

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3604 OF 2022

Hazi Liyaqat Khan S/O Mubarik Khan -- Petitioner

Vs.

Assistant Charity Commissioner, Nagpur and -- Respondents
another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Dipti P. Tidke, Advocate for Petitioner
Ms. M.A. Barabde, AGP for Respondent No.1
Dr. A.H. Jamal, Advocate for Respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 10th OCTOBER, 2022

Heard Ms. Tidke, learned counsel for the petitioner, Dr. Jamal, for respondent No.2 and AGP for respondent No.1. The petitioner challenges the order dt. 13/5/2022, whereby the petitioners have been forbidden to cross-examine the witness, who has been examined on behalf of reporting trustee in Change Report No.895/2014.

2. Ms. Tidke, learned counsel for the petitioner submits that the definition of 'a person having interest' as occurring in Section 2(10) of the Bombay Public Trust Act (MPT Act) is an inclusive definition and therefore there cannot be any set parameters for that purpose and the provision of Section 2(10) as well as 2(2-A) of the MPT Act, therefore, have to be

construed in a liberal manner, considering which the impugned order cannot be sustained. Reliance is placed upon judgment in the case of **Digambar Pralhad Jot and others Vs. Satyanarayan Biharilal Zunzunwala and others** reported in AIR 1978 1 Bom 196 and in Writ Petition No.1996 of 2021(Pyarchand Maniram Wasnik & others Vs. Nandkishor Uttam Shyamkunwar and others), decided on 05/01/2022.

3. Dr. Jamal, learned counsel for the respondent No.2 opposes the same and submits that the petitioners have no concern whatsoever with the trust on the account of which the impugned order is justified by placing reliance in the case of **Ajitkumar Rameshkumar Patni Vs. Jaywant Madhukar Mishra and another** in Writ Petition No.1587/2012, decided on 11/02/2013.

4. It is not in dispute that the respondent No.2 - Trust, is imparting education in Islamic languages, in the locality. The petitioner claimed to be person professing Muslim religion and interested in propagation of Islamic languages, considering which when a change report No.895/2014 was filed by respondent No.2 - trust the petitioner had filed objections to the same in December 2014. From 2014, till the date of passing of the impugned order, the petitioner has been permitted to participate in the proceeding before the learned Assistant Charity Commissioner and it is for the first time that the application below Exh.88 came to be filed on 27/09/2021 objecting the right of the petitioner to cross-examine the Election Officer on the ground that he was not legal and valid members of the Trust nor beneficiaries of the trust, which has been allowed by the impugned order. It is

also not disputed that the petitioner has also initiated proceeding under Section 47 of the MPT Act bearing No.12/2013, which is pending adjudication before the Jt. Charity Commissioner. The impugned order, merely considers the proposition that the petitioner was not the member of the trust as the only ground, to allow the application and does not consider the wider language of Section 2(10) read with section 2(2-A) of the MPT Act and so also the fact of Section 47, application being prosecuted by the petitioners and its effect, nor does it consider the position that since 2014, the petitioner has been permitted to participate in the change report proceedings. It is thus obvious that the impugned order does not consider various factors which are necessary to be taken into consideration for determining the entitlement of the petitioner to participate in the change enquiry report. As is indicated in **Digambar Pralhad Jot and others Vs. Satyanarayan Biharilal Zunzunwala** (supra), the definition of a person having interest in Section 2(10) of Act is an inclusive definition and has to be interpreted in liberal sense, which would be equally applicable in respect of Section 2(2-A) of the MPT Act.

5. Considering this position on the basis of facts as availing in the present matter, the impugