IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7296 OF 2018

**1. Shri Maganlal Himatram Barfiwala)
Charity Trust,)
Office at Shri Halai Lohana Mahajan Trust)
6/10, Lohana Wadi, Thakurdwar Road,)
Mumbai – 400 002)**

**2. Arvind Narayandas Gotecha,)
Aged about 67 years,)
Occupation Not known,)
Indian Inhabitant, residing at 702A,)
Rajeshri Kunj, Iraniwadi, Kandivali)
(West), Mumbai 400 067)**

**3. Piyush Gangaram Gantha,)
aged not known, Occupation – Business,)
Indian Inhabitant, residing at Adarsh)
Rustomji Residency, Off Marve Road,)
Malad (West), Mumbai 400 064)**

**4. Surendra Jayantilal Tanna,)
Aged about 75 years,)
Occupation not known, Indian Inhabitant)
Residing at Bhagwandas Tapidas Building,)
2nd Floor, 18, Gajdar Street, Chira Bazar,)
J.S.S.Road, Mumbai 400 002)**

**5. Mahesh Liladhar Samani,)
Aged about 65 years,)
Occupation not known, Indian Inhabitant)
Residing at 305/7, Virat Co.op. Housing)
Society, Sector No.3, Charkop, Near)
Bhagwati Hotel, Kandivali (West),)
Mumbai 400 067)**

**6. Smt.Pragnaben Dilip Morjaria,)
Aged not known, Occupation Business,)
Indian Inhabitant, Residing at)
101-102, Megh Malhar, Film City Road,)
Opposite Royal Challenge Hotel,)
Goregaon (East), Mumbai 400 063)**

**7. Satish Jamnadas Dattani,)
Aged about 69 years, Occupation Business)
Indian Inhabitant, residing at Gokuldas)
Khimji Bunglow, Vasanji Lakhamji Road,)
Kandivali (West), Mumbai 400 067)**

**8. Suresh Amrutlal Popat,)
Aged not known, Occupation not known,)
Indian Inhabitant, residing at 1,)
Bhaveshwar Co.op.Hsg.B/5, Sector-6,)
Shanti Nagar, Mira Road (East),)
District Thane – 401 107)**

**9. Hitesh Govindji Kotecha,)
Aged about 57 years, Occupation Business)
Indian Inhabitant, residing at B-1901,)
19th Floor, Orchit Subrabia, Link Road,)
M.G.Road Extension Road,)
Kandivali (W), Mumbai 400 067)**

**10. Rajesh Kakubhai Gantra,)
Aged not known, Occupation not known,)
Indian Inhabitant, residing at Gulab)
Mansion, Maharashtra Nagar, L.T.Road,)
Borivali (W), Mumbai 400 092)**

**11. Smt.Meena Prakash Thakkar,)
Aged about 62 years,)
Occupation not known, residing at)
Flat No.222, Kamna Building No.4,)
7th Floor, Near Siddhi Vinayak Temple,)
S.K.Bole Road, Prabhadevi,)
Mumbai 400 028) ….. Petitioners**

VERSUS

Mridangraj Hiralal Suchak,)
Aged about 76 years, Occupation Business)
An Indian Inhabitant, having office at)
37/41, Vithalbhai Patel Road, Ground Floor)
Barfiwala Building, Mumbai 400 004) ….. Respondent

Mr.V.A.Thorat, Senior Advocate, a/w. Mr.Vishal Kanade, i/b. Mr.Haresh Jethalal Lulia for the Petitioners.

Mr.Rohit Kapadia, Senior Advocate, i/b. Khan Javed Akhtar for the Respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 25th JANUARY, 2019
PRONOUNCED ON : 27th FEBRUARY, 2019

JUDGMENT :

Rule. Mr.Kapadia, learned senior counsel for the respondent waives service. By consent of parties, writ petition is heard finally. The matter is placed on board for final hearing.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners (original opponents) have impugned order dated 7th April, 2018 passed by the learned Joint Charity Commissioner – II, Maharashtra State, Mumbai holding that the respondent (original applicant) is a person having interest in the trust to file an application under section 41-D of the Maharashtra Public Trusts Act, 1950 (for short the said MPT Act). Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner no.1 is a trust registered under the provisions of the said MPT Act. The respondent is a lessee/tenant in respect of the entire ground floor of the building known as Gopaldas Barfiwala Trust Building situated at 37/39, 39/41, Vithalbhai Patel Road, Mumbai 400 004 admeasuring about 2800 sq.ft. It is the case of the respondent that as per letter dated 24th January, 1917, Shri Maganlal Himatram Barfiwala, a trust was created to open Khata (department) in the name of Madhavji Jesang, Amarsey Kanji and Maganlal Himatram Barfiwala Lohana in Balashram existing in Mumbai for up-bringing of little orphan kidling, managed by Shri Halai Lohana community. It was mentioned in the said Will that the management of the said Khata shall be carried on in such manner as the trustees of the said Shri Halai Lohana Mahajans community think proper. It was further provided that the said accounts thereof shall be published along with annual report of the said Balashram.

4. In the year 1949, the trustees of the said Shri Halai Lohana Mahajans filed a suit in this court bearing Suit No.1521 of 1949 against the then Advocate General of Bombay and others on 5th January, 1950. This court passed an order thereby directing the trustees of the said Shri Halai Lohana Mahajans to utilize the income of the said trust in giving milk to poor children of the community below 5 years, with preference to be given to orphans of the community, and if there was any surplus, the same shall be utilized in giving milk to the poor expectant mothers of the said Shri Halai Lohana Mahajans community, for medical help and clothing to poor

children and poor expectant mothers community. The said trust was registered being Public Trust No.15 of 1951 by the Registrar of Small Causes Court Bombay on 9th February, 1951. The trust was subsequently registered in the present name i.e. Shri Maganlal Himmatram Barfiwala Charity Trust bearing no. A745 (BOM) under the provisions of the said Bombay Public Trust Act, 1950.

5. Since there was no provision in the Will to collect fund by donation to fulfill the objects of the Trust, the Deputy Charity Commissioner passed an order on 30th November, 1977 on the application dated 25th October, 1977 filed by the trustees before the said Deputy Charity Commissioner allowing the petitioner no.1 trust to collect donations funds etc. for meeting the objects of the Trust and further directed to show such income in the balance-sheet and annual accounts of the said trust.

