SUPREME COURT OF INDIA

Vinodkumar M. Malavia

Vs.

Maganlal Mangaldas Gameti

C.A.Nos.8800-8801 of 2013

(Surinder Singh Nijjar and Pinaki Chandra Ghose JJ.)

30.09.2013

JUDGMENT

PINAKI CHANDRA GHOSE, J.

1. Leave granted.

2. These appeals are directed against the common judgment and order dated April 23, 2012 (in First Appeal Nos. 1535 and 1536 of 2009) passed by the High Court of Gujarat, affirming the order dated February 3, 2009 passed by the City Civil Court (in Civil Misc. Application Nos. 470 of 2008 and 630 of 2008). The City Civil Court set aside the order dated May 23, 2008, passed by the Charity Commissioner. The said adjudication was made by the Charity Commissioner pursuant to the order passed by this Court in Vinod Kumar Mathurseva Malvia & Anr. v. Maganlal Mangaldas Gameti and Ors. [2006 (9) SCC 282] (being Civil Appeal No. 1260 of 2006, arising out of SLP (Civil) No. 24198 of 2005, decided on February 24, 2006) in an earlier ancillary dispute wherein this Court directed the Charity Commissioner to adjudicate on all questions pertaining to the merger of trust and other pending disputes as expeditiously as possible. Thus, the Charity Commissioner adjudicated on the objections against Change Report Nos. 44 of 1981 and 665 of 1981.

3. The facts of the case briefly are as follows:

> 1. The facts of the present case are not much in dispute and the background of the same lies with the facts in the matter adjudicated by this Court in Church of North India v. Lavajibhai Ratanjibhai & Ors. [2005 (10) SCC

760] (being Civil Appeal No. 9419 of 2003 as decided on May 3, 2005), therefore, the detailed background of the parties and the organizations involved has not been mentioned and only the facts pertinent to the dispute in question are stated.

2. The abovementioned Change Reports were filed by First District Church of the Brethren (hereinafter referred to as 'the FDCB') a registered religious society under the Societies Registration Act, 1860 (hereinafter referred to as 'the SR Act') bearing Registration No. 1202/44 and later registered as public trust in Gujarat bearing No.E- 643/Bharuch, after the enactment of the Bombay Public Trusts Act, 1950 (hereinafter referred to as 'the BPTA') property of which is vested with its 'Property Committee' and the Church of North India (hereinafter referred to as 'the CNI'), Gujarat Diocese. The CNI is a public trust registered by an application accepted on May 12, 1970 with effect of registration being given from 1971 and the trust being formed on November 29, 1970 with Registration No. D-17/Ahmedabad.

3. These Change Reports were filed to give effect to the unification of six churches which included the FDCB, an offshoot of the 'Brethren Church' of USA (other Churches being The Council of the Baptist Churches in North India, The Church of India, Pakistan, Burma and Ceylon, The Methodist Church (British and Australian Conference), The Methodist Church in Southern Asia and The United Church of Northern India) into a single entity, 'The Church of North India' (with the Gujarat Chapter being managed by the Church of North India, Gujarat, Diocese).

4. This unification is the result of a process which commenced from 1929. The negotiation meetings commenced from 1955 onwards which had representatives from the uniting churches who discussed every aspect of the emerging entity. A result of which was the Plan of Church Union in 1965 called the 4th Revised Edition in the form of a printed booklet published by the Negotiating Committee and widely circulated and deliberated by the uniting Churches which adopted the same. The plan traced the historic background leading to the creation of the CNI and dealt with all aspects of the same. Part-II of the same pertained to procedural details of the unification. The plan is a result of the negotiations through various meetings convened in the years 1955, 1956, 1957, 1961, 1964 and 1970. The Managing Committee of the FDCB being the 'District Committee' initially participated in these meetings as an observer, however, from 1956, it joined the negotiation process. It is alleged that Resolution No. 70/08 was passed

on February, 17, 1970 pursuant to which the CNI was formed by merging the six churches. FDCB being one of the six churches, discussed the unification internally within its 21 Societies and put the same to vote at different junctions and in the final decision, the resolution was approved by 3/5th majority of the representatives of the Governing Body. Allegedly, on November 29, 1970, the FDCB merged with the other six churches to form CNI and accepted the same as its legal continuation and successor and vested with the CNI its rights, titles, claims and FDCB's interests together with its privileges and obligations.

5. In 1976, the Church of North India Trust Association (hereinafter referred to as 'the CNITA') was formed under the Indian Companies Act, 1956 and appointed as the trustee of CNI. It has been alleged that the annual meetings of the FDCB were discontinued post 1971. That certain members which had earlier given consent to Resolution 70/08 began to raise objections that FDCB continued to exist. Subsequently, the original plaintiff (Shri A.O. Patel) filed Civil Suit No. 72 of 1979 in the Court of the Civil Judge, Senior Division, Bharuch for a declaration that FDCB has come to an end and that CNI is the legal successor and continuation of the same. During the pendency of the suit, CNI got itself registered retrospectively and Change Report Nos. 44/81 and 665/81 were filed before the Charity Commissioner to give effect to the changes resulting the unification. The aforementioned suit, after an appeal before the District Judge, Bharuch went before the Gujarat High Court as Second Appeal No. 303 of 1986, the same was dismissed and the matter came up before this Court as Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra) (In Civil Appeal No. 9419 of 2003, decided on May 3, 2005). Therein, the question which arose before this Court was: whether Section 80 of the BPTA imposes a bar on the jurisdiction of the Civil Court.

