

**HIGH COURT OF GUJARAT**

**PRABODHKUMAR MAGANBHAI PATEL**

*Versus*

**MODASA KADVA PATIDAR CHHATRALAYA**

**Date of Decision:** 03 August 2009

**Citation:** 2009 LawSuit(Guj) 1168

**Hon'ble Judges:** [M R Shah](#)

**Eq. Citations:** **2010 4 GLR 3562**

**Case Type:** Special Civil Application

**Case No:** 5103 of 2009

**Acts Referred:**

[Constitution Of India Art 227](#)

[Bombay Public Trusts Act, 1950 Sec 85, Sec 80, Sec 36](#)

**Final Decision:** Petition dismissed

**Advocates:** [R C Jani](#), [Mihir Joshi](#), [Sunil S Joshi](#)

**Cases Cited in (+):** 1

**Cases Referred in (+):** 6

**M.R.Shah, J.**

**[1]** Draft amendment allowed in Special Civil Application No. 4545 of 2009

**[2]** Rule. Shri Sunil Joshi, learned Advocate waives service of notice of rule on behalf of respondent Nos. 4 to 11 who are the main contesting respondents.

**[3]** As common question of law and facts arise in these group of petitions and the dispute is with respect to one Trust i.e. Modasa Kadva Patidar Trust, all these petitions are disposed of by this common judgment and order.

**[4]** 1. Special Civil Application No. 4545 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5

in Regular Civil Suit No. 65 of 2008. in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 22 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 65 of 2008.

4.2. Special Civil Application No. 5103 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 66 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 25 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 66 of 2008.

4.3. Special Civil Application No. 5104 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 67 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 26 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 67 of 2008.

4.4. Special Civil Application No. 5105 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 68 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 27 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 68 of 2008.

4.5. Special Civil Application No. 5106 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an

appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 70 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 28 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 70 of 2008.

4.6. Special Civil Application No. 5107 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 71 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 29 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 71 of 2008.

4.7. Special Civil Application No. 5108 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 72 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 32 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 72 of 2008.

4.8. Special Civil Application No. 5109 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 73 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 23 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 73 of 2008.

4.9. Special Civil Application No. 5110 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 74 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 33 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 74 of 2008.

4.10. Special Civil Application No. 5111 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-2009 passed by the learned 3rd Addl. Civil Judge (J.D.) Modasa passed below Exh. 5 in Regular Civil Suit No. 75 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 34 of 2009 in dismissing the same and confirming the order passed by me learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 75 of 2008.

4.11. Special Civil Application No. 5113 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 76 of 2008 in not granting the interim injunction as prayed for, as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No. 35 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 76 of 2008.

4.12. Special Civil Application No. 5113 of 2009 has been preferred, under Art. 227 of the Constitution of India, by the petitioner herein original plaintiff for an appropriate writ, direction and order to quash and set aside the judgment and order dated 31-3-2009 passed by the learned 3rd Addl. Civil Judge (J.D.), Modasa passed below Exh. 5 in Regular Civil Suit No. 77 of 2008 in not granting the interim injunction as prayed for as well as the order passed by the learned 3rd Joint District Judge, at Modasa, District : Sabarkantha dated 28-4-2009 passed in C.A.F.O. No.

24 of 2009 in dismissing the same and confirming the order passed by the learned trial Court passed below Exh. 5 in aforesaid Regular Civil Suit No. 77 of 2008.