6. Insofar as the respondent is concerned, it is the case of the respondent that he is a grandson of the said Late Sheth Maganlal Himatram Jivanram Barfiwala (maternal grandfather 'Nana') who was the settlor of the said trust. On or about 23rd October, 1974, the petitioner no.1 trust granted the property in shops on the ground floor of the said Barfiwala Building admeasuring 2800 sq.ft. on monthly payment of rent of Rs.539.40 paise plus Rs.1000/- as monthly royalty aggregating to Rs.1539.40 paise per month to the respondent with an option to renew the said lease for a further period of 25 years from 1999 on the same terms and conditions, provided the respondent gives notice in writing to the petitioner no.1 trust atleast one month before

the expiry date of the said lease showing his intention to renew the said lease granted in the year 1974. The trustees of the petitioner no.1 obtained permission dated 12th May, 1974 under section 36 of the said Act by filing an application for granting the said premises on lease in favour of the respondent. The said sanction was accorded by the Charity Commissioner for granting the said premises on lease for a period of 25 years with one option of renewal for further period of 25 years.

7. It is the case of the respondent that the trustees of the petitioner no.1 trust however started increasing the rent and demanded additional amount from the respondent under the garb and guise of increased Municipal taxes to the tune of almost about Rs.9,50,000/- by their letter dated 21st March, 1996. The respondent accordingly filed RAN Application No. 347/SR/1981 against the trustees of the petitioner no.1 trust in the Small Causes Court, Bombay *inter alia* praying for fixing standard rent. The respondent also filed an application to fix the interim rent which was fixed by the Small Causes Court, Bombay at the rate of Rs.1,300/- per month. It is the case of the respondent that he was depositing the said interim rent regularly in court from time to time.

8. Sometime in the year 1996, the trustees of the petitioner no.1 filed RAE&R Suit No.498/1013/1996 against the respondent to recover the alleged arrears of rent. On 7th May,1999, the said RAN Application No. 347/SR/1981 for fixation of rent was disposed of by the Small Causes Court fixing standard rent payable by the respondent

to the petitioner no.1 trust at Rs.1,000/- per month including all taxes and directed the trust to refund the excess amount deposited by the respondent with the Small Causes Court pending the disposal of the suit. The revision application filed by the petitioner no.1 trust before the Appellate Bench of the Small Causes Court, came to be disposed of in favour of the respondent on 30th July, 2001. The petitioner no.1 thereafter withdrew the RAE&R Suit No.498/1013/1996 against the respondent which was filed for eviction of the respondent and for recovery of the rent as it had become ineffective. The respondent demanded an amount of Rs.1,75,367.49 from the petitioner no.1 as directed by this court.

9. It is the case of the respondent that the petitioner no.1 trust however did not pay the said amount and thus the respondent was required to file an execution application to execute the decree passed against the trust in the year 2002. This court passed an order to attach the property of the petitioner no.1 trust and to put the property for auction. It is the case of the respondent that after passing of the order by this court, the petitioner no.1 paid the decreetal amount to the respondent on 15th January, 2003 in the sum of Rs.1,75,367.49 paise by pay order dated 2nd January, 2003.

10. It is the case of the respondent that since the deed of lease dated 23rd October, 1974 was coming to an end, the respondent addressed a letter to the petitioner no.1 trust on 5th August, 1999 requesting for renewal of the said lease for a further period of 25 years. The petitioner no.1 however did not give any response to the said letter for

almost seven years. On 2nd December, 2006 the respondent addressed another letter to the petitioner no.1 to renew the said lease. On 9th December, 2006, the petitioner no.1 replied to the said letter and agreed to renew the lease in favour of the respondent. It is the case of the respondent that on 11th December, 2006, the respondent addressed a letter to the petitioner no.1 trust requesting to give their consent for sub-lease of the entire shops on the ground floor to a reputed bank.

11. The petitioner no.1 vide its letter dated 27th December, 2006 informed the respondent that the respondent will have to pay a sum of Rs.51,000/- per month as charges in addition to the rent which was payable under the said lease agreement if the premises were given on sub-lease. It is the case of the respondent that the trustee of the petitioner no.1 suggested the respondent to formally accept the said letter dated 27th December, 2005 with an assurance that the contentious issue of the charges of Rs.51,000/- would be sorted out before signing of the renewal lease. The respondent accordingly accepted the said letter dated 27th December, 2006 based on the said assurance of the trustee of the petitioner no.1.

12. On 10th August, 2007, the petitioner no.1 renewed and executed lease deed with the respondent in respect of the said shops however w.e.f. October 1999 instead of making the same w.e.f. 10th August,2007 and without contentious condition of payment of Rs.51,000/-. It is the case of the respondent that he was coerced to sign the agreement w.e.f. October 1999 in view of the assurance of the trustees of the petitioner no.1 that it was only the formally mentioned in the lease agreement

dated 10th August 2007 but actually 25 years would be calculated from 10th August, 2007 thereby causing loss of income for eight years to the respondent.

13. The petitioner no.1 filed suit bearing no. RAE Suit No.251/411/2009 against the respondent for eviction. It is the case of the respondent that though he has already paid upto date rent to the petitioner no.1, the petitioner no.1 failed to issue the stamp receipt as per the provisions of Maharashtra Rent Control Act, 1999. On 7th August, 2017, the petitioner no.1 issued a notice of termination and also contended that the petitioner would be entitled to recover mesne profits from the respondent at the market rate. It is the case of the respondent that the respondent thereafter engaged two advocates to apply for certified copies of the records and proceedings of the trust which were received by the respondent on 22nd March,2017 and thereafter came to know about various breaches alleged to have been committed by the petitioners.

14. Sometime in the month of October,2017, the respondent filed an application under section 41D of the said Act, *inter alia* praying for removal of the trustees permanently from the membership of the trust and for an injunction against them from getting re-elected as trustees of the petitioner no.1 trust and for various reliefs. The petitioners filed an application (Ex.14) in the said Application No.537 of 2017 filed by the respondent *inter alia* raising a preliminary issue as to whether the respondent herein being a tenant of the property Shri Maganlal Himatram Barfiwala can be held to be a person having interest in the

trust and has *locus standie* to file an application under section 41-D of the Maharashtra Public Trusts Act, 1950. The said application filed by the petitioners was resisted by the respondent. By an order dated 7th April, 2018 passed by the learned Joint Charity Commissioner – II, Maharashtra State, Mumbai, the learned Joint Charity Commissioner held that the respondent herein is a member of Halai Lohana Community and grandson of the settlor and thus can be said to be a person having interest in the trust under section 2(10) of the Maharashtra Public Trusts Act, 1950 as well as a beneficiary defined under section 2A of the said Act.