6. The present dispute, however, arises from objections arising out of the adjudication by the Charity Commissioner dated May 23, 2008 regarding Change Report Nos. 44/81 and 665/81. The same proceeding commenced post the direction of this Court in Vinod Kumar Mathurseva Malvia & Anr. v. Maganlal Mangaldas Gameti & Ors. (supra) (Being Civil Appeal No. 1260 of 2006, decided on February 24, 2006). The same arose out of orders dated October 6, 2005 and October 10, 2005, passed in First Appeal No. 988 of 2005 by the High Court of Gujarat with regard to a trust application appointing a new trustee. The matter before this Court was regarding the interpretation and application of Clause 9 of the scheme of Church of

Brethren General Board. This Court referred to the earlier Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra) decision of this Court applicable to the same set of facts and thereby directed the concerned Charity Commissioner to adjudicate on all pending disputes.

7. The Charity Commissioner adjudicated on the disputes arising out of the Change Report Nos. 44/81 and 665/81. The former was filed by Shri A.O. Patel being the Reporting Trustee of the Brethren Trust concerned with the dissolution of the constitution of the Brethren Trust with its "Memorandum of Association" becoming "obsolete" and ineffective (It should be noted that Shri A.O. Patel had died during the pendency of the proceedings and appellant Nos. 1 and 2 were joined in his place). The latter report was filed by CNI, Gujarat Diocese Trust which requests for the change, that as the CNI Trust has become the legal continuation and successor of the Brethren Trust, its concerned movable and immovable property must be added to CNI's properties. The Change Reports were objected by Shri Nityanand Thakore and other objectors filed similar objection applications. These persons along with the respondents in this dispute being Shri Shantilal Thakore and Shri Maganlal M. Gameti had earlier given consent to the unification proceeding. The Charity Commissioner thus adjudicated on the following questions:-

i) Whether the change is legal?

ii) Whether the said Change Reports or any of the Change Reports are liable to be allowed?

The Charity Commissioner answered both in affirmative and dismissed the objections raised against the Change Reports, allowing the properties vested in FDCB to be vested in CNI.

8. Against the abovementioned order of the Charity Commissioner, the objectors to the Change Reports preferred Civil Miscellaneous Application Nos. 470 of 2008 and 630 of 2008 before the City Civil Court, Ahmedabad under Section 72 of the BPTA. The applications were filed, alleging that there was no lawful merger of the Trust and the property vested with the Property Committee continued to exist with it. The questions which arose before the learned City Civil Judge are as under:-

i) Whether the Society is dissolved and secondly, whether the Trust, i.e., FDCB is also dissolved?

ii) Whether CNI is successor of the Trust, i.e., FDCB?

iii) Whether by mere merger of FDCB into various other Churches, the properties are by rules and regulations of the Society ipso facto vested in CNI, without having to perform any other legal obligation or formality?

9. The learned Civil Court Judge, after analyzing the various aspects of the BPTA and the SR Act, was of the opinion that the FDCB had not been dissolved as there was no proper proof of the same. Furthermore, as a trust and society are creations of statutes, they must be dissolved accordingly and the question of merger is a factual one, wherein the merging trust continues to exist unless specifically dissolved under the statute. Furthermore, without following Section 50A of the BPTA which deals with the dissolution of trust, the FDCB property cannot be vested with CNI. Thus, the learned Civil Court Judge quashed and set aside the order of the Charity Commissioner.

10. The appellants (wherein appellant No.1 was one of the respondents in the above suit) preferred First Appeal Nos. 1535 of 2009 and 1536 of 2009 before the High Court of Gujarat. The basic issue before the learned Single Judge was to determine whether the CNI is the successor and legal continuation of FDCB or not. The learned Single Judge while adjudicating the same, referred to the earlier decisions of this Court in the same factual matrix and based on the earlier findings, dismissed the appeals and confirmed the order of the Civil Court.