**[5]** The facts and chronological events leading to the present Special Civil Applications in nutshell are as under:

5.1. There is one Trust, namely, Modasa Kadva Patidar Trust at Modasa, District Sabarkantha who is running a Chhatralaya in the premises in question. It appears that the respective petitioners are in occupation and possession of the shops in the premises in question. It is the case on behalf of the respective petitioners-original plaintiffs that the shops in question are given on lease to them by the respondent Nos. 2 and 3 herein-original defendant Nos. 2 and 3 who posed themselves to be the Trustees of the aforesaid Trust. It is the case on behalf of the respondent Nos. 4 to 11 that respondent Nos. 2 and 3 without any authority and without there being any Resolution of the Trust, constructed the shops unauthorizedly in violation of statutory rules and without any permission from the Competent Authority and further given on lease to the respective petitioners in the year 2005. That the defendant Nos. 2 and 3 who are neither Trustees nor any Office Bearers of the Trust made an application to the Collector for regularizing the construction of the shops. The said application was objected by the respondent Nos. 4 to 11 hereinafter referred to as defendant Nos. 4 to 11 i.e. the Trustees of the Trust and requested that application may be rejected since the commercial construction has been carried out by the respondent Nos. 2 and 3, in the Trust property, who are neither Trustees nor Office Bearers of the Trust without taking permission from the Charity Commissioner and in violation of the Rules and Regulations. That the Collector, Sabarkantha by order dated 7-8-2007 ordered to demolish the shops, toilet blocks, etc. That being aggrieved and dissatisfied with the order passed by the Collector, Sabarkantha vide order dated 7-8-2007 insofar as not allowing the application in toto, the Trust filed Revision Application before the learned Special Secretary, Revenue Department (Appeals). At the same time, petitioners- original plaintiffs also preferred the revision application before the Special Secretary, Revenue Department (Appeals), State of Gujarat by way of separate revision application. It appears that no stay order was granted by the Revisional Authority, and therefore, respective petitioners preferred Special Civil Application before this Court and this Court vide order dated 24-5-2007 remanded the case and directed the Collector to give an opportunity of hearing to the respective petitioners. That thereafter, on remand, the Collector, Sabarkantha again passed an order, not regularizing the construction of the shops occupied by the respective petitioners and directing to demolish the construction of shops, etc. The order passed by the Collector, Sabarkantha was challenged by the respective petitioners before the

Special Secretary, Revenue Department (Appeals) who by common order dated 24-4-2008 confirmed the order passed by the Collector, Sabarkantha. It appears that against the order passed by learned Special Secretary, Revenue Department (Appeals) dated 24-4-2008 in dismissing the revision application confirming the order passed by the Collector, Sabarkantha vide order dated 7-8-2007 not regularizing the construction of the shops and directing to demolish the construction of the shops, etc. occupied by the respective petitioners. Special Civil Application No. 8028 of 2008 was preferred before this Court and the same came to be withdrawn by the petitioners, and consequently, the order passed by the Collector, Sabarkantha confirmed by the Revisional Authority not regularizing the construction of the shops occupied by the petitioners and to demolish the construction of the shops in question, came to be confirmed and/or they become final.

5.2. It appears that having failed to get any relief from the Collector, Sabarkantha and the Revisional Authority and from this Court and having realized that the construction and transfer/lease in favour of the respective petitioners is in breach of provisions of Bombay Public Trusts Act as no prior permission of the Charity Commissioner required under Sec. 36 of the Bombay Public Trusts Act has not been obtained, and therefore, respondent Nos. 2 and 3 submitted an Application Nos. 36-37/2007 before the Charity Commissioner, State of Gujarat for post-facto permission under Sec. 36 of the Bombay Public Trusts Act with respect to the lease in favour of the respective petitioners under Sec. 36 of the Bombay Public Trusts Act. That in the said application i.e. Application Nos. 36-37/2007, respondent Nos. 4 to 11 herein also submitted the objections against grant of permission and for necessary direction.

5.3. It appears that learned Charity Commissioner, State of Gujarat vide order dated 11-6-2008 dismissed the said application filed by respondent Nos. 2 and 3 herein and refused to grant the post-facto permission under Sec. 36 of the Bombay Public Trusts Act for regularizing the lease of shops and further directed that the Trustees and Trust should get the vacant possession from the occupiers and to report the same within 60 (sixty) days from the date of order and directed the Trustees of the Trust to initiate proceedings in accordance with law to get back the possession of the building of the Chhatralaya and the shops in question within 60 (sixty) days and submit the compliance report to the Charity Commissioner. Being aggrieved and dissatisfied with the order passed by the Charity Commissioner, State of Gujarat dated 11-6-2008 passed under Sec. 36 of the Bombay Public Trusts Act, the respective petitioners herein preferred revision application vide No. TEN/AA/33/08 before the Gujarat Revenue Tribunal and the Gujarat Revenue