15. It is held that it cannot be said that the applicant has no concern with the petitioner no.1 trust or that he was a stranger. It is further held that merely because a person is a tenant/lessee, he cannot be disqualified as a person having interest in the trust when the said person otherwise establishes that he was a person having interest in the trust. It is held that the respondent herein had established that he was a person having interest in the trust and fulfilled the pre-requisite condition of section 41-D of the said Act and has *locus standie* to file the said application. The learned Joint Charity Commissioner answered the point for determination i.e. whether the applicant establishes that he is a person having interest in the said trust as contended by him and locus standie to file an application under section 41-D of the Maharashtra Public Trusts Act, 1950 in affirmative. Being aggrieved by the said order dated 7th April, 2018, the petitioners herein filed this petition under Article 227 of the Constitution of India impugning the said order.

16. On 24th July, 2018, this court noted that this matter raises an interesting issue as to whether the definition of "beneficiary" under section 2-A of the Maharashtra Public Trusts Act, 1950 shall be given a restricted meaning or not and more particularly while deciding the application under section 41-D of the Maharashtra Public Trusts Act, 1950. This court accordingly directed the office to place the writ petition on board for hearing and final disposal at the admission stage and till date, stayed the proceedings under section 41(D) of the said Act filed by the respondent.

17. Mr.Thorat, learned senior counsel for the petitioners placed reliance on section 41-D of the Maharashtra Public Trusts Act, 1950 (for short "the MPT Act") and would submit that under the said provision an action for suspension, removal and dismissal of the trustees can be taken either (a) on application of a trustee or (b) any person interested in the trust or (c) on receipt of a report under section 41-B or (d) or *suo motu* by the learned Charity Commissioner. He submits that in this case admittedly the respondent (original applicant) is not a trustee of the petitioner no.1 trust. There was also no report submitted to the learned Charity Commissioner under section 41-B of the said MPT Act. The learned Charity Commissioner has not *suo motu* initiated any action for suspension, removal and dismissal of the trustees. He submits that the respondent however, strongly placed reliance on the expression "any person interested in the trust", which is one of the category of the persons who can apply for suspension, removal and dismissal of the trustees of the trust by invoking section

41-D of the said MPT Act.

18. Learned senior counsel placed reliance on the definition of "person having interest" under section 2 (10)(e) of the said MPT Act. It is submitted that it is not the case of the respondent that sub-sections (a), (b), (c) or (d) of section 2(10) of the said MPT Act are applicable to the facts of this case. Learned senior counsel also strongly placed reliance on the definition of "beneficiary" inserted by an amendment to section 2 by L.A. BILL No.LIX OF 2017.

19. It is submitted by the learned senior counsel that in view of the amendment to section 2 and more particularly by inserting sub-section 2-A defining the expression "beneficiary", which includes only a 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 the said MPT Act and the constitution of the trust and no other person. He submits that the definition of the "beneficiary" thus is restrictive definition. It is submitted by the learned senior counsel that the respondent is neither a trustee nor the beneficiary of the trust. In support of this submission, learned senior counsel invited my attention to the application filed under section 41-D of the said MPT Act by the respondent before the learned Charity Commissioner which refers to the object of the trust. He submits that as per the Will dated 24th January, 2017 of Maganlal Himatram Barfiwala, the object of the trust was to open Khata (department) in the name of Madhavji Jesang, Amarsey Kanji & Maganlal Himatram Barfiwala Lohana in "Balashram" existing in Bombay for up-bringing of little orphan kidling, managed by Shri

Halai Lohana community. It was provided that the management of the said Khata shall be carried on in such manner as the trustees of the said Balashram and Shri Halai Lohana community may think proper.

20. Learned senior counsel invited my attention to the scheme framed by this Court in Suit No.1521 of 1949 by an order dated 5th January, 1950 in the suit filed by the trustees of Shri Halai Lohana community against the Advocate General of Bombay & Ors. By the said order, the trustees of the Shri Halai Lohana community were directed to utilize income of the trust by giving milk to poor children of the community below five years,with preference to be given to orphans of the community, and if there is surplus, the same may be utilized in giving milk to the poor expectant mothers of the Shri Halai Lohana Mahajan's community and medical help and clothing to poor children and poor expectant mothers community.

21. It is submitted by the learned senior counsel that the said scheme sanctioned by this Court would clearly indicate that the specific beneficiaries of the community had been identified and not all the members of the community. He submits that insofar as the respondent is concerned, since he did not fall under any part of the beneficiary under the said scheme of the petitioner no.1 trust as provided in the object clause as well as in the scheme sanctioned by this Court by an order dated 5th January, 1950. It is submitted that even if the respondent belongs to Shri Halai Lohana Mahajan community, since the respondent did not fall under the specified beneficiary of the community he would not fall under the definition of beneficiary under

section (2A) of the said MPT Act.

22. It is submitted by the learned senior counsel for the petitioners that the respondent claimed to be the grand-son of late Sheth Maganlal Himatram Jivanram Barfiwala and being a grand-son of the settlor claimed to be the person having interest in the petitioner no.1 trust in the said application under section 41-D of the said MPT Act before the learned Joint Charity Commissioner. It is submitted by the learned senior counsel that upon settling the trust by the said settlor late Sheth Maganlal Himatram Jivanram Barfiwala, the said settlor was divested of his properties which were forming part of the petitioner no.1 trust unless so specified in the said trust deed providing for continuation of any rights in the property forming part of the said trust deed in his own favour or in favour of his family members. It is submitted that in the trust deed, no such rights in the properties of the trust were reserved in favour of the settlor or in favour of the members of the family members of the said settlor.

23. Learned senior counsel invited my attention to paragraph 4(e) of the application filed by the respondent under section 41-A of the said MPT Act and would submit that the said application would clearly indicate that the same was filed by the respondent on the ground that he was the grand-son of the settlor and it was his duty / interest as a grand-son to see that the properties of the settlor were put to the proper use by the trustees as per main objects of the trust as per the Will of the said settlor and subsequent orders passed by this Court in different suits in that connection.

24. Learned senior counsel also invited my attention to the averments made by the respondent in the said application under section 41-A of the said MPT Act and more particularly in paragraph (f) and would submit that various allegations made by the respondent which according to the respondent were causes of action for filing the said application under section 41-D of the said MPT Act were totally frivolous and after thought. It is submitted by the learned senior counsel that the application under section 41-D of the said MPT Act filed by the respondent was a counter blast to the eviction proceedings filed by the trust against the respondent before the Small Causes Court, Mumbai in respect of the tenanted premises given to the respondent by the petitioner no.1 trust. The tenancy in respect of which has been already terminated by the petitioner no.1 trust. It is submitted that the said suit for seeking eviction of the respondent is still pending before the Small Causes Court, Mumbai.

25. Learned senior counsel would submit that the averments made by the respondent in the said application under section 41-D of the said MPT Act would clearly indicate that those averments are not only adverse to the interest of the trust but the respondent has questioned the title of the petitioner no.1 trust. The respondent cannot be thus considered as the person having interest in the trust or has acted for the benefit of the trust.

26. Learned senior counsel invited my attention to the notice of termination dated 7th August, 2017 addressed by the petitioners through

their advocate to the respondent thereby terminating the lease in respect of the premises admeasuring 2008 sq. ft. of the ground floor of the property known as “Barfiwala Building”, at 37, 39 and 41, Vithalbhai Patel Road, Mumbai 400 004 granted in favour of the respondent. He submits that within a period of two months from the date of the receipt of the said notice of termination, the respondent filed a frivolous application under section 41-D of the said MPT Act in the month of October, 2017 against the petitioners. It is submitted by the learned senior counsel that the provisions of section 41-D of the said MPT Act cannot be invoked by the person having personal grudge against the trust and more particularly the person who has made bald allegations about functioning of the trust in view of the petitioners having filed the proceedings against the respondent for his eviction from the tenanted premises.

27. It is submitted that it is the duty of the learned Charity Commissioner to stop the harassment to the trust and the trustees and shall not entertain such frivolous application under section 41-D of the said MPT Act filed by such person. He submits that relying upon the object of the respondent in filing such application is to pressurize the petitioner no.1 trust and to its trustees to withdraw the eviction suit against the respondent. He submits that in any event the allegations made by the respondent in the said application are totally stale allegations and have been made after more than five decades.

28. Learned senior counsel for the petitioners invited my attention to the findings rendered by the learned Joint Charity Commissioner – II

and also the points for determination framed by the learned Joint Charity Commissioner. He submits that the learned Joint Charity Commissioner has rendered a finding that the respondent herein had come with a specific case that he is a grandson of the settlor of the trust and belonging to Halai Lohana Community and therefore he is a interested person having interest in the trust as contemplated under section 2(10) of the Maharashtra Public Trusts Act, 1950. He also invited my attention to the findings rendered in paragraph (11) of the impugned order that the trust was created only for Halai Lohana Community including orphan children as well as poor members of Halai Lohana community is also *ex-facie* incorrect and contrary to the schemes sanctioned by this court. He submits that the trust was formed not for the entire Halai Lohana community but was created only for the section of the community.

29. It is submitted by the learned senior counsel that the findings rendered by the learned Joint Charity Commissioner that the applicant being the member of Halai Lohana community and can be said to be a person having interest in the trust under section 2(10) as well as beneficiary under section 2(A) of the MPT Act is also totally erroneous and contrary to those provisions and also contrary to the admitted facts.

30. It is submitted by the learned senior counsel that the findings rendered by the learned Joint Charity Commissioner in paragraph (14) of the impugned order that the respondent herein had made further serious allegations against the petitioners herein for commission of contravention of section 41-D of the MPT Act and therefore

considering the close relationship between the settlor and the respondent as well as he being a member of the Halai Lohana community, it was established that he is a person having interest in the trust as required under section 41-D of the MPT Act is also *ex-facie* perverse. He submits that merely because the respondent has made allegations against the trust cannot be the reason for holding that the respondent is a person having interest in the trust as required under section 41-D of the MPT Act. It is vehemently urged that the relative of the settlor cannot be considered as beneficiary or a person having interest in the trust.

31. Learned senior counsel for the petitioners placed reliance on the judgment of this court in case of ***Gajanan Waman Mulay and others vs. Moropant Mulay Public Charitable Trust, 1963 Mh.L.J.444*** and relevant portion on page (2) of the said judgment and would submit that the respondent being a tenant of the petitioner no.1 trust though may be interested in the trust property but that would not make any interest in the trust. It is also vehemently urged that the respondent is a person who was hostile to the interest of the trust and his object is to see that the trust is destroyed. Thus on that ground also it could not be said that the respondent is having any interest in the petitioner no.1 trust. It is submitted that the proceedings filed by both the parties against each other are pending in which the respondent has made serious allegations against the petitioners and has bent upon to destroy the reputation of the petitioner no.1 trust and also the reputation of the trustees.

32. Learned senior counsel placed reliance on the judgment of this court in case of ***S.H.Jawandhiya and others vs. Onkareshwar Birbal Prasad Mishra, 1996 (2) Mh.L.J. 897*** and in particular paragraph (10) in support of his submission that the respondent who claimed to be the tenant did not fall within the definition of person having interest in the trust. He submits that an employer or the tenant does not fall in the category of a person having interest in the trust. It is submitted that the definition of the word 'beneficiary' under section 2(2A) of the MPT Act is not an inclusive definition and is not a wide definition. He submits that the said definition is very restrictive and cannot include a tenant or even member of the community who is not a beneficiary. It is submitted that the respondent having litigation against the petitioner no.1 trust thus cannot be allowed to misuse the provisions of section 41D of the MPT Act. This court has already granted *ad-interim* relief in this writ petition against the respondent which is in force for quite sometime.