11. It is from this order of the High Court the matter rests before us.

4. Mr. Mihir Joshi, learned senior counsel appearing on behalf of appellant No.1 (in C.A. No. ___/2013 @ SLP (C) No.16575/2012), argued that the unification of the six churches is pursuant to the choice exercised by the uniting churches through various internal resolutions and the same is a religious matter involving faith, and the courts below cannot adjudicate on the same since such a choice is protected by Articles 25 and 26 of the Constitution. He further contended that the unification has been a long drawn process which culminated on November 29, 1970 when CNI was formed and since 1979, annual meetings of the same are being conducted in which the respondents who had given consent to the unification also

participated. Mr Joshi further contended that the stand taken by the respondents does not hold good as they are estopped from raising objections owing to their earlier consent to the unification in the internal resolutions passed by FDCB. Furthermore, as argued by Mr. Joshi, the objections have no substance since the respondents are not prevented from practising their faith and there is no change in the practices followed by CNI which is a result of amalgamation of the uniting churches. He further contended that as per the scope of inquiry under Section 22, the Charity Commissioner's decision must not be set aside as the Act is a complete Code; that Section 50A of the BPTA is only administrative in nature but in the present case the matter is of choice exercised by a community as a whole.

5. Mr. K.V. Vishwanathan, learned senior counsel appearing on behalf of appellant No. 2 (in C.A. No. ___/2013 @ SLP (C) No. 16576/2012), in addition to Mr. Joshi's arguments, contented that the right to unify is an inherent right exercised by the community promised under Articles 25 and 26. Furthermore, the respondents have not challenged the unification. Therefore, the view of the High Court is incorrect and the Charity Commissioner rightly accepted the Change Reports effecting the unification.

6. It is the case of the respondents that the unification did not dissolve FDCB as the procedure laid down in the Societies Registration Act and the BPTA was not adhered to. Furthermore, under Articles 25 and 26, they are entitled to object to the unification as their faith is being impinged upon and, therefore, they cannot be bound by estoppel. Mr. Bhatt, learned senior counsel appearing on behalf of the respondents, has contended that there is no question of merger and subsequent transfer of trust property as the resolutions, which have been relied upon by the appellants, do not have any legal sanctity and they cannot be placed above the law of the land.

7. Mr. Joshi further supplemented his submissions and has submitted that the High Court's determination that the said resolutions have interfered with Articles 25 and 26 as they impose religious faith and tenets on FDCB is incorrect, firstly, because such consideration is beyond the scope of inquiry under Section 22 and beyond the scope of the BPTA as it entails adjudication on religious affairs; secondly, the same is not an ordinary question fit to be decided by the Charity Commissioner and one which attracts the jurisdiction of the Civil Court which is not ousted in this aspect by the BPTA, in fact the question is beyond the scope of the BPTA. Further, pointed out that the inquiry under Section 22 is only regarding the legality of the charge and does not extend to adjudicating rights of parties under general law, therefore the Charity Commissioner has correctly held that unifications is a

religious process; furthermore unification happened in 1970 and has not been challenged by the objectors who were a part of the process and the High Court has, thus, overlooked that the right to merge is a religious matter and the statute must be interpreted accordingly. Further, submitted that the Resolutions are not contrary to the BPTA as no provision provides for prior permission of the Charity Commissioner and even if there existed one same would have been unconstitutional, also Section 50A is only an enabling Section and the power vested under the same is for better administration of trusts, which is not the reason presently; secondly, the only procedure required to be followed was that under Section 22, being recording of unification due to resolutions; thirdly, as there is no dissolution, the obligation attached to the property is same and after merger only the administrative machinery has been changed; lastly, there is no transfer of property and obligations remain the same, albeit in a different name. It was further submitted that the contention that CNI came into existence in 1980 is misconceived as Registration is only acknowledgment of trust and is not related to incorporation of any company. Further, submitted that the finding that procedure under the SR Act must be followed is untenable as assets had not been vested in the society and the same need not be examined; moreover the resolutions were passed by members and the Charity Commissioner had no jurisdiction to examine the SR Act and such objections should not have been raised before him; in addition but without prejudice to the same also submitted that the 3/5th majority requirement under the SR Act was complied with and no dispute had been raised under Section 13 of the SR Act. Further, contended that the High Court's finding that unification amounts to imposition of tenets is not correct as after the merger the same religious practice existed, a fact accepted by the Civil Court as well; moreover as CNI was an amalgamated body, there is no question of imposition or taking over. Also contended that the rejection of the Change Reports by the High Court is untenable as all documents exhibited before the Charity Commissioner have been proved in the Civil Court and also strict rules of evidence do apply to such proceedings. It is submitted that the finding of the High Court that objectors are not barred by estoppels is incorrect as the objections lack bonafide. Lastly, he submitted that the contention that the issue had been decided in Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra) does not hold good in the light of the subsequent decision inVinod Kumar Mathurseva Malvia & Anr. v. Maganlal Mangaldas Gameti & Ors. (supra).