Tribunal vide its judgment and order dated 31st July, 2008 dismissed the said revision application and confirmed the order passed by the Charity Commissioner, State of Gujarat dated 11-6-2008 passed in Application Nos. 36-37/2007 in refusing to grant post-facto permission under Sec. 36 of the Bombay Public Trusts Act and directing the Trustees of the Trust to recover the possession of the shops in question. It appears, that thereafter, pursuant to the order passed by the Charity Commissioner dated 11-6-2008 confirmed by the Gujarat Revenue Tribunal by which the Trustees of the Trust were directed to take steps in accordance with law within 60 (sixty) days to recover/get back the possession of the shops in question, the Trust/Trustees- respondent Nos. 4 to 11 herein issued/served notices upon the respective petitioners to vacate the shops in question and hand over the possession of the shops in question to the Trust/Trustees and at that stage, the respective petitioners preferred the' aforesaid Regular Civil Suits in the Court of learned Civil Judge (J.D.) at Modasa, District : Sabarkantha for declaration and permanent injunction declaring that defendant Nos. 4 to 11 are not entitled to recover the peaceful and vacant possession of the shops in question without obtaining any decree under the Rent Act and restraining the defendant Nos. 4 to 11, their agents and servants from interfering with the enjoyment of the shops in question of the respective petitioners/plaintiffs and interfering with the enjoyment of the tenancy rights by the respective petitioners/ plaintiffs. In the said suit, the respective petitioners preferred interim injunction applications below Exh. 5 restraining the defendants from obstructing the plaintiffs from using and/or enjoying the possession of shops in question by the respective petitioners/plaintiffs as tenant. That the learned Civil Judge (J.D.) at Modasa, District : Sabarkantha by his order dated 31-3-2009 dismissed the said applications at Exh. 5 and rejected the prayer of the respective petitioners/plaintiffs for grant of interim injunction as prayed for. Being aggrieved and dissatisfied with the order passed by the learned trial Court rejecting the interim injunction applications passed below Exh. 5 in respective suits, and respective petitioners/original plaintiffs preferred C.A.F.Os. before the District Court, Sabarkantha and the learned 3rd Joint District Judge, Modasa by impugned orders had dismissed all the aforesaid Civil Appeal From Orders by confirming the order passed by the learned trial Court passed below Exh. 5 in not granting interim injunction as prayed for. Being aggrieved and dissatisfied with the orders passed by both the Courts below and in not granting the injunction as prayed for, respective petitioners- original plaintiffs have preferred the present Special Civil Applications under Art. 227 of the Constitution of India.

**[6]** Shri N. D. Nanavati, learned Senior Advocate appearing for Shri R. C. Jani, learned Advocate appearing on behalf of the respective petitioners/original plaintiffs have vehemently submitted that both the Courts below have materially erred in not granting

the interim injunction as prayed for restraining the defendants more particularly, defendant Nos. 4 to 11 and disturbing the enjoyment of the tenancy rights by the respective petitioners/original plaintiffs. It is submitted that respective petitioners/original plaintiffs are in occupation and possession of the shops in question since many years, and therefore, it can be said that respective petitioners/ original plaintiffs are in the settled possession of the shops in question, and therefore, except following due procedure of law i.e. by filing a suit for recovery of the possession and obtaining the decree from the Competent Civil Court under the Rent Act, the Trustees of the Trust and the concerned defendants cannot take the possession of the suit shops in question. It is submitted that Trustees of the Trust cannot take law in their hands and take forcibly possession of the shops in question occupied by the plaintiffs since many years as tenants.

**[7]** Shri R. C. Jani, learned Advocate appearing on behalf of respective petitioners/original plaintiffs has heavily relied upon the following decisions of the Hon'ble Supreme Court in support of his submission that only after following due procedure of law i.e. filing suit against respective petitioners and obtaining the decree from the Competent Civil Court with respect to possession, defendant Nos. 4 to 11 and/or the Trustees of the Trust cannot disturb the possession of the respective petitioners-original plaintiffs and cannot take possession of the shops occupied by the respective petitioners- original plaintiffs.

(a) In the case of [Krishna Ram Mahale \(Dead\) by his L.Rs. v. Mrs. Shobha Venkat Rao](#), 1989 AIR(SC) 2097 (Para 8).