33. Mr.Kapadia, learned senior counsel for the respondent on the other hand submits that there are several litigations filed by the petitioners against the respondent. In the application filed under section 41D of the MPT Act by the respondent, the petitioners have raised an issue of locus of the respondent for filing the said application under section 41D of the MPT Act. He submits that the ground raised in the said application filed before the learned Joint Charity Commissioner could atmost a ground for dismissal of the application under section 41-D but on the basis of those grounds, the learned Joint

Charity Commissioner does not cease to have jurisdiction to hear the said application under section 41-D at this stage merely on the allegations made by the petitioners that the respondent is not a person having interest in the trust.

34. Learned senior counsel for the respondent invited my attention to section 2(10)(e) of the MPT Act and would submit that the expression 'person having interest' provided in the MPT Act at different places are for different purposes. He also placed reliance on section 92 of the Code of Civil Procedure, 1908 in support of this submission. It is submitted that section 2(10) which defines a person having interest is a inclusive definition. It is submitted that the word 'means' was substituted by the word 'includes' by amendment by Bombay 28 of 1953 by virtue of which amendment, the ambit of the expression 'person having interest' was widened. He submits that under section 2(10) (e) of the MPT Act, the expression any trustee or beneficiary was inserted in substitution of the word 'any beneficiary' by Maharashtra Act 20 of 1971. It is submitted that for the purpose of invoking section 41D of the MPT Act, a person having interest in the trust need not be a trustee or beneficiary.

35. It is submitted by the learned senior counsel that it was the authority only i.e. the Joint Charity Commissioner who was qualified to determine as to who is the beneficiary and a person having interest and is entitled to invoke section 41D of the MPT Act which powers have been rightly exercised by the said authority in the impugned order which cannot be interferred with by this court. He submits that the

widow or orphans or children who are the only beneficiaries according to the petitioners would not bring any illegalities of the petitioner no.1 trust or the trustees to the notice of the Charity Commissioner under section 41D of the MPT Act. The trustees of the petitioner no.1 may not choose to file any application under section 41D before the authority for removal of the trustees. None of these trustees also may file any suit under section 92 of the Code of Civil Procedure, 1908 in view of the prior leave of Charity Commissioner required under sections 50 and 51 of the MPT Act though there may be sufficient reason or complaint against the trustees acting prejudicial to the interest of the trust.

36. Learned senior counsel submits that though the properties of the settlor may be divested in the trust upon formation of the trust, it cannot be argued by the trustees that though the properties of the trust or the management of the trust are not being looked properly and not in the interest of the beneficiaries, the settlor or relative of a settlor cannot even file any application under section 41D of the MPT Act or cannot initiate any other action against the trust or the trustees. He submits that the settlor could have filed a complaint under section 41D of the MPT Act. The respondent being a grandson and being a member of the community and beneficiary, certainly could have filed the said application under section 41D of the MPT Act before the learned Joint Charity Commissioner. He submits that the word 'direct' which was prescribed under section 92 of the Code of Civil Procedure, 1908 also came to be deleted.

37. Learned senior counsel placed reliance on the judgment of Privy Council in case of ***Vaidyanatha Ayyar and another vs. Swaminatha Ayyar and another, AIR 1924 Privy Council 221(2)*** and in particular the relevant paragraph on pages 222 and 223 and would submit that the grandson of the settlor also would be a person having interest in the trust and is entitled to maintain the application under section 41D of the MPT Act. He submits that the respondent is a son of the daughter of the settlor admittedly and has been occupying the ground floor premises of the building of the petitioner no.1 trust as a tenant for last more than 35 years. It is submitted that tough the petitioners ought to have renewed the lease in favour of the respondent in the year 1991 itself, fresh lease is executed belatedly and as a result of that the respondent could not give the said premises on sub-lease for a period of eight years. The petitioners had illegally demanded the higher rent in respect of the said premises. The respondent was successful in the application filed by the respondent for determination of the standard rent.

38. It is submitted that the petitioners had recovered excess rent from the respondent in respect of the said premises. The respondent was required to file an execution application and for attachment of the properties of the trust. The renewal of the lease was granted by the petitioner no.1 trust subject to condition that the respondent would pay a sum of Rs.51,000/- per annum in addition to the rent. The said demand was subsequently dropped by the petitioners. It is submitted that though the lease deed entered into between the parties permitted

the sub-lessee by the respondent. The petitioners initiated action against the respondent for creating sub-lease and illegally determined the lease which was granted to the respondent. He submits that the complaint of the respondent is not adverse to the interest of the trust.

39. Mr.Kanade, learned counsel for the petitioners in rejoinder invited my attention to the order dated 24th July, 2018 passed by this court formulating the issues involved in this petition. He submits that initially under section 2(10) of the MPT Act, the definition of 'person having interest' was restricted prior to 1953 when the words 'means' was substituted by the words 'includes'. Similarly under section 2(10)(e), the words 'a beneficiary' was substituted by the words 'any trustee or beneficiary' by Maharashtra Act, 20 of 1971.

40. Learned counsel strongly placed reliance on the definition under section 2(2A) and would submit that by the said latest amendment, the expression 'beneficiary' was now restricted to the person entitled to the benefit as per the objects of the trust as per Trust Deed or scheme made under the Act and Constitution of Trust and excludes any other person. It is submitted that by virtue of the said amendment, the legislative intent is clear that interference with the management of the trust by filing an application under section 41D of the MPT Act is restricted and an action can be taken only in the four circumstances and by the persons mentioned therein.

41. It is submitted by the learned counsel that in this case, it is not the case of the respondent that the Charity Commissioner has initiated

any action under section 41D on receipt of the report under section 41B or has initiated any suo-motu action under the said provision for suspension, removal or dismissal of any of the trustees of the petitioner no.1 trust. He submits that none of the condition set out in section 41D are satisfied for the purpose of invocation of the said provision by the respondent. The narrow meaning given to the 'person having interest has to be given full effect. It is submitted that it is not the case of the respondent that any acts of the petitioners are inconsistent with the object of the trust such as for benefit of orphans or the widow or the children, no such grounds are raised by the respondent under section 41D of the MPT Act.

42. Learned counsel for the petitioners distinguished the judgment of Privy Council in case of ***Vaidyanatha Ayyar and another*** (supra) on the ground that the facts of the said judgment before the Privy Council were totally different. The said judgment had dealt with section 92 of the Code of Civil Procedure,1908. He submits that section 92 of the Code of Civil Procedure, 1908 forms part of Part V which provides for special procedure such as in case of public nuisance and other wrongful acts affecting public at large. He submits that the said provisions will not apply in view of the specific provision under MPT Act being a special statute with restrictive definition under section 2A.

