



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ३ अंक ६४]

शुक्रवार, ऑगस्ट ११, २०१७/श्रावण २०, शके १९३९

[पृष्ठे १२, किंमत : रुपये २७.००

असाधारण क्रमांक १२६

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Public Trusts (Second Amendment) Bill, 2017, (L. A. Bill No. LIX of 2017), introduced in the Maharashtra Legislative Assembly on the 11th August 2017, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

N. J. JAMADAR,
Principal Secretary and R.L.A. to Government,
Law and Judiciary Department.

L. A. BILL No. LIX OF 2017.

A BILL

further to amend the Maharashtra Public Trusts Act.

XXIX of 1950. WHEREAS it is expedient further to amend the Maharashtra Public Trusts Act, for the purposes hereinafter appearing; it is hereby enacted in the Sixty-eighth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Public Trusts (Second Amendment) Act, 2017.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

(१)

Amendment
of section 2 of
XXIX of 1950.

2. In section 2 of the Maharashtra Public Trusts Act (hereinafter referred to as “principal Act”),—

XXIX of
1950.

(a) after clause (2), the following clause shall be inserted, namely :—

“(2A) “beneficiary” means any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per this Act and constitution of the trust and no other person;”;

(b) for clause (4), the following clause shall be substituted, namely :—

“(4) “Court” means the High Court of Judicature at Bombay;”.

Amendment
of section 5 of
XXIX of 1950.

3. In section 5 of the principal Act, in sub-section (2A), for clause (c), the following clause shall be substituted, namely :—

“(c) who holds a degree of law of any University established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organisation for not less than 5 years after obtaining such degree on a post not lower in rank than Senior Clerk or Steno-Typist and has passed the competitive departmental examination to be conducted as per the rules prescribed by the Charity Commissioner.”.

Amendment
of section 22
of XXIX of
1950.

4. In section 22 of the principal Act,—

(a) to sub-section (1), the following proviso shall be added, namely :—

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

(b) to sub-section (2), the following provisos shall be added, namely :—

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

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

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

(c) in sub-section (3), the words “or applications” shall be deleted.

5. In section 35 of the principal Act, in sub-section (1), after the second proviso, the following proviso shall be added, namely :—

Amendment
of section 35
of XXIX of
1950.

“Provided also that, if any public trust has made the application to the Charity Commissioner for seeking the order granting the permission for investing the money in any other manner under the second proviso, the Charity Commissioner shall decide such application within three months from the date of receipt of such application and where it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.”.

6. In section 36 of the principal Act,—

Amendment
of section 36
of XXIX of
1950.

(a) in sub-section (1), after clause (c), the following provisos shall be added, namely :—

“Provided that, the Charity Commissioner may, before the transaction for which previous sanction is given under clause (a), (b) or (c) is completed, modify the conditions imposed thereunder, as he deems fit:

Provided further that, if such condition is of time limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely :—

“(1A) The Charity Commissioner shall not sanction any lease for a period exceeding thirty years under this Act.”;

(c) to sub-section (2), the following proviso shall be added, namely :—

“Provided that, no sanction shall be revoked under this section after the execution of the conveyance except on the ground that such sanction was obtained by fraud practiced upon the Charity Commissioner before the grant of such sanction.”;

(d) after sub-section (4), the following sub-section shall be added, namely :—

“(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a *bona fide* purchaser for value, the Charity Commissioner may grant *ex-post facto* sanction to the transfer of the trust property by the trustees, if he is satisfied that,—

(a) there was an emergent situation which warranted such transfer,

(b) there was compelling necessity for the said transfer,

(c) the transfer was necessary in the interest of trust,

(d) the property was transferred for consideration which was not less than prevalent market value of the property so transferred, to be certified by the expert,

(e) there was reasonable effort on the part of trustees to secure the best price,

(f) the trustees actions, during the course of the entire transaction, were bonafide and they have not derived any benefit, either pecuniary or otherwise, out of the said transaction, and

(g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force.”