(b) In the case of [Rame Gowda \(Dead\) by L.Rs. v. M. Varadappa Naidu \(Dead\) by L.Rs.](#), 2004 1 SCC 769 (Para Nos. 9, 10, and 11).

**[8]** It is also further submitted by Shri R. C. Jani, learned Advocate appearing on behalf of the respective-petitioners/original plaintiffs that as such, Charity Commissioner has no jurisdiction to direct the Trustees of the Trust to get back the possession of the shops in question while exercising the powers under Sec. 36 of the Bombay Public Trusts Act, and therefore, the order passed by the Charity Commissioner upon which, the reliance has been placed by the defendant Nos. 4 to 11 is absolutely illegal. It is further submitted that even otherwise, learned Charity Commissioner has directed the Trustees of the Trust to initiate the proceedings in accordance with law within 60 (sixty) days to get back the possession of the shops in question and has never directed to get back the possession forcibly and without following any due process of law.

**[9]** Shri R. C. Jani, learned Advocate appearing on behalf of the petitioners submitted that due process of law is provided under Secs. 50 and 51 of the Bombay Public Trusts Act, and therefore, instead of filing the suit provided under the Bombay Public Trusts Act, more particularly, provided under Secs. 50 and 51 of the Act, the defendants have issued the notice calling upon the petitioners to handover the possession of the shops in question, which cannot be said to be in accordance with law, and therefore, both the Courts below have materially erred in not granting the injunction as prayed for restraining the defendant Nos. 4 to 11 and the Trust from interfering with the possession of the respective petitioners/original plaintiffs and enjoyment of their tenancy rights as they are tenants of the Trust.

**[10]** By making above submissions and relying upon the above decisions, it is requested to allow all these petitions and granting the injunction as prayed for, restraining defendant Nos. 4 to 11 from disturbing the possession of the petitioners as tenants and obstructing the petitioners/original plaintiffs for enjoying their tenancy rights.

**[11]** All these petitions are opposed by Shri Mihir Joshi, learned Senior Advocate appearing with Shri Sunil Joshi, learned Advocate appearing on behalf of original defendant Nos. 4 to 11 i.e. the Trustees of the Trust. It is submitted that respective petitioners have lost before all the Forums i.e. before the Revenue Authorities as well as Charity Commissioner. It is submitted that respective petitioners are claiming their tenancy rights through the respondent Nos. 2 and 3 herein - defendant Nos. 2 and 3 who were not at all the Trustees of the Trust and/or were never authorized to deal with the properties of the Trust. It is submitted that even otherwise, properties of the Trust cannot be leased without the prior permission of the Charity Commissioner as required under Sec. 36 of the Act and not only the shops in question were leased by the defendant Nos. 2 and 3 to the respective petitioners-original plaintiffs unauthorizedly and without prior permission under Sec. 36 of the Bombay Public Trusts Act, but even the subsequent applications by the defendant Nos. 2 and 3 for getting post-facto permission under Sec. 36 of the Bombay Public Trusts Act has been rejected and the objections submitted by the defendant Nos. 4 to 11 have been allowed and the learned Charity Commissioner, who is the only competent authority with respect to Trust property under the Bombay Public Trusts Act, has directed the Trustees of the Trust to get back the possession of the shops in question. It is submitted that the order passed by the Charity Commissioner was challenged before the Gujarat Revenue Tribunal by way of revision application and the said revision application is dismissed and order passed by the learned Charity Commissioner is confirmed and the order passed by the Gujarat Revenue Tribunal has not been carried further by the respective petitioners, meaning thereby, the order passed by the Charity Commissioner has become final.

Therefore, it is submitted that the Trustees and the Trust are as such, complying with the directions issued by the Charity Commissioner and they have issued the notices calling upon the respective petitioners to handover the peaceful and vacant possession of the shops in question, therefore, it is submitted that in the aforesaid facts and circumstances of the case, it cannot be said that defendant Nos. 4 to 11 have not acted in accordance with law.

**[12]** Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the defendant Nos. 4 to 11 i.e. the Trustees of the Trust has further submitted that as such, the respective suits themselves are not maintainable. It is submitted that in the respective complaints/suits, original-plaintiffs have prayed for a declaration that the defendants have no right/authority to get back the possession except obtaining the decree under the Rent Act. It is submitted that therefore, respective petitioners have claimed for declaration with respect to tenancy rights in the Trust property and considering the provisions of the Bombay Public Trusts Act with respect to the Trust property, the Charity Commissioner is the only authority to deal with dispute with respect to the Trust property. It is submitted that even otherwise, considering the Sec. 85 of the Bombay Public Trusts Act, any dispute which is required to be dealt with by the Authority under the Bombay Public Trusts Act, Civil Court has no jurisdiction. It is further submitted that even otherwise, with respect to the Trust property any suits is to be filed, a prior permission of the Charity Commissioner is required and not only that but in all such proceedings, Charity Commissioner is required to be joined as defendants. It is submitted that in the present case before filing the suits in question neither prior permission of the Charity Commissioner has been obtained nor Charity Commissioner is joined as party defendants, and therefore, the suits in question are not maintainable at all. Under the circumstances, both the Courts below have rightly refused injunction as prayed for. It is submitted that reliance has been placed upon Secs. 50 and 51 of the Bombay Public Trusts Act by the learned Advocates appearing on behalf of the respective petitioners in their favour is absolutely misplaced. It is submitted that on the contrary the Secs. 50 and 51 of the Bombay Public Trusts Act would be in favour of the defendant Nos. 4 to 11.

**[13]** Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the defendant Nos. 4 to 11 has submitted that in the facts and circumstances of the case more particularly, in view of the order passed by Charity Commissioner, confirmed by the Gujarat Revenue Tribunal (revision application preferred by the respective petitioners) and considering the fact that rights of the respective parties more particularly, petitioners-original plaintiffs have been adjudicated upon by the Competent Authority under the provisions of Bombay Public Trusts Act, issuing the notices and calling upon the respective petitioners-original plaintiffs, to handover the possession of the shops in

question, can be said to be acting in accordance with law. It is submitted that in view of the aforesaid submission on behalf of the respective petitioners that only filing a suit and obtaining the decree from the competent Civil Court can only be said to be in accordance with law, cannot be accepted. It is submitted that in view of the order passed by the Charity Commissioner adjudicating the rights of the respective petitioners, and thereafter, to contend that the Trustees of the Trust have to file a suit and wait for years and then decree for possession would be giving a premium to illegality. It is submitted that decisions relied upon by the learned Advocates appearing on behalf of the petitioners can be applicable in a case where there is no prior adjudication with respect to the rights and with respect to the person who was sought to be evicted. Therefore, it is submitted that in the facts and circumstances of the case, decisions relied upon by the learned Counsel appearing on behalf of the respective petitioners/original plaintiffs would not be any assistance to them. Shri Joshi, learned Senior Advocate appearing on behalf of the respondent Nos. 4 to 11 has heavily relied upon the following decision of the Hon'ble Supreme Court.

(a) In the case of [Shubh Shanti Services Ltd. v. Manjula S. Agarwalla](#), 2005 AIR(SC) 2506:

(b) Thomas Cook (I) Ltd. v. Hotel Imperial, 2007 AIR(NOC) 169 Making the above submissions and relying upon the above decisions, it is requested to dismiss all these petitions with exemplary costs.

**[14]** Heard the learned Advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that all these petitions are filed by the respective petitioners-original plaintiffs under Art. 227 of the Constitution of India challenging the respective orders passed by both the Courts below refusing to grant interim injunction as prayed for restraining the defendant Nos. 4 to 11-Trustees of Shri Modasa Kadva Patidar Trust from taking possession of the shops in question. There are concurrent findings given by both the Courts below refusing to grant interim injunction as prayed for unless there is jurisdictional error much less an error of law normally the High Court would not interfere with the discretionary order passed by the Courts below, in exercise of the powers under Art. 227 of the Constitution of India.