8. Appellant No. 2 in his written submissions settled by Mr. Vishwanathan, has further supplemented and submitted that the issue of merger of churches is not amenable to jurisdiction of courts and is independent of the BPTA as it is a religious or ecclesiastical matter not subject to judicial scrutiny; that they have

placed sufficient evidence before the Charity Commissioner to prove the factum of merger which has been upheld by the City Civil Court as well; that sub-section (2) of Section 50A of the BPTA comes into play when the Charity Commissioner is of the opinion that trusts must be merged due to mismanagement, however in the present matter the merger is due to religious and ecclesiastical reasons, and, therefore sub-section (2) of Section 50A is not applicable; that Section 13 of the SR Act is not applicable as it is not a case of dissolution of churches but a merger, furthermore, the BPTA is a complete code and merger of trust registered under the BPTA cannot be contingent on the requirements under Section 12 of the SR Act, furthermore, the applicability of both the statutes creates an anomalous situation; one of the objectors himself was the trustee when the Change Reports were filed and only a miniscule faction have objected to the Change Reports; that the resolutions for merger of FDCB with CNI passed by the internal bodies of FDCB have not been assailed or challenged by anybody (including the respondents) before the Civil Court, therefore these resolutions continue to bind all the members of the FDC including the respondents; and lastly, that the Charity Commissioner under Section 22 of the BPTA conducts an enquiry into the factum and legality of change and in this light, the Charity Commissioner has, therefore, passed a reasoned order.

9. Per contra, the respondents have submitted that there are many unexplained lapses in the entire formation of CNI, first being that the Change Reports have been filed eleven years after the occurrence of the alleged changes in violation of Section 22 of the BPTA which requires that a change is to be mandatorily reported after 90 days of its occurrence; secondly, CNITA being the trustee of CNI, was formed six years after the alleged formation of CNI which was registered in 1980, thereby creating a situation where the CNI trust did not have a trustee for six years and did not have any legal status till its registration in 1980; thirdly, CNI only submitted its audited books of accounts prior to 1984; lastly, CNI was registered after ten years of unexplained delay and the same was ex-parte, furthermore, as per the appellants, CNI was the successor of FDCB; however, at the time of subsequent registration, the properties of FDCB were not shown in the registration form as properties of CNI. In this background, the present Change Reports are incorrect and in violation of Section 22 as they seek to effect a change which took place prior to the registration of the trust, furthermore in the light of the above, the claim of the appellants that CNI is the legal successor of FDCB since its formation on November 29, 1970 till date does not hold good. The respondents further submitted that, admittedly, the FDCB was first registered under the SR Act and then under the BPTA when it came into force and is, therefore, governed by both which are regulatory in nature; that in addition to the above, the present Change

Reports seeking alienation of the properties of a registered trust are not in compliance with Section 36 and/or Sections 50A, 51, 50 of the BPTA and that the trust which exists in perpetuity does not stand dissolved by the declaration of a Charity Commissioner who has declared the same without resorting to Section 13 of the SR Act; that even the other denominations which merged with CNI continue to exist and own the property; that the resolutions placed by the appellants only speak about merger and there is nothing on record which indicates the intent of dissolution of trust or society; that a society stands dissolved only after the procedure under Section 13 of the SR Act is followed and the dissolution of a society does not ipso facto mean that properties of the trust are also adjusted; that many persons objected to the unification and M.M. Gameti is only the principal objector who never held any post or signed any documents and even such documents are without any legal consequence; and lastly, that the unification is the secular part ancillary to religious practice and is, therefore, subject to judicial scrutiny.

10. Having heard the rival contentions and after considering the written submissions, we are of the opinion that the primary issue which needs to be answered is : whether the alleged unification of the First District Church of Brethren with the Church of North India is correct or not, and the same answers all the ancillary issues raised before us.

11. Regarding the issue of unification, we are of the opinion that the questions regarding the validity of the unification process have been answered in the observations made by this Court in Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra), wherein the matter was regarding the bar of jurisdiction of the Civil Court under Section 80 of the BPT Act. This Court in the aforementioned matter delineated the jurisdiction of the authorities and the Civil Court under the BPT Act and under what circumstances which body has jurisdiction. While reaching to its conclusion, this Court at great length discussed the provisions of the SR Act and the BPTA and the relationship between the two and determined that:

> "61. There is nothing on record to show that the churches concerned were being managed by the societies registered under the Societies Registration Act. In any event, it stands accepted that the dispute as regards dissolution of societies and adjustment of their affairs should have been referred to the Principal Court of original civil jurisdiction.

62. The suit in question also does not conform to the provisions of Section 13 of the Societies Registration Act.

63. Section 20 of the Act provides that the societies enumerated therein can only be registered under the said Act.

64. Unless a suit is filed in terms of Section 13 of the Act, the society is not dissolved. Even assuming that the society stands dissolved in terms of its memorandum of association and articles of association, the same would not ipso facto mean that the properties could be adjusted amongst the members of the society in terms of the provisions of the said Act. Concededly, the properties of the trust being properties of the religious trust had vested in such trust. Such a provision, we have noticed hereinbefore, also exists in the BPT Act. Thus, only because the society has been dissolved, ipso facto the properties belonging to the trust cannot be said to have been adjusted. The appellants, thus, we have noticed hereinbefore, have averred in the plaint that the suit relates to the property of the trust and their administration. If the properties of the churches did not belong to the society, the appellant herein cannot claim the same as their successor. …"

(emphasis supplied)