43. Learned counsel for the petitioners strongly placed reliance on the judgment of this court in case of ***Gajanan Waman Mulay and others*** (supra) and would submit that the respondent in this case is not interested in the welfare of the petitioner no.1 trust which is for the

benefit of the orphans, children and women i.e. the separate section of the community but is interested to pressurize the petitioners to settle the outgoing disputes between the parties. It is submitted that the provisions under section 41D for removal, suspension or dismissal of any proceedings of the public trust cannot be invoked by any member of the public but can be invoked only by the person actually deriving the benefit from the trust, by the trustees and in certain circumstances by the Charity Commissioner.

REASONS & CONCLUSIONS :

44. The question that arises for consideration of this Court is 'as to whether the definition of “beneficiary” under section 2-A of the Maharashtra Public Trusts Act, 1950 shall be given a restrictive meaning or not and more particularly while deciding the application under section 41-D of the MPT Act'.

45. A perusal of the application filed by the respondent under section 41-D of the MPT Act with Rule 25-AA of the Maharashtra Public Trusts Rules, 1951 indicates that it was the case of the respondent in the said application that the respondent is a grand-son of the said Sheth Maganlal Himatram Jivanram Barfiwala i.e. (son of the daughter of the said settlor). The said settlor had executed a Will dated 24th January, 2017 in the name of his wife Bai Gangabai as an executrix and the trustee and directed her to administer his property for specific beneficiaries. It was provided in the said Will that the object of the trust would be to open a department in the name of Madhavji

Jesang, Amarsey Kanji & Maganlal Himatram Barfiwala Lohana in "Balashram" existing in Bombay for up-bringing of little orphan kidling, managed by Shri Halai Lohana community.

46. It was further provided that the management of the said department shall be carried on in such a manner as the trustees of the said "Balashram" and Shri Halai Lohana Mahajan community think proper. It was further provided that if those three persons of "Balashram" ceased to exist, the institution for the upbringing of Orphan babies shall be separately established in the name of Shri Maganlal Himatram Barfiwala. The trustees of Shri Halai Lohana Mahajans will maintain the institution and income of the immovable properties and shops situated at 37/41, V.P. Road, then Bombay – 400 004.

47. This Court passed a decree on 5th January, 1950 in Suit No.1521 of 1949, which was filed by the trustees of Shri Halai Lohana Mahajans against the Advocate General of Bombay and others. By the said order, the trustees of the said Shri Halai Lohana Mahajans were directed to utilize the income of the said trust for giving milk to the poor children of the community below five years with preference to be given to the orphans of the community. It was further provided that if there was any surplus, same could be utilized for giving milk to the poor expectant mothers of the said Shri Halai Lohana Mahajans, the medical help and clothing to poor children and poor expectant mothers of the community.

48. It is not in dispute that the respondent was not a trustee of the petitioner no.1 trust at any point of time. It is also not the case of the respondent that the said settlor had given the said property in the trust and did not retain any personal right of any nature whatsoever in the said property. The said property was to be managed by the trustees exclusively for the benefit of the trust and the beneficiaries specifically prescribed in the Will. The said properties thus vested in the trustees on behalf of the trust.

49. A perusal of the application filed by the respondent under section 41-D of the MPT Act indicates that the respondent has made various allegations against the petitioners in respect of the functioning of the petitioner no.1 trust since the date of execution of the Will dated 24th January, 1917 by the settlor. It has been alleged in the said application that the trustees of the petitioner no.1 trust have given a total go-bye to all the provisions of the Trust Deed, the said MPT Act and have committed various illegal and unauthorized acts in the management and the administration of the said trust.

50. In the said application filed by the respondent, the respondent has set out the details of the execution of the lease deed by the trustees in favour of the respondent in respect of the shops on the ground floor of the property on the trust being shop no.37/41, V.P. Road, Bombay – 400 004, the litigation filed by the parties against each other in respect of the said shops. He has also raised an issue of additional rent allegedly demanded by the petitioners from the respondent in respect

of the said shops made the allegations of coercion against the petitioners to sign the agreement with effect from October, 1989 though the said agreement was signed on 10th August, 1997.

51. It was also contended by the respondent in the said application that the trustees have no right to continue even for a day on the ground that the petitioner no.1 trust did not have title of the immovable property mentioned in the Will dated 24th January, 2017 of late Sheth Maganlal Himatram Barfiwala since no probate had been obtained by the trustees in respect of the said Will till date. The respondent has thus challenged the title of the petitioners in respect of the same property though the respondent claims to be a lessee in respect of the said property from the petitioners.

52. A perusal of the said application filed under section 41-D of the MPT Act by the respondent makes it clear that the respondent has not made any allegations against the petitioners that the property of the trust has not been used for the benefit of the specific beneficiaries prescribed in clauses 17 and 18 of the Will of the settlor or the provisions of the Trust Act.

53. The petitioners filed a detailed written statement before the learned Joint Charity Commissioner raising various issues including an issue that the respondent herein was not at all a person having interest in the trust as defined under section 2(1) of the MPT Act. It was also contended that the respondent has no vested interest in the trust and its property and has filed the said application with a view to pressurize

the trustees of the petitioner no.1 trust to accept his illegal terms / demands which are contrary to the interest of the trust and thus the respondent cannot be considered as “person having interest” in the said trust and has no *locus-standie* to file the said application in the said suit.

54. The petitioners also contended about various breaches of the lease agreement entered into between the petitioners and the respondent in respect of the shops situated on the ground floor of the property of the trust. It is also contended by the petitioners that the amounts of the donations received by the trust has not been utilized for the purposes and the object of the trust. The petitioners prayed for framing a preliminary issue i.e. “Whether the respondent herein being a tenant of the property of the petitioner no.1 trust can be held as 'a person having interest in the trust' and as such whether the respondent herein had a *locus-standi* to file the said application”. There is no substance in the submission made by the learned senior counsel for the respondent that if the beneficiaries or any trustee does not file an application under section 41-D of the MPT Act, the respondent who claims to be a member of community and grand son of the settlor can be allowed to file proceedings under section 41-D of the MPT Act. The Charity Commissioner himself can invoke powers under section 41-D of the said MPT Act if conditions set out therein are satisfied.