Amendment
of section 36A
of XXIX of
1950.

7. In section 36A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely :—

“(3A) Notwithstanding anything contained in sub-section (3), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) results in hardship to the trust, beneficiary or *bona fide* third party, the Charity Commissioner may grant *ex-post facto* sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees.”

Amendment
of section 41
of XXIX of
1950.

8. In section 41 of the principal Act, in sub-section (2), for the words and figures “Subject to the provisions of section 72, the order” the words “The order” shall be substituted.

Amendment
of section 41A
of XXIX of
1950.

9. In section 41A of the principal Act, to sub-section (1), the following proviso shall be added, namely :—

“ Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.”

Amendment
of section 41D
of XXIX of
1950.

10. In section 41D of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) (a) When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is *prima facie* material to proceed against the said person.

(b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.

(c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charges. If it is not practicable for the Charity Commissioner to issue notice, frame charges and pass final orders within stipulated time, he shall record reasons for the same.

(d) The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation, if any, and the finding on each charge, with reasons therefor.”;

(b) sub-section (5) shall be deleted;

(c) for sub-section (6), the following sub-section shall be substituted, namely :—

“(6) An appeal shall lie to the Court against the order made under sub-section (1), as if such decision was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order.”.

11. In section 41E of the principal Act, sub-sections (4), (6) and (7) shall be deleted. Amendment of section 41E of XXIX of 1950.

12. In section 47 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely :— Amendment of section 47 of XXIX of 1950.

“(5) An appeal shall lie to the Court against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.”.

13. In section 50 of the principal Act,—

(a) for clause (ii), the following clause shall be substituted, namely :— Amendment of section 50 of XXIX of 1950.

“(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property to proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant,”;

(b) in clause (iv), sub-clause (h) shall be deleted;

(c) after the third proviso, the following *Explanation* shall be added, namely :—

“*Explanation.*—In this section, “Court” means, in the Greater Mumbai, the City Civil Court and elsewhere, the District Court.”.

14. In section 50A of the principal Act,—

(a) in sub-sections (1), (2) and (3) for the words “Charity Commissioner”, wherever they occur, the words “Assistant or Deputy Charity Commissioner” shall be substituted; Amendment of section 50A of XXIX of 1950.

(b) for sub-section (4), the following sub-section shall be substituted, namely :—

“(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the Charity Commissioner under section 70, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50.”.

Amendment
of section 51
of XXIX of
1950.

15. In section 51 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.”;

(b) sub-section (4) shall be deleted.

Substitution
of section 55
of XXIX of
1950.

16. For section 55 of the principal Act, the following section shall be substituted, namely :—

Cypres.

“55. (1) If upon an application made to him or otherwise, the Assistant or Deputy Charity Commissioner is of the opinion that,—

(a) the original object for which the public trust was created has failed ;

(b) the income or any surplus balance of any public trust has not been utilized or is not likely to be utilized;

(c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object ; or

(d) in any of the cases mentioned in sections 10 to 13 or in regard to the appropriation of the *dharmada* sums held in trust under section 54, the directions of the Charity Commissioner are necessary then,

the Assistant or Deputy Charity Commissioner shall pass appropriate orders after making an enquiry and make a report to the Charity Commissioner.

(2) The Charity Commissioner may *suo motu* or on the report of Assistant or Deputy Charity Commissioner, give directions and in giving such directions, he shall give effect to the original intention of the author of the public trust or object for which the public trust was created.

(3) The Charity Commissioner may direct the property or income of the public trust or any portion thereof to be applied cypres to any other charitable or religious objects. In doing so, it shall be lawful for the Charity Commissioner to alter any scheme already settled or to vary the terms of any decree or order already passed in respect of the public trust or the conditions contained in the instrument of the public trust.

(4) An appeal shall lie against the decision or order passed by the Charity Commissioner under sub-section (2) or, as the case may be, sub-section (3) of this section to the Court, as if such order was a decree passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.”.