12. It has been alleged by the appellants that under Articles 25 and 26 of the Constitution, they are entitled to manage their affairs and the question of unification of churches is a religious decision over which the courts have no jurisdiction. We are of the opinion that the unification has no legal foundation whatsoever. The FDCB is a religious society registered under the Societies Registration Act and its property vests with a Trust regulated by the BPTA. As per the BPTA, a public trust being religious in nature, may also be a society under the Societies Registration Act. It is a well accepted principle that a body created by a statute must conform to the provisions of the regulating statute. In the present case, the procedure for dissolution of FDCB has not conformed to the requirements set out in Section 13 of the SR Act and the procedure as laid down in the BPT Act as noted in Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra). Furthermore, the case of the appellants is based on the resolutions and deliberations which it has put on record in support of its claim of dissolution and subsequent unification. However, as per the finding of the lower courts, no such resolution or minutes of such deliberations comply with the procedure as laid down in the statutes. All the material on record as per the lower court only talks about

amalgamation and there is no reference to dissolution of FDCB as required under the Societies Registration Act. Therefore, the High Court has rightly opined that:

> "….. However, the fact remains that there is no basis or foundation or the legal or other frame work, which could be said to be binding and which could be relied upon by the appellant."
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> Resolution 70/08 on which the case of the appellants is built whether complying with or not with the requirements under the SR Act, does not dissolve the FDCB Trust. Therefore, it would be improper if the religious society being FDCB stands dissolved on the basis of the material produced before the lower court. Therefore, in light of the aforementioned judgment of this Court, the High Court and the lower court are correct in holding the same.

13. The property of a Society under Section 5 of the SR Act, if not vested in trustees, then only shall vest for the time being with the governing body of such society. The properties of FDCB vested with public trust, being No.E-643/ Bharuch. It was also recognized by this Court in Church of North India v. Lavajibhai Ratanjibhai & Ors. (supra) wherein it was observed thus:

> "60. We are not oblivious of the fact that the resolution adopted in the meeting held on 17-2-1970 allegedly fulfilled all the requirements for such resolution as provided in the Societies Registration Act but it is now beyond any controversy that the society having not owned any property, their transfer in favour of a new society was impermissible in law. In terms of Section 5 of the Societies Registration Act, all properties would vest in the trustees and only in case in the absence of vesting of such properties in the trustees would the same be deemed to have been vested for the time being in the governing body of such property. In this case, it is clear that the properties have vested in the trustees and not in the governing body of the society."
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> The resolutions produced and the deliberations made in the internal meetings of FDCB only talk about amalgamation of FDCB with the other churches and the intent to dissolve the society and the registered trust is not conveyed and cannot be read into the same. On the basis of these resolutions and deliberations, the claim of the appellants that CNI is the successor of the property of the FDCB, which vests with the registered trust, does not hold good.

14. As observed by this Court in the aforementioned judgment, while analyzing various provisions of the BPTA, the alienation of movable property of the trust without previous sanction of the Charity Commissioner is barred under Section 36. This Court in its judgments in Church of North India v. Lavajibhai Ratanjibhai and Ors. (supra) and Vinod Kumar Mathurseva Malvia and Anr. v. Maganlal Mangaldas Gameti and Ors. (supra) has clearly stated that the BPTA is a complete code. Furthermore, in Church of North India (supra), this Court has observed thus:

> "69. We have noticed hereinbefore that the BPT Act provides for finality and conclusiveness of the order passed by the Charity Commissioner in Sections 21(2), 22(3), 26, 36, 41(2), 51(4) and 79(2)."
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> The statute provides for a proper procedure for the claimants to adopt for the transfer of the property and the same has not been observed. The case of the appellants is that the dissolution of the society automatically dissolves the trust and vests the property of trust with CNI, designated as the successor of the same which is based on the resolutions etc. placed on record. However, the procedure for the amalgamation of a trust scheme stemming out from Section 50A BPTA, which is a complete code, has been disregarded. Therefore, the High Court while referring to the judgment of the Civil Court has correctly observed that:
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> "…it has been clearly observed with regard to merger that such society being a Trust registered under the Bombay Public Trust Act is required to follow the procedure for amalgamation or merger as contemplated under the Section 50A(2) of the Bombay Public Trust Act. Further, since the Society and the Trust being the creation of the Statute, they have to comply with the modes provided in the Statute for amalgamation and necessary procedure including the approval of the Charity Commissioner has to be there before such merger takes place. A useful reference can be made to Section 50A(2) of the Bombay Public Trust Act. It is required to be mentioned that mere expression or desire to merger by passing Resolution by the Brethren Church would result into merger unless it is approved with the procedure followed under the Bombay Public Trust Act. Further, the properties, which are vested in the committee of such Church, which is registered as FDCB, would be managing the affairs of the Trust and the corpus of the Trust cannot be transferred along with the property without following procedure or approval of the Charity Commissioner under the Bombay Public Trust Act."

(emphasis supplied)

Furthermore, as the statute has only provided for Section 50A, persons governed by the same must act within the four corners of the legislation and should not question the legislative wisdom on the grounds that as certain aspects have not been provided in a statute so they have no bearing on them.

