

drp

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.857 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ - Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1.      Ashok Nathu Mali      RESPONDENTS  
         Age-60 years, Occ-Agril.  
         R/o At Post Pilkhod,  
         Taluka-Chalisgaon, District-Jalgaon
2.      The Assistant Charity Commissioner,  
         Jalgaon, Taluka and District - Jalgaon

**WITH**

**WRIT PETITION NO.856 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ-Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1.      Ashok Nathu Mali      RESPONDENTS  
         Age-60 years, Occ-Agril.  
         R/o At Post Pilkhod,  
         Taluka-Chalisgaon, District-Jalgaon

2. The Assistant Charity Commissioner,  
Jalgaon, Taluka and District - Jalgaon

**WITH**

**WRIT PETITION NO.865 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ-Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1. Ashok Nathu Mali      RESPONDENTS  
Age-60 years, Occ-Agril.  
R/o At Post Pilkhod,  
Taluka-Chalisgaon, District-Jalgaon
2. The Assistant Charity Commissioner,  
Jalgaon, Taluka and District - Jalgaon

**WITH**

**WRIT PETITION NO.864 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ-Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1. Ashok Nathu Mali      RESPONDENTS  
Age-60 years, Occ-Agril.  
R/o At Post Pilkhod,  
Taluka-Chalisgaon, District-Jalgaon

2. The Assistant Charity Commissioner,  
Jalgaon, Taluka and District - Jalgaon

**WITH**

**WRIT PETITION NO.869 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ-Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1. Ashok Nathu Mali      RESPONDENTS  
Age-60 years, Occ-Agril.  
R/o At Post Pilkhod,  
Taluka-Chalisgaon, District-Jalgaon
2. The Assistant Charity Commissioner,  
Jalgaon, Taluka and District - Jalgaon

**WITH**

**WRIT PETITION NO.863 OF 2015**

Shri Krushna Mali Samaj Hitswanrdhak Sanstha      PETITIONER  
Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon  
Through Prakash Ramchandra Baviskar,  
Age-55 years, Occ-Agriculturist,  
R/o At Post Pilkhod, Taluka-Chalisgaon,  
District - Jalgaon

VERSUS

1. Ashok Nathu Mali      RESPONDENTS  
Age-60 years, Occ-Agril.  
R/o At Post Pilkhod,  
Taluka-Chalisgaon, District-Jalgaon

2. The Assistant Charity Commissioner,  
Jalgaon, Taluka and District - Jalgaon

.....

Mr. Shailesh P. Brahme, Advocate for the petitioners

Mr. V. G. Shelke, AGP for respondent State

Mr. K. C. Sant, Advocate for respondent No.

.....

**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 25<sup>th</sup> JUNE, 2015**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner in this group of writ petitions, challenges orders dated 8<sup>th</sup> December, 2012 passed by Assistant Charity Commissioner, allowing applications filed by respondent No.1, pursuant to section 73A of the Maharashtra Public Trusts Act, 1950.

3. Bone of contention of learned advocate Mr. Brahme, appearing for the petitioner is that respondent No.1 cannot be said to be an '*interested person*', who can be said to fall under category "e" of clause 10 under section 2 comprising definitions under the Maharashtra Public Trusts Act, 1950. Respondent No.1

is neither a trustee, nor is he a member of the trust. He further tries to find flaw in observations appearing in the order impugned that the object of the trust is benefit and welfare of Mali community. Learned advocate further refers to dabbling activities of respondent No.1 in the affairs of the trust. He, as such, submits that for all aforesaid reasons, inclusion of respondent No.1 in the proceedings pending before Assistant Charity Commissioner would be improper and is not at all desirable.

4. Mr. Brahme, learned advocate for the petitioner places reliance on a decision of learned single judge of this court in writ petitions bearing No.832 of 2015 and 933 of 2015 decided on 2<sup>nd</sup> February, 2015. Factual position in said matter appears to be that two trusts were at loggerheads and were having clash of interest. It was not a case wherein the petitioners could be said to be either trustees or beneficiaries of the trust about which the proceedings were going on. Facts of said case are wide apart from the ones involved in present matters and as such, the judgment being relied on may not carry case forward for the petitioner.

5. Mr. Sant, learned advocate for respondent No.1, on the

other hand, submits that it is an indisputable position that respondent No.1 belongs to Mali community and title of the trust itself suggests that it is meant for benefit of the people belonging to said community. Learned advocate further points out that the fact that respondent No.1 is having interest in affairs of the trust is evident from the averments as are appearing in the 'say' of the petitioner filed opposing applications pursuant to section 73A of the Maharashtra Public Trusts Act. It is further being submitted that discretion has been vested in the authority and unless the same is exercised illegally and without following judicial principles, the same is not amenable to be interfered with.

6. Mr. Sant, places reliance on *AIR 1978 Bombay 196 "Digambar Pralhad Jot and Others V. Satyanarayan Biharilal Zunzunwala & Others"*, a decision rendered by a division bench of this court with reference to the phrase "*person having interest*" and submits that the words are intended to be enumerative and not exhaustive and according to him in said citation it has been considered that once the authority has considered that certain people are having interest in the trust, said finding being of fact, is not liable to be interfered with by this court in its extra ordinary jurisdiction.

7. Looking at aforesaid, the order being passed after taking into account rival submissions and finding that respondent No.1 is having interest in the trust, and that his presence may assist the inquiry officer to arrive at a proper decision, I am not inclined to exercise discretionary powers in favour of the petitioner. Writ petitions, as such, are dismissed. Rule stands discharged with no order as to costs.

**[SUNIL P. DESHMUKH, J.]**

drp/wp857-15