- 17.** Section 56 of the principal Act shall be deleted. Deletion of section 56 of XXIX of 1950.
- 18.** Section 56A of the principal Act shall be deleted. Deletion of section 56A of XXIX of 1950.
- 19.** In section 68 of the principal Act, after clause (e), the following clauses shall be inserted, namely :— Amendment of section 68 of XXIX of 1950.
- “(e-1) to encourage and facilitate the better administration of public trusts to make them litigation free;
- (e-2) to accept resignation of a trustee who has submitted it to the trust and not reported by the other trustees and treat it as a report under section 22 and decide the same after making the necessary enquiry therefor;
- (e-3) to frame or modify schemes under section 50A ;
- (e-4) to pass appropriate order and make a report under section 55;”.
- 20.** In section 69 of the principal Act,— Amendment of section 69 of XXIX of 1950.
- (a) for clause (b), the following clause shall be substituted, namely :—
- “(b) power to entertain and dispose off appeals from the findings of the Deputy or Assistant Charity Commissioner under sections 20, 22 and 28, and order under sections 50A and 79 ;”;
- (b) clause (ll) shall be deleted;
- (c) for clause (n), the following clause shall be substituted, namely :—
- “(n) power to give notice to trustees for the cypres application of the trust money and to pass appropriate orders for the same;”.
- 21.** In section 70 of the principal Act, in sub-section (1),— Amendment of section 70 of XXIX of 1950.
- (a) after clause (c-1), the following clause shall be inserted, namely :—
- “(c-2) the order under section 50A ;”;
- (b) after clause (d), the following clause shall be inserted, namely :—
- “(d-1) an order under sub-section (1) of section 79;”.
- 22.** In section 70A of the principal Act, in sub-section (2) for clause (b) the following clause shall be substituted, namely:— Amendment of section 70A of XXIX of 1950.
- “(b) in which an order has been passed in an appeal made under section 70.”.
- 23.** Section 71 of the principal Act shall be deleted. Deletion of section 71 of XXIX of 1950.
- 24.** Section 72 of the principal Act shall be deleted. Deletion of section 72 of XXIX of 1950.
- 25.** To section 73 of the principal Act, the following proviso shall be added, namely :— Amendment of section 73 of XXIX of 1950.
- “Provided that, while holding enquiry under section 22 of the Act, the Assistant or Deputy Charity Commissioner shall record the evidence in the form of affidavits only subject to the cross-examinations of the deponent, if permitted by him in appropriate case.”.

Substitution
of section 74A
of XXIX of
1950.

26. For section 74A of the principal Act, the following section shall be substituted, namely :—

Charity
Commissioner,
Joint Charity
Commissioner,
Deputy or
Assistant
Charity
Commissioner,
etc. to be civil
court within
sections 345
and 346 of the
Code of
Criminal
Procedure,
1973.

“74A. When the State Government so directs, the Charity Commissioner, Joint Charity Commissioner or Director of Accounts or any Deputy or Assistant Charity Commissioner shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973.”

2 of
1974.

Substitution
of section 77
of XXIX of
1950.

27. For section 77 of the principal Act, following shall be substituted, namely :—

Recovery of
sums under
the Act and
rules.

“77. All sums payable under the provisions of this Act or rules, if not paid shall notwithstanding anything contained in any law be recoverable as an arrear of land revenue.”

Substitution
of section 79
of XXIX of
1950.

28. For section 79 of the principal Act, the following section shall be substituted, namely :—

Decision of
property as
public trust
property.

“79. (1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner as provided by this Act.

(2) An appeal shall lie against such decision of the Assistant or Deputy Charity Commissioner to the Charity Commissioner under section 70.”

Amendment
of section
79CC of XXIX
of 1950.

29. In section 79CC of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) An appeal shall lie against an order awarding compensation under sub-section (2) if made by the Deputy or Assistant Charity Commissioner to the Charity Commissioner whose decision shall be final and the provisions of section 70 shall apply to such appeal.”