15. In addition to the above, there are evident lapses in the formation of CNI which have been observed by the High Court in paragraph 17 of its judgment and we also concur with the view of the High Court wherein: Firstly, it is alleged that CNI was formed on November 26, 1970 post Resolution 70/08 dated February 17, 1970, however the same was sought to be registered in 1980 and given registration with effect from 1971. The same is contrary to the requirements as laid down in Section 18 of the BPTA which requires registration of a public trust within three months of a creation as per clause (b) of sub-section (4). The Act is also silent about the registration with retrospective effect. But the dispute is not regarding the interpretation of the procedure of registration under the BPTA, therefore, we refrain from going further into the details of the same. The second lapse which exists is that in 1976, the Church of North India Trust Association (CNITA) was formed under the Indian Companies Act, 1956 and appointed as the trustee of CNI; a trust allegedly existing since 1971 which succeeded FDCB in 1970 which was allegedly dissolved and its annual meetings discontinued since 1971. A suit for declaration of CNI as the successor of FDCB was filed in 1979 (held not to be maintainable in Church of North India (supra)). During the pendency of the 1979 suit, Change Report Nos. 44 of 1981 and 665 of 1981 were filed in 1980. This situation created a scenario where FDCB simply vanished after the 1970 resolutions and who managed its properties till CNITA is an unresolved question, identified by this Court in Church of North India (supra) which stated that "….Furthermore, there is nothing on record to show the mode and manner of the management and control of the trust property." Subsequently this Court in the abovementioned case discussed the procedure under the BPTA which is reproduced as under:

"70…..The BPT Act provides for express exclusion of the jurisdiction of the civil court. In various provisions contained in Chapter IV, a power of inquiry and consequently a power of adjudication as regards the list of movable and immovable trust property, the description and particulars thereof for the purpose of its identification have been conferred. In fact, the trustee of a public trust is enjoined with a statutory duty to make an application for registration wherein all necessary descriptions of movable and immovable

property belonging to the trust including their description and particulars for the purpose of identification are required to be furnished. Section 19 provides for an inquiry for registration with a view to ascertaining inter alia the mode of succession to the office of the trustee as also whether any property is the property of such trust. It is only when the statutory authority satisfies itself as regard the genuineness of the trust and the properties held by it, is an entry made in the registers and books, etc. maintained in terms of Section 17 of the Act in consonance with the provisions of Section 21 thereof. Such an entry, it will bear repetition to state, is final and conclusive. Changes can be brought about only in terms of Section 22 thereof."

The above facts clearly show non-compliance with the procedure under BPTA. The argument that as per Article 254 of the Constitution, the Societies Registration Act overrides the BPTA or that the Societies Registration Act and BPTA are in conflict, does not stand either, since both the statutes are not in conflict with each other. On the contrary, they are in consonance with each other regarding the administration and regulation of public and religious trusts.

16. Therefore, we are of the opinion that the claim of the appellants that following unification of FDCB with CNI after the purported resolution resulted in the dissolution of FDCB making CNI its legal successor and controller of its properties, does not hold good and cannot be accepted. The High Court has rightly observed that:

"….. The trust which has been created as public trust for a specific object and the charitable or the religious nature or for the bonafide of the Society or any such institution managed by such trusts for charitable and religious purpose shall continue to exist in perpetuity and it would not cease to exist by any such process of thinking or deliberation or the Resolution, which does not have any force of law."

17. Since the FDCB trust never stood dissolved, the properties of the same will not vest with CNI. Earlier also, this Court in Church of North India (supra) has observed the same and stated that:

"…the purported resolutions of the churches affiliated to the Brethren Church and merger thereof with the appellant, having regard to the provisions of the Act was required to be done in consonance with the provisions thereof. It is not necessary for us to consider as to whether such

dissolution of the churches and merger thereof in the appellant would amount to alienation of immovable property but we only intend to point out that even such alienation is prohibited in law."

18. Objections have been raised regarding the jurisdiction of the Charity Commissioner and the courts impinging on the freedoms guaranteed under Articles 25 and 26 of the Constitution. It has been alleged that a refusal to allow the change in trust nullifies the choice exercised by the community in a matter which is purely religious, of faith and ecclesiastical; especially considering the fact that the newly created entity follows the same religion. Furthermore, the issue of estoppel has been raised in the light of the same in relation to the objections to the unification raised by the respondents who had earlier consented to the same.

19. Firstly, we would answer the issue of the jurisdiction of the Charity Commissioner and lower courts. The choices of the community herein are the purported resolutions and deliberations. These resolutions are an attempt to effect a change in management and ownership of the FDCB trust properties in a manner which is against the law of the land. However, it is the case of the appellants that as per Articles 25 and 26, they are free to manage their own affairs and have relied on judgments of this Court in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282] and Ratilal Panachand Gandhi & Ors. v. State of Bombay & Ors. [AIR 1954 SC 388].