55. The respondent filed a reply to the said application filed by the petitioners for framing a preliminary issue on 20th February, 2018. The respondent denied that he was not a person having interest. In the said

reply, it was contended that he was the member of Shri Halai Lohana Mahajans community and as a member of the said community, he was a beneficiary of the trust. It was contended in the said reply that even if a person is tenant in respect of the property of a trust, he cannot be debarred to take action on wrong functioning by the trust and that also of serious nature as allegedly pointed out by the respondent in his application filed under section 41-D of the MPT Act.

56. A perusal of the impugned order passed by the learned Joint Charity Commissioner indicates that the learned Joint Charity Commissioner has held that the respondent was a grand-son (daughter's son) of the settlor of the trust. There was also no dispute that the respondent belonged to Shri Halai Lohana Mahajans community. In paragraph 9 of the impugned order, learned Joint Charity Commissioner has held that the respondent had filed the said application with a specific case that he was a grand-son of the settlor of the trust and belonged to Shri Halai Lohana Mahajans community and therefore, he was a person having interest in the trust as contemplated under section 2(10) of the MPT Act.

57. Learned Joint Charity Commissioner thereafter extracted section 2(10) and section 2-A of the MPT Act in the impugned order and rendered a finding that the respondent being a member of Shri Halai Lohana Mahajans community and a grand-son of the settlor, he being a member of the said community, it can be said that he is the person having interest in the trust under section 2(10) as well as the beneficiary defined under section 2-A of the MPT Act. It is further held

that it cannot be said that the respondent had no concern with the trust or that he was a stranger.

58. In paragraph 14 and 15 of the impugned order, it is held by the learned Joint Charity Commissioner that on a plain reading of the application filed under section 41-A of the MPT Act by the respondent, it appeared that he had made several serious allegations against the petitioners that the trust as well as the trustees for commission of contravention of section 41-D of the MPT Act. It is further held that considering the close relationship between the settlor and the respondent as well as the member of Shri Halai Lohana Mahajans community, it was established that he is the person having interest in the trust as required under section 41-D of the MPT Act who filed the application against the trustees. It is further held that the respondent had established that he was a person having interest in the trust as contemplated under section 2(10) of the MPT Act and has fulfilled pre-requisite conditions of section 41-D of the MPT Act and thus has *locus-standi* to file the said application.

59. Section 41-D of the said MPT Act provides for suspension, removal and dismissal of the trustees. Section 41-D (1) of the MPT Act reads thus :

> "41D. Suspension, removal and dismissal of trustees :
>
> (1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B

> or *suo motu* may suspend, remove or dismiss any trustee of a public trust, if he, -”
>
> …................'

The expression “person having interest” is defined under Section 2(10) (e) of the said MPT Act which is applicable to the facts of this case reads thus :

> “ Person having interest includes -
>
> a) ….......
>
> b) ….......
>
> c) ….......
>
> d) ….......
>
> e) in the case of any other public trust (any trustee or beneficiary)”

60. The word “means” was substituted by the word “includes” by the amendment in the year 1953. In section 2(10)(e) the words “for beneficiary” was substituted by the words “any trustee or beneficiary” by the amending Act, 1971. As a result of these two amendments, the definition of “person having interest” under section 2(10) become inclusive definition. It is not in dispute that the petitioner no.1 trust does not fall under section 2(10)(a) to (d) and would fall as any other trust under section 2(10)(e). As a result of the amendment to section 2(10)(e) person having interest would include in case of any other public trust, any trustee or beneficiary.

61. Section (2-A) was inserted vide an amendment dated 1st September, 2017 in the said MPT Act, 1950 by Maharashtra Act LV of

2017 after clause (2). The expression “beneficiary” was defined which reads thus :

> 2(2A) “Beneficiary” means any person entitled to any of the benefits 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.

62. A conjoint reading of section 41-D, 2(10)(e) and 2(2-A) of the MPT Act would thus clearly indicate that the application under section 41-D of the MPT Act can be filed by a trustee or a beneficiary or an action can be initiated by the Charity Commissioner on receipt of a report under section 41-B or *suo motu* for removal, suspension or dismissal of any trustee of a public trust in the event of the conditions set out therein having been satisfied.

63. It is not the case of the respondent that he is a trustee of the petitioner no.1 trust. It is also not in dispute that the Charity Commissioner has not initiated any action under section 41-D on receipt of any report under section 41-B or has initiated any action under the said provisions *suo motu* for suspension, removal or dismissal of the trustees. The question thus arises is whether the respondent can be considered as a person interested in the trust for the purpose of invoking section 41-D of the said MPT Act or not.

64. The expression “person having interest”, in case of any other public trust which includes any trustee or beneficiary will have to be read with the definition of beneficiary under section 2(2-A) inserted by

2017 amendment which provides that the beneficiary means any person entitled to any of the benefit as per the objects of the trust explained in the Trust Deed or in the scheme made as per the said Act and the constitution of the trust and no other person. It is thus clear beyond reasonable doubt that the person who claims to be a beneficiary for the purpose of satisfying in the definition of “person having interest” under section 2(10)(e) of the said MPT Act and for the purpose of invoking section 41-D of the MPT Act has to be a person himself entitled to any of the benefits as per the objects of th trust explained in the Trust Deed or the scheme made as per the provisions of the MPT Act and the constitution of the trust and no other person.

65. It is not in dispute that the respondent in his application filed under section 41-D had not claimed to be any beneficiary entitled to any of the benefits as per the objects of the petitioner no.1 trust explained in the Trust Deed or the scheme sanctioned by this Court and the constitution of the trust. The respondent admittedly does not fall under the category of beneficiaries specifically provided in the trust deed such as orphans of Shri Halai Lohana Mahajan community, poor child of the community below five years or poor expectant mother of Shri Halai Lohana Mahajan community. In my view, the respondent thus cannot be considered as the beneficiary entitled to any of the benefits as per the objects of the trust explained in the Trust Deed or the scheme sanctioned by this Court. The respondent thus does not satisfy the condition set out in section 2(10)(e) of the MPT Act and is not a person having interest in the trust or not a person interested in the trust.