Substitution
of section 82
of XXIX of
1950.

30. For section 82 of the principal Act, the following section shall be substituted, namely :—

Trial of
offences under
this Act.

“ 82. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Act.”

Amendment
of section 84
of XXIX of
1950.

31. In section 84 of the principal Act, in sub-section (2),—

(a) clause (o) shall be deleted;

(b) clause (u) shall be deleted.

32. In the Schedule B appended to the principal Act,—

Amendment
of Schedule B
of XXIX of
1950.

(a) in entry relating to section 50A, in column (2) for the word “Charity Commissioner” the words “Assistant or Deputy Charity Commissioner” shall be substituted;

(b) after entry relating to section 51(1), the following entry shall be inserted, namely :—

“ 51(2) Appeal to the Court against Rs. 100 ”;
the decision of the Charity Commissioner.

(c) in entry related to section 55, in column (2), for the word “Court” the words “Assistant or Deputy Charity Commissioner” shall be substituted;

(d) entry relating to section 56A shall be deleted;

(e) in entry related to section 70(1), in column (2), for the words, brackets and figures “or order under sub-section (3) of section 54” the words, figures, letter and brackets “or order under section 50A, sub-section (3) of section 54 and sub-section (1) of section 79” shall be substituted;

(f) entry relating to section 71(1) shall be deleted;

(g) entry relating to section 72(1) shall be deleted;

(h) entry relating to section 72(4) shall be deleted.

XXIX of
1950.
Mah. of
2017.

33. For the removal of doubts, it is hereby declared that nothing in the Maharashtra Public Trusts Act, as amended by the Maharashtra Public Trusts (Second Amendment) Act, 2017 (hereinafter referred to as “the said Amendment Act of 2017”), shall affect the applications or appeals pending before any Civil Court on the date of commencement of the said Amendment Act of 2017; and such applications or appeals shall be dealt with and disposed of by such Court in accordance with the law as it stood prior to the date of commencement of the said Amendment Act of 2017.

Removal of
doubts.

STATEMENT OF OBJECTS AND REASONS.

The Maharashtra Public Trusts Act (XXIX of 1950) regulates and makes better provisions for the administration of public religious and charitable trusts in the State of Maharashtra. More than 8 lac trusts have been registered in the State under the said Act.

Though, the said Act contains comprehensive provisions to regulate the trusts, yet, it is noticed that the proceedings under various provisions of the Act remain pending for the inordinately long period and thereby result in hindrances in the advancement of public religious and charitable objects.

2. The State Government is concerned with the huge pendency of cases before the authorities under the Act, especially the change reports, more particularly the uncontested change reports, to make entries in the registers kept under section 17 of the said Act. The Government had, therefore, constituted a committee *vide* order dated 13th January, 2016, under the Chairmanship of Shri A. J. Dholakiya, Charity Commissioner (Retired), and comprising Shri S. B. Savle, the Charity Commissioner and other officers, to propose amendments in the Maharashtra Public Trust Act, to expedite the disposal of the change reports by the Assistant or Deputy Charity Commissioners and also the proceedings before the other authorities under the said Act. The committee gave its report and suggested comprehensive amendments to the said Act.

3. It was further noticed that the said Act has created a hierarchy of authorities and courts, with a series of appeals, applications or revisions. Orders of the Charity Commissioner, for instance, have been made subject to challenge before the District Court, the Maharashtra Revenue Tribunal and Divisional Commissioner. This multiplicity of proceedings and forums under the Act, when a substantial number of judicial officers of the rank of District Judge, discharge the functions of Charity Commissioner and Joint Charity Commissioner has been found to be unwarranted and even anomalous. In the case of Vidharbha Youth Welfare Society V/s. Sandeep Ram Meghe, (Civil Revision No. 84/2015), the Hon'ble Bombay High Court, in terms, observed that "It is somewhat anomalous to allow the adjudication of some types of disputes by Civil Court, District Court, the Maharashtra Revenue Tribunal, particularly when the Judicial Officers of the rank of District Judge presides over as Joint Charity Commissioner. It has given rise to conundrum." The High Court recommended that on the lines of Maharashtra Co-operative Societies Act, 1960, where all types of disputes are to be decided by Co-operative Courts or Appellate Courts, the Maharashtra Public Trusts Act is required to be revisited.