20. We are of the opinion that the appellants' reliance on the abovementioned two judgments is misplaced. In The Commissioner, Hindu Religious Endowments, Madras (supra), this Court while adjudicating upon the validity of Sections 21, 30(2), 31, 55, 56 and 63 to 69 of the Madras Hindu Religious and Charitable Endowments Act, 1951 against Articles 19(1)(f), 25 and 26 of the Constitution of India and examining the distinction between tax and fee, held that the Sections were ultra vires and Section 76 (1) of the Madras Hindu Religious and Charitable Endowments Act, 1951 was void. It was also held that a levy under this section does not attract Article 27 as it was for the maintenance of the religious trust despite being a tax. While deciding on the above, this Court delved into many questions regarding the scope of religion and recognized the reservations to the freedom of religion under Article 25(2) and that the State is empowered to legislate on the secular activities ancillary to practice of religion and that the courts are empowered to decide whether the same is an integral part of religious practice or a secular part. In Ratilal Panachand Gandhi (supra), the validity of Section 44 and levy under Section 58 of the BPTA was questioned against Articles 25 and 26. As

per this Court, Section 44 was held to be unconstitutional. However, the levy under Section 58 was termed as a fee and was allowed. While deciding on the same, this Court once again reiterated on the power of the Government to legislate on regulating the secular aspects of religious practice as allowed under clause (2) of Article 25. In light of the same, the High Court while disregarding the unification procedure, has rightly observed that:

> "…it will amount to accepting that such Resolutions or deliberation are above the law and the law that any such Resolution passed anywhere will have more binding force then (sic) the law created by the Sovereign Authority of India like the Bombay Public Trust Act as well as the provisions of the Constitution under Articles 25 and 26 of the Constitution of India. In fact, Article 26 which provides for the freedom of the religious faith and Article 26 which provides for the freedom of acquiring and administering the property or the Trust in accordance with law, meaning thereby, the provisions of the Bombay Public Trust Act, which has been created, would have no application again in the guise of such Resolution. Even the Transfer of Property Act will have no bearing and properties of various Trust or the Churches would get automatically transferred or vested without any requirement of law being fulfilled, without any document, without any registration, stamp etc. therefore, it would be rather over simplification to accept the submission that it was merely a Resolution for a merger or unification of various Churches for better understanding and advancement of cause of religion and faith and the Court should not examine this aspect even though there is a strong protest which has led to repeated round of litigations before the Courts upto the Hon'ble Apex Court. The underlying object or the purpose even if it assumed that it is only for better administration, still it cannot have any predominance or the constitutional provision or the law of land"

21. Regarding the issue of estoppels raised by the appellants, we feel that there is no need to interfere or clarify the views of the High Court which are as under:

> "…Therefore, the submission made on the ground of estoppel that once having accepted the Resolutions or having participated at the time of discussion on Resolution or unification, same people have backed out. Therefore, they are stopped from now changing their stand is without any basis and misconceived. There is no question of having changed the stand or faith but it is a question which is required to be considered whether one sect like the Church of Northern India can impose religion faith, acquire the trust

and its property and take away total state of affairs for the managing of such Trust, which have been established for management of the various Churches at different levels. The principles of estoppel or promissory estoppel in such cases have no application."

Furthermore, the Court has rightly opined that:

"….. Therefore, there is no question of any promise made out, for which, the estoppel could come into play. In fact, even if it is assumed that some of the people had initially participated at some stage with regard to merger or unification of the Church of Brethren Trust into the Church of North India, one can still have a re-look or fresh thinking at the entire episode and have a different opinion at later stage, which cannot be prohibited. The constitutional provision under Articles 25 & 26, which is the genesis for such freedom has granted such right, which cannot be taken away or curtailed on the ground of estoppel."

Thus, the High Court has precisely concluded that:

"…the focus has to be on the ultimate freedom of faith, religion and persuasion of such faith and belief as one likes, which cannot be curtailed. As a matter of fact, by the aforesaid procedure and the litigations, which have been repeated, it is reflected that in the name of unification or merger, it is aimed that there is total control of not only properties and the churches but it will also have an ultimate effect of imposing particular faith or belief, which is not permissible."

22. On the issue of jurisdiction of civil courts: whether Section 80 imposes a complete bar or not and in what circumstances is the jurisdiction shared between the Charity Commissioner and the civil courts, we are of the opinion that these issues have been adequately answered by this Court in Church of North India (supra), wherein this Court discussed the jurisdiction under the BPTA at length after referring to many prominent cases including Dhulabhai and Ors. v. The State of Madhya Pradesh and Anr. [1968 (3) SCR 662]. This Court thus observed that:

"82. The provisions of the Act and the Scheme thereof leave no manner of doubt that the Act is a complete code in itself. It provides for a complete machinery for a person interested in the trust to put forward his claim before the Charity Commissioner who is competent to go into the question and to prefer appeal if he feels aggrieved by any decision. The bar of jurisdiction

created under Section 80 of the Act clearly points out that a third party cannot maintain a suit so as to avoid the rigours of the provisions of the Act. The matter, however, would be different if the property is not a trust property in the eye of law. The civil court's jurisdiction may not be barred as it gives rise to a jurisdictional question. If a property did not validly vest in a trust or if a trust itself is not valid in law, the authorities under the Act will have no jurisdiction to determine the said question."