**[15]** At the outset, it is required to be noted and it is an admitted position that the suit property is the property of Public Trust, Shri Modasa Kadva Patidar Trust at Modasa, District: Sabarkantha which is a Trust registered under the Bombay Public Trusts Act. The aforesaid Public Trust was running the Boarding in the suit property in question and there was an open space on the front side of the Boarding upon which, the shops in question have been constructed and they are in occupation and in possession of the respective petitioners herein. Respective petitioners claim to be in possession of the

disputed shops in question as alleged and claiming through respondent Nos. 2 and 3 herein as Trustees of the Trust. It is the case on behalf of the respective petitioners that respondent Nos. 2 and 3 herein as Trustees of aforesaid Trust have leased the shops in question to the respective petitioners thereby, they have become the tenant of the suit shops in question. That as the property in question belongs to the Trust registered under the Bombay Public Trusts Act, it is subject to restrictions/provisions under the Bombay Public Trusts Act. Section 36 of the Bombay Public Trusts Act creates a clear embargo/bar of transferring in any manner whatsoever the Trust property without prior sanction of the Charity Commissioner. Section 36 of the Bombay Public Trusts Act reads as under :

"36. [(1)] [Notwithstanding anything contained in the instrument of trust-]

(a) no sale, mortgage, exchange or gift or any immovable property, and

(b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building, belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner.

[(2) The decision of the Charity Commissioner under sub-sec. (1) shall be communicated to the trustees and shall be published in such manner as may be prescribed.

(3) Any person aggrieved by such decision may appeal to the Gujarat Revenue Tribunal within thirty days from the date of its publication.

(4) Such decision shall, subject to the provisions of sub-sec. (3) be final.]"

Therefore, any sale, mortgage, exchange or gift of any immovable property and/or lease for a period exceeding 3 years in the case of non- agricultural land or a building belonging to a public trust is void ab initio. As held by this Court in the case of [Huseinmiya Safimiya v. Habibsha Hasamsha Fakir](#), 1985 2 GLR 928 any alienation of the immovable property of the public trust without express permission of the Charity Commissioner as required under Sec. 36 of the Act shall be invalid and is void and not binding to the Trust. Similar view has been expressed by this Court in the case of *Pratik Medicines v. Board of Management*, 2005 2 GLH 15 and it is held that lease of the Trust property without prior permission of the Charity Commissioner is void ab initio. In the present case, admittedly, before alleged lease in favour of the respective petitioners admittedly prior permission of the Charity Commissioner is not obtained. On the contrary, permission under Sec. 36 of the Act has specifically refused by the Charity Commissioner. Under the circumstances,

alleged lease in favour of the respective petitioners is nullity and void ab initio. It is required to be noted that in the present case, not only there is no prior permission of the Charity Commissioner before the alleged lease in favour of the respective petitioners, there was already an application submitted by the respondent Nos. 2 and 3 alleged to be the Trustees at the relevant time when the shops in question were leased and submitted the application before the Charity Commissioner under Sec. 36 of the Act for post-facto permission and to regularize the lease in favour of the respective petitioners and the Charity Commissioner has dismissed the said application and refused to regularize the lease in favour of the respective petitioners and refused to grant post-facto permission under Sec. 36 of the Act. It is required to be noted that before the Charity Commissioner, the respective petitioners were also heard. It is also required to be noted that there were objections filed by the respondent Nos. 4 to 11 who were the Trustees of the Trust and direction was sought and the learned Charity Commissioner has while rejecting the application submitted by the respondent Nos. 2 and 3 herein claiming to be the Trustees of the Trust at the relevant time when there was a lease in favour of the respondent-petitioners, has specifically observed that respondent Nos. 2 and 3 through whom the petitioners are claiming the lease in their favour and inducted the petitioners, were not the Trustees of the Trust. There is a specific finding given by the Charity Commissioner that respondent Nos. 2 and 3 who have alleged to have leased the shops in question in favour of the petitioners had no authority to lease the suit property belonging to the public trust. That the learned Charity Commissioner after hearing the parties not only dismissed the application submitted for post facto permission under Sec. 36 of the Act, but has also allowed the objections submitted by the respondent Nos. 4 to 11 herein Trustees of the Trust and has directed the Trustees of the Trust to get back the possession after following due process and report to the Charity Commissioner within 60 (sixty) days. It is required to be noted that the order passed by the Charity Commissioner was challenged by the respective petitioners before the Gujarat Revenue Tribunal by way of revision application and the said revision application is dismissed and the order passed by the Charity Commissioner has become final.