4. Keeping in view the objectives of expeditious and swift disposal of proceedings by the authorities within the organisation administering the said Act and doing away with multiple authorities or forums and proceedings and further streamlining the proceedings before the authorities under the Act by providing time limits and incorporating enabling provisions, it was found absolutely necessary to amend the provisions of the said Act and introduce, *inter alia*, the following amendments :—

(a) As it was found that the supervisory jurisdiction of the District Court over the charity organisation was being misused to prolong the finality to proceedings, the definition of "Court" under section 2 (4) is proposed to be amended to mean 'High Court of Judicature at Bombay'. Consequently, remedy of applications against the orders of the Charity Commissioner under section 72 is proposed to be deleted.

(b) In the matter of change reports,—

(i) make an enabling provision to allow the extension of period of 90 days in reporting change by adding a proviso to sub-section (1) of section 22;

(ii) to promote swift disposal and arrest the pendency of the change reports under section 22, certain provisos are proposed to be added to sub-section (2) to mandate the decision on the change reports within the stipulated period, and also provide for a mechanism for provisional acceptance of change reports and attach finality to the orders of provisional acceptance of change in uncontested matters.

(c) To make provisions in section 36 which enable the Charity Commissioner to modify the conditions imposed while giving sanction for the transfer and disposal of the public trust property and put restrictions on the belated challenge to the order of granting sanction after the execution of conveyance, except on the ground of fraud.

(d) To invest authority with the Charity Commissioner to grant *ex-facto* sanction under section 36 and 36A in exceptional and extraordinary situations, where the absence of previous sanction results in extreme hardship.

(e) To provide time limit for deciding applications seeking directions under section 41A (1).

(f) To streamline the procedure for exercising power of suspension, removal and dismissal of trustees under section 41D and provide time limit for the same.

(g) To invest the Assistant or Deputy Charity Commissioners with authority to frame or modify scheme under section 50A and make the order subject to appeal to the Charity Commissioner.

(h) To do away with the supervisory and advisory jurisdiction of the District Courts in the matter of Cypres application of the income and property of the Trust and instead empower the Charity Commissioners to exercise the powers under section 55 in all respects.

(i) To do away with the proceedings before the Maharashtra Revenue Tribunal and Divisional Commissioner.

Consequent to the aforesaid insertion, deletion and substitution, suitable consequential amendments are proposed in the various sections, including Schedule B of the said Act.

5. The Bill seeks to achieve the above objectives.

Mumbai,
Dated the 10th August 2017.

DEVENDRA FADNAVIS,
Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative powers, namely :—

Clause 1(2).—Under this clause, power is taken to the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 3.—Under this clause, which seek to substitute clause (c) of sub-section (2A) of section 5 of the Maharashtra Public Trusts Act, power is taken to the Charity Commissioner to make the rules for conducting the competitive departmental examination for appointing a person who holds a degree of law of any University established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organisation for not less than 5 years after obtaining such degree and is not lower in rank than Senior Clerk or Steno-Typist, as a Assistant Charity Commissioner.

Clause 4.—Under this clause, which seek to add provisos to sub-section (2) of section 22 of the said Act, power is taken to the State Government to prescribe by rules the manner of holding the enquiry by the Assistant or Deputy Charity Commissioner and taking the entry regarding change of the names and addresses of the trustees and the manager or the mode of succession to the office of the trusteeship and membership in the concerned register.

2. The above-mentioned proposals for delegation legislative power are of normal character.