Furthermore, this Court concluded its observation by holding that:

"98. ….The Civil Court will have no jurisdiction in relation to a matter where over the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the Act or in relation to a matter, unconnected with the administration or possession of the trust property, the Civil Court may have jurisdiction. In this case, having regard to the nature of the lis, the jurisdiction of the Civil Court was clearly barred."

In the present dispute also, the respondents approached the Civil Court under Section 72(1) of the Act and the Civil Court correctly exercised jurisdiction over the same.

23. The question regarding the admissibility of evidence adduced before the Charity Commissioner has been adequately addressed by the High Court and we do not find any reason to interfere with the same. The observations of the High Court in this regard are as under:

"21…It is well accepted that though the Charity Commissioner is not the Court, the procedure is to be followed like the Civil Court. The procedure as provided in the Civil Procedure Code would mutatis mutandis apply. In other words, though the Charity Commissioner has discretion to have evolved his own procedure, normal procedure under the Civil Procedure Code is followed in such matter. It is required to be mentioned that even though strictly Civil Procedure Court (sic) may not be applicable, still the procedure is required to be followed in order to provide fair opportunity to other side to contest on every issue including the documents, which are sought to be produced and also to decide the probative value after it is exhibited as per the Evidence Act. Therefore, it is necessary that all such Resolutions etc. ought to have been placed on record, which has not been done. Therefore, what was not forming the part of the record in the original

proceedings cannot be permitted to be supplemented by way of explanation in appeal."

The appellants in this regard cited this Court's decision in R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Anr. [2003 (8) SCC 752], wherein this Court held that the High Court was incorrect in rejecting the photocopies of documents as they were not originals. In this light, since the Charity Commissioner is not required to strictly adhere to the procedure under the Code of Civil Procedure, 1908 and the Evidence Act, 1872, the evidence submitted before the Charity Commissioner may be admissible unless they are against the basic principles of Evidence Law.

24. Finally answering the question raised by the appellants regarding the scope of inquiry of the Charity Commissioner under Section 22 of the Act, this Court in Church of North India (supra) very aptly provided a bird's eye view of Section 22 which is provided as under :

"….Section 22 provides for the change which may occur in any of the entries recorded in the register kept under Section 17 to make an appropriate application within 90 days from the date of the occurrence of such change. Sub-section (1A) of Section 22 reads thus:

"(1A) Where the change to be reported under sub- section (1) relates to any immovable property, the trustee shall, alongwith 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."

31. Sub-section (2) of Section 22 empowers a Deputy or Assistant Charity Commissioner to hold an inquiry 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 therein. In the event, a change is found to have occurred in any of the entries recorded in the register kept under Section 17, the Deputy or Assistant Charity Commissioner is required to record a finding with the reasons therefore to that effect. Such an order is appealable to the Charity Commissioner. By reason of changes which have been found to have occurred, the entries in the

register are required to be amended. Such amendment on the occurrence of change is final and conclusive."

25. After analysing the facts and the law in the matter, we have noticed that it is the duty of the society to take steps in accordance with Section 13 of the SR Act for its dissolution. We have further noted that unless the properties vested in the Trust are divested in accordance with the provisions of the SR Act and in accordance with the BPTA, merely by filing the Change Report/s, CNI cannot claim a merger of churches and thereby claim that the properties vested in the Trust would vest in them. In our opinion, it would only be evident from the steps taken that the passing of resolutions is nothing but an indication to show the intention to merge and nothing else. In fact, the City Civil Court has correctly held, in our opinion, which has been affirmed by the High Court, that there was no dissolution of the society and further merger was not carried out in accordance with the provisions of law. In these circumstances, we hold that the society and the Trust being creatures of statute, have to resort to the modes provided by the statute for its amalgamation and the so-called merger cannot be treated or can give effect to the dissolution of the Trust. In the matrix of the facts, we hold that without taking any steps in accordance with the provisions of law, the effect of the resolutions or deliberations is not acceptable in the domain of law. The question of estoppel also cannot stand in the way as the High Court has correctly pointed out that the freedom guaranteed under the Constitution with regard to the faith and religion, cannot take away the right in changing the faith and religion after giving a fresh look and thinking at any time and thereby cannot be bound by any rules of estoppel. Therefore, the resolution only resolved to accept the recommendation of joint unification but does not refer to dissolution.

26. Having analysed the facts and the law in the matter, we are of the opinion that the High Court and the City Civil Court have rightly adjudicated on the matter in question and correctly set aside the order passed by the Charity Commissioner.

27. Accordingly, we affirm the order passed by the High Court.

28. For the reasons aforementioned, we do not find any merit in the present appeals and the same are dismissed accordingly.