Thus, the alleged lease in favour of the respective petitioners is not only hit by Sec. 36 of the Bombay Public Trusts Act and is a nullity and void ab initio but as observed by the Charity Commissioner, the same was by the persons i.e. respondent Nos. 2 and 3 who were not the Trustees on the P.T.R. of the Trust and that they had no authority to lease shops in question/premises in question on behalf of the Trust. Therefore, the rights of the respective parties have been adjudicated upon by the Charity Commissioner who is the only Competent Authority under the provisions of the Bombay Public Trusts Act. Under the scheme

and provisions of the Bombay Public Trusts Act, Charity Commissioner is the only Competent Authority to decide the dispute with respect to the property of the public trust.

**[16]** It is also required to be noted at this stage that even the shops in question constructed and/or put-up on the premises in question belonging to the public trust, are held to be unauthorized and illegal by the Collector, Sabarkantha. The order has been passed by the Collector, Sabarkantha holding the construction of shops in question as unauthorized and illegal, and the Collector has directed to demolish the construction of the shops in question occupied by the respondent-petitioners, and as such the order passed by the Collector, Sabarkantha was challenged before the Revisional Authority and the said Revision Application came to be dismissed confirming the order passed by the Collector, Sabarkantha and against which the Special Civil Application was preferred and the said Special Civil Application came to be withdrawn. Thus, even the order passed by the Collector, Sabarkantha holding the construction of the shops in question unauthorized and illegal has become final.

**[17]** In backdrop of above facts and circumstances of the case, the controversy raised in the present Special Civil Applications is required to be considered. Now, when considering the order passed by the Charity Commissioner in an application under Sec. 36 of the Bombay Public Trusts Act and considering the directions issued by the Charity Commissioner to take back the possession of the shops in question from the petitioners, when respondent Nos. 4 to 11 have issued notices upon the respective petitioners calling upon them to handover the possession of the shops in question and at that stage, the respondent-petitioners have preferred the aforesaid suits and prayed for interim injunction praying interim injunction restraining the defendant Nos. 4 to 11 and the Trust from disturbing the possession of respective petitioners except obtaining the decree for possession from the Competent Rent Court. It is the contention on behalf of the respective petitioners that assuming that the occupation and possession of the respective petitioners in the suit property belonging to the public trust is illegal still they can be evicted and/or possession can be taken from them only after following due process of law i.e. filing of a suit and obtaining the decree from the Civil Court. It is the case on behalf of the respective petitioners that in the present case as the petitioners are claiming that they are the tenants of the suit shops in question on the basis of the lease by respondent Nos. 2 and 3, a decree is to be obtained from the Rent Court and unless the decree for possession is obtained from the Rent Court, the Trustees and/or Trust cannot take the possession of the suit shops from the petitioners. In support of above submissions, learned Counsel appearing on behalf of the petitioners placed the reliance on the aforesaid decisions.

- (i) In the case of [Krishna Ram Mahale \(Dead\) by His L.Rs. v. Mrs. Shobha Venkat Rao](#), 1989 AIR(SC) 2097,
- (ii) In the case of [Rame Gowda \(Dead\) by L.Rs. v. M. Varadappa Naidu \(Dead\) by L.Rs.](#), 2004 1 SCC 769 (Para Nos. 9, 10 and 11).

**[18]** Now, to appreciate the aforesaid submissions, it is required to be noted that admittedly, the property in question belong to the public trust. For any dispute with respect to the property belonging to the public trust only Charity Commissioner has the jurisdiction under the Bombay Public Trusts Act. Not only that but even with respect to the lease of the property belonging to the public trust, prior sanction of the Charity Commissioner is must as required under Sec. 36 of the Act. Except the Charity Commissioner, no other Authority or Cdurt has any jurisdiction with respect to the Trust property. As per Sec. 80 of the Bombay Public Trusts Act, no Civil Court has jurisdiction to decide and deal with any question which is by or under Public Trusts Act to be decided or dealt with by any officer or authority under the Bombay Public Trusts Act or in respect of which decision or order such officer or authority has been made final and conclusive.

