHAPTER: I

**Suggestion to insert the provision
regarding issuance of Order
provisionally accepting the change report
and
time limit for holding inquiry**

**Need to amend Section 22(1), (2) and (3) of
GPTA**

1. At the outset, it is to be stated that the "Bombay Public Trusts Act, 1950" came into force and extended to the whole of the then State of Bombay. Necessary amendments were made to the "Bombay Public Trusts Act, 1950" from time to time.
2. Vide Government Gazette dated 13.03.2013, Legislative and Parliamentary Affairs Department, Government of Gujarat introduced the "Gujarat Short Titles (Amendment) Amending Act, 2013", inserting Serial No.38A to the Schedule attached with the "**Gujarat Short Titles (Amendment) Act, 2011**" and, thereby, this "**Bombay Public Trusts Act, 1950**" ("**BPTA**") was renamed/substituted as "**Gujarat Public Trusts Act, 1950**" ("**GPTA**").

3. It appears that number of change reports submitted by the public trusts remain unattended or are not finalized on the ground that some persons have objected to the said change and, thereafter, the person who has objected does not remain present at the time of hearing of such objection.

As per the information received, large numbers of applications have remained pending since number of years. The following table would reveal approximate pendency of the applications filed under Sections 22 and 22A of the GPTA:—

Year	Initial pendency		No. of fresh applications		No. of applications disposed off		Pending	
	Disputed	Un-disputed	Disputed	Un-disputed	Disputed	Un-disputed	Disputed	Un-disputed
2015	2408	14029	430	8370	436	7565	2411	14834
2016	2411	14834	982	8850	541	11024	2852	12660
2017	2852	12660	891	9772	610	9603	3133	12829

The aforesaid figures reveal that change reports are pending since number of years. In some cases, such pendency is likely to cause dispute between the Trustees or Members of the Organizations.

To avoid such situation, as soon as change report is filed, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change report which would be subject to

finalization after due inquiry. Such amendment is necessary in Section 22 of GPTA, for the reasons stated below.

In addition, some time-limit may be prescribed, say, three or four months.

4. To avoid similar difficulty, on 11.08.2017, State of Maharashtra introduced a Bill to amend the "Maharashtra Public Trusts Act". Dealing with Section 22 for the "Change Report", Para: 4(b) of the Statement of Objects and Reasons to the said Bill are as under:—

"In the matter of change reports,—

- (i) make an enabling provision to allow the extension of period of 90 days in reporting change by adding a proviso to Sub-Section (1) of Section 22;*
- (ii) to promote swift disposal and arrest the pendency of the change reports under Section 22, certain provisos are proposed to be added to Sub-Section (2) to mandate the decision on the change reports within the stipulated period, **and also provide for a mechanism for provisional acceptance of change reports and attach finality to the orders of provisional acceptance of change in uncontested matters."***

Recommendations for suitable amendments in The Gujarat Public Trusts Act, 1950

The aforesaid Bill introduced certain amendments in Section 22 of the Principal Act, namely,

- (i) Following proviso was sought to be added to Sub-Section (1) of Section 22:—

“Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.”

- (ii) Following provisos were sought to be added to Sub-Section (2) of Section 22:—

*“**Provided that, in the case of change in the names and addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and managership, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice:***

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under Section 17 in the prescribed manner:—

Provided also that, if objections are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by Sub-Section (3) of this Section, within three months from the date of filing objections."

(iii) The words "or applications" used in Sub-Section (3) of Section 22 were sought to be deleted.

5. For the change report, Section 22(1) to (4) of GPTA provides as under:—

"22. Change:—

(1) Where any change occurs in any of the entries recorded in the register kept under Section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of

the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

- (1A) Where the change to be reported under Sub-Section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in Sub-Section (7) of Section 18.*

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

- (2) For the purpose of verifying the correctness of the entries in the register kept under Section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry.*

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under Sub-Section (1) and holding an inquiry, if necessary under Sub-Section (2), or merely after holding an inquiry under the said Sub-Section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under Section 17 in regard to a particular public trust, he shall record a finding with the reasons therefore to that effect. Such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend the entries in the said register in accordance with such finding and if appeals or applications were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made shall, subject to any further amendment on the occurrence of a change, be final and conclusive.

(4) Whenever an entry is amended under Sub-Section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under Sub-Section (1A), after certifying the amended entry to the Sub-Registrar referred to in Sub-Section (7) of Section 18, for the purpose of registering the change."

6. SUGGESTIONS:---

- (i)** Sub-Sections (1), (2) and (3) of Section 22 are required to be amended by introducing similar provision, as suggested in the Bill introduced by the State of Maharashtra.

- (ii)** In addition, time-limit for holding inquiry and deciding the objection be prescribed, say, three or four months, by specifically mentioning that if the objecting party does not appear, the objection would not be considered.

* * *

CHAPTER: II

Suggestion to insert the provision regarding de-registration of the Trust and its property

Need to insert Sections (3A) and (3B) after Section 22(3) of GPTA

1. Section 18 of GPTA provides for registration of trust and trust property. There is no provision with regard to de-registration of the trust in required cases, such as:--
 - (i) when its purpose is completely fulfilled; or
 - (ii) when its purpose becomes unlawful; or
 - (iii) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
 - (iv) when the trust, being revocable, is expressly revoked; or
 - (v) when the trustees are found not doing any act for fulfilling object of the trust.

2. For the aforesaid purpose, the State of Maharashtra has introduced the **Maharashtra Public Trusts (Amendment) Act, 2016** on 31.03.2016.

By the said Amendment Act, Sub-Sections (3A) and (3B) were inserted after Sub-Section (3) of Section 22 of the Principal Act. The said Sub-Sections (3A) and (3B), as amended vide **Maharashtra Public Trusts (Amendment) Act, 2016** read:--

“(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds:--

(a) when its purpose is completely fulfilled; or

(b) when its purpose becomes unlawful; or

(c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(d) when the trust, being revocable, is expressly revoked; or

(e) when the trustees are found not doing any act for fulfilling object of the trust:--

*Provided that, no trust shall be de-registered under Clause (e), unless its trustees have committed default in reporting the change under Sub-Section (1), in submission of the audited accounts as prescribed by Sub-Section (2) of Section 33 or Sub-Section (1A) of Section 34 or in making any other compliance prescribed by or under this Act **for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.***

(3B) *The Deputy or Assistant Charity Commissioner **may take over the management of properties of the trust de-registered under Sub-Section (3A) and pass such necessary orders for the same, as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under Section 57.***


3. SUGGESTION:--

Similar provisions are required to be added so that trust properties are not misused for unlawful purpose or for the grounds stated in Para: 1 above, such as,

- (i) trust purpose is completely fulfilled;
- (ii) trust purpose becomes unlawful;
- (iii) fulfillment of the purpose becomes impossible by destruction of the trust property or otherwise;
- (iv) when the trust being revocable is expressly revoked; or
- (v) when the trustees are found not doing any act for fulfilling the object of the trust.

Hence, similar Sub-Sections are required to be added after Sub-Section (3) of Section 22 of GPTA.

Date : 21.03.2018
Place : Ahmedabad


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