

**IN THE HIGH COURT OF JUDICATURE AT BOMAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10125 OF 2022**

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Shri. B. Parandhaman and anr.Petitioners

V/s.

Shri B. Paramanandhan and ors.Respondents

Mr.A.V. Anturkar, Senior Advocate i/b. Ajinkya Udane for Petitioners

Mr. S.M. Oak i/b. Vinayak R. Patil , Advocate for Respondent No.1

CORAM : SANDEEP K. SHINDE, J.

WEDNESDAY, 28TH SEPTEMBER, 2022.

P.C. :

1. Rule. Rule made returnable forthwith by consent.
2. This petition is filed against the order dated 14th June, 2022 passed by the Assistant Charity Commissioner-IV , Pune Region , Pune, rejecting petitioners' application for being impleaded in the proceedings in the pending Change Report 1237/2022 filed by the Respondent No.1 in respect of Shri Balaji Society, a Trust under Section 22 of the Trust Act.
3. Heard Mr. Anturkar, Learned Senior Counsel for the Petitioners and Mr. Oak, learned counsel for Respondent No.1.

4. Mr. Anturkar, learned Senior Counsel for the Petitioners submitted that, Petitioners being persons, having interest in the Trust, it was imperative to join them as a party to the said proceeding on their application under Section 73A of the Maharashtra Public Trust Act. Mr. Anturkar, submitted that the Assistant Charity Commissioner failed to exercise the jurisdiction vested in him under Section 73A of the said Act and thereby committed an error in rejecting impleadment sought by the Petitioners.

5. On the other hand Mr. Oak, learned counsel for the Respondent No.1, submitted that, the Assistant Charity Commissioner, has dealt with all objections of the Petitioners to the proposed change and, therefore, order declining to implead, caused not prejudice to them. Mr. Oak, learned counsel, on instructions, submitted that Change Report No. 1237/2022 has been accepted and, therefore, petition against the order, declining their impleadment is rendered infructuous. Mr. Oak, further submitted that against the order, accepting the

change report, Petitioners have preferred an appeal under Section 70(2) of the Trust Act, and , therefore, Petitioners may ventilate their grievance, if any, before the Appellate Authority. Mr. Oak would, therefore, urge that order impugned calls for no interference. Mr. Anturkar, learned Senior Counsel, countered the arguments of Mr. Oak, contending that Petitioners sought impleadment under Section 72A of the Act, person being interested, in the Trust. However, learned Charity Officer dealt with the application assuming jurisdiction under Section 22(2) of the Act, and, therefore, error in exercise of jurisdiction being apparent on the face of it, interference is called for.

6. To appreciate the rival contentions, it would be advantageous to reproduce Section 73A of the Trust Act:

4. “73A. *Power to Inquiry Officer to join persons as party to proceedings,--In any proceedings this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such*

person on such terms and conditions as the officer holding the inquiry may order.”

7. This section was inserted by Maharashtra Act, 20 of 1971, object and reasons, of which were; “At present there is no provision in the Act to bring on record as party any person having interest in public trust. It is noticed that in many cases certain persons are in position to help the inquiry officers to arrive at a decision by producing relevant evidence.” Thus, new section has been added empowering inquiry officers to join person as a party to any proceeding, if such person is having interest in the trust. The provisions of this Section are clear, plain and unambiguous on its face, and, therefore, meaning of this provision must be determined from the language itself. Thus, to say Section 73A enables any person to join as party to proceeding provided, he discloses his interest in the trust. Once, interest is disclosed and Charity Commissioner is satisfied qua applicants' interest in the trust, it is obligatory for

him to allow impleadment. Thus jurisdiction of the Charity Commissioner under Section 73A is limited.

8. In the case at hand, the Learned Commissioner while dealing with the application under Section 73A of the Act, has assumed the jurisdiction under Section 22(2) r/w. 4th proviso thereto. The Section 22 of the Act invest the Charity Commissioner with powers to verify correctness of the change occurred in any of the particulars recorded in the register of the Trust and / or change in name and address or the mode of succession to office of trusteeship and its managership by holding inquiry and after considering the objection to such change/s and thereafter pass order either to accept or reject the change. In the case at hand, Charity Commissioner has inquired into the objections to the change report, while application was simply for impleadment.

9. In, my considered view, the order impugned being passed by assuming jurisdiction under section 22(2) of the Act, the error is apparent on the face of the order and,

therefore, interference is called for. In the result, the impugned order is set aside. Rule is made absolute in the above terms.

10. Petition is disposed of.

11. At the request of Mr. Oak, learned counsel appearing for the Respondent No.1, the Learned Charity Commissioner shall decide and dispose of two Change Report Nos. 3321/2020 and 3320/2021 of the same trust, expeditiously.

(SANDEEP K. SHINDE, J.)