**[19]** As stated hereinabove, there is already a decision by the Charity Commissioner who is the only Competent Authority under the Bombay Public Trusts, dismissing the application submitted under Sec. 36 of the Act for post facto permission and/or to regularize the lease in favour of the petitioners and even the lease in favour of the respective petitioners is held to be illegal and that too which has alleged to be by the respondent Nos. 2 and 3 who had no authority to lease the suit property on behalf of the public trust. Therefore, prima facie, it appears that Civil Suits filed by the respective petitioners for declaration of permanent injunction claiming tenancy rights are not maintainable. Apart from that, mere is already a decision by the Charity Commissioner, who is the only Competent Authority, with respect to the rights of the petitioners with respect to the shops in question and that order has become final. Therefore, rights of the respective petitioners in the suit properties has been adjudicated upon by the Competent Authority under the Bombay Public Trusts Act. Under the circumstances, the decisions relied upon by the learned Counsel appearing on behalf of the petitioners to the effect that when a person is in settled position may be a trespassers, he cannot be evicted except following due process of law i.e. filing of the suit for possession and obtaining the decree from the Civil Court would not be of any assistance to the petitioner in the facts and circumstances of the case. The aforesaid decisions relied upon by the petitioners can be made applicable where the rights of the parties are not adjudicated upon by any Court and/or Authority. If the contention on behalf of the learned Counsel appearing on behalf of the respective petitioners to the effect that inspite of the fact that the lease in favour of the respective

petitioners is held to be not only illegal, but it is null and void and inspite of a decision by the Competent Authority/Charity Commissioner who is the Competent Authority under the Bombay Public Trusts Act holding the lease in favour of not only illegal and null and void are that too by the respondent Nos. 2 and 3 who had no authority to lease the suit property, still the Trustees of the Trust have to file the Rent Suit for taking possession and getting back the possession and obtain decree from the Rent Court would be permitting the petitioners to occupy and continue with the possession of the shops in question which is held to be illegal and unauthorized and would be giving premium to the wrongdoers.

A judicial notice can be taken that to file a suit for getting the possession and then obtain the decree and again revision/appeal would take years, and therefore, it appears that intention of the respective petitioners by making above submission is only to delay the proceedings and continue with the illegal possession for years together. Under me circumstances and in the facts and circumstances of the case, where the rights of the parties are adjudicated upon by the Charity Commissioner who is the only Competent Authority under the Bombay Public Trusts Act to deal with the properties of the public trust and alleged lease in favour of the respondent-petitioners is held to be illegal and unauthorized and when the said order has become final and when considering the directions issued by the Charity Commissioner when the respondent Nos. 4 to 11 herein Trustees of the Trust have issued notices upon the respective petitioners calling upon the petitioners to handover the possession, it cannot be said that same is in any way illegal and/or arbitrary. In the facts and circumstances of the case, the contention on behalf of the petitioners that the Trustees of the Trust can take the possession from the respective petitioners only after obtaining a decree of possession from Rent Court cannot be accepted, more particularly, when the lease in favour of the respective petitioners is found to be null and void ab initio. It is also required to be noted and as stated above, there is already an order passed by the Collector, Sabarkantha to demolish the shops in question by holding that construction of the shops in question is absolutely illegal and unauthorized and the said order of Collector has also become final. Therefore, even the construction of shops in question occupied by the respective petitioners is held to be illegal and unauthorized.

**[20]** In view of the above and considering the aforesaid facts and circumstances of the case, when both the Courts below have refused to grant interim injunction as prayed for, it cannot be said that the orders passed by both the Courts below is illegal and/or without jurisdiction and/or the Courts below have not exercised the jurisdiction vested upon it, which calls for interference of this Court in exercise of powers under Art. 227 of the Constitution of India.

In the facts and circumstances of the case, both the Courts below have rightly refused to grant interim injunction as prayed for.

**[21]** In view of the above and for the reasons stated hereinabove, all these petitions fail and they deserve to be dismissed and are accordingly dismissed. Rule discharged in each of the petitions. Ad-interim relief, if any, stands vacated forthwith. In the facts and circumstances of the case, there shall be no order as to cost.