66. A perusal of the impugned order passed by the learned Joint Charity Commissioner clearly indicates that the learned Joint Charity Commissioner has considered the respondent as a person having interest in the trust under section 2(10) of the MPT Act as well as the beneficiary under section 2(2-A) of the MPT Act on the ground that he is a member of Shri Halai Lohana Mahajan community and the grand-son of the settlor. In my view, this finding of the learned Joint Charity Commissioner is *ex-facie* perverse and contrary to the definition of "person having interest" under section 2(10)(e) of the MPT Act and also the definition of "beneficiary" defined under section 2(2-A) of the MPT Act. The finding of the learned Joint Charity Commissioner that considering the close relationship between the settlor and the respondent as well as he being a member of Shri Halai Lohana Mahajan community, the respondent was a person having interest as required under section 41-D of the MPT Act is also *ex-facie* perverse and contrary to section 41-D of the MPT Act. In my view, in view of the definition of section 2(2-A) of the MPT Act, the definition of "person having interest" under section 2(10)(e) has to be given a restricted meaning. In my view, even if a person is a member of the community, he does not automatically become a beneficiary defined under section 2(2-A) of the MPT Act.

67. A perusal of the statement of objects and reasons of 2017 Act clearly indicates that after considering the fact that the proceedings under various provisions of the MPT Act remained pending for inordinate long period resulting in hindrance in advancement of the

public religious and charitable objects, various amendments were proposed. Insofar as section 41-D is concerned, in my view, the definition 'beneficiary' has to be given narrow and restrictive meaning. It is thus clear that the legislative intent to insert the definition of 'beneficiary” under section 2-A of the MPT Act is to restrict the interference with the management of the public trust only by the persons having interest in the trust including the trustee and beneficiary and more particularly the beneficiary defined under section 2(2-A) of the MPT Act inserted by 2017 Amendment and no other person.

68. A perusal of the record clearly indicates that insofar as the respondent is concerned, the respondent has made various allegations against the petitioner no.1 trust and the trustees for the period of last several decades in the said application filed under section 41-D, is a party to various litigations filed by the trust against the respondent or *vice versa*. In my view, the learned Joint Charity Commissioner has thus erroneously held that in view of the respondent having made various serious allegations against the petitioners for commission of contravention under the provisions of section 41-D of the MPT Act therefore, would be considered as the person having interest in the trust as required under section 41-D of the MPT Act. In my view, the interest of the respondent is adverse to the interest of the trust and not a person interested in the trust as required under section 41-D of the MPT Act for invocation of the said provision. The respondent claims the alleged rights in the property of the trust and not in the trust itself. The respondent is interested in destruction of the trust and thus cannot be considered as person interested in trust or a person having interest in

the trust. Alleged action taken by the trustees against the respondent for termination of lease, filing proceedings for eviction, alleged enhancement of rent cannot grant a locus to the respondent to invoke section 41-D of the MPT Act for various reliefs set out therein.

69. A perusal of the Will and the order passed by this Court sanctioning the scheme does not indicate that the settlor through whom the respondent claims right had reserved any right in the property which was directed to be vest in the trust and was to be used for specific set of beneficiaries. Since the settlor himself did not reserve any right in the property in the Will or such right in the settlor not provided even in the sanction scheme, the question of the grand-son of the settlor claiming any separate right in the property of the trust as the relative of the settlor did not arise. This Court in case of ***Gajanan Waman Mulay & Ors.*** (supra) has held that the tenants may be interested in the trust property but that does not make them persons interested in the trust. This court held that the applicants therein or the persons who are hostile and their object is to see that the trust is destroyed could not be considered as person having interest in the trust itself falling within the meaning of section 2(10) of the MPT Act. The principles laid does by the Division Bench of this Court in case of ***Gajanan Waman Mulay & Ors.*** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

70. This Court in case of ***S.H. Jawandhiya & Ors.*** (supra) has held that an employee or a tenant does not fall within the category "person having interest" in the trust under section 2(10) and therefore, sections

50 and 51 of the MPT Act had no application. The principles of law laid down in case of ***S.H. Jawandhiya & Ors.*** (supra) can be extended to the facts of this case.

71. Insofar the judgment of the Privy Council in case of ***Vaidyanatha Ayyar & Anr.*** (supra) relied upon by Mr.Rohit Kapadia, learned senior counsel for the respondent is concerned, the Privy Council had considered section 92 of the Code of Civil Procedure, 1908 in the said judgment. The said judgment, in my view, would not assist the case of the respondent even remotely. The application filed by the respondent in this case was not under section 92 of the Code of Civil Procedure, 1908 but was filed under section 41-D of the MPT Act. Be that as it may, since the settlor himself had not reserved the right in the property of the trust, the respondent who claims to be the grand-son of the settlor cannot claim any independent right or interest in the petitioner no.1 trust based on such Will or the sanctioned scheme. The judgment of the Privy Council thus in case of ***Vaidyanatha Ayyar & Anr.*** (supra) would not assist the case of the respondent.

72. In my view, the impugned order passed by the learned Joint Charity Commissioner is *ex-facie* contrary to various provisions of the said MPT Act and also contrary to the principles of law laid down by the Division Bench of this Court in case of ***Gajanan Waman Mulay & Ors.*** (supra) and the judgment delivered by a single Judge of this Court in case of ***S.H. Jawandhiya & Ors.*** (supra) and thus deserves to be set aside.

73. I therefore, pass the following order :-

(a) The impugned order dated 7th April, 2018 passed by the learned Joint Charity Commissioner – II, Maharashtra State, Mumbai, below Exhibit – 14 in Application No.537 of 2017 filed by the petitioners is quash and set-aside. The application (Exhibit – 14) filed by the petitioners in Application No.537 of 2017 is allowed.

(b) It is declared that the respondent is not a person having interest within the meaning of section 2(10)(e) read with the definition of "beneficiary" under section 2(2-A) of the Maharashtra Public Trusts Act, 1950 and is not a person interested in the trust and thus could not have invoked section 41-D of the Maharashtra Public Trusts Act, 1950.

(c) It is declared that the respondent had no *locus standie* to file the said Application No.537 of 2017 under section 41-D(1)(b), (c) and (d) of the Maharashtra Public Trusts Act, 1950 and thus the said application is rejected on the ground of maintainability.

(d) Rule is made absolute in aforesaid terms.

(e) There shall be no order as to costs.

(R.D.DHANUKA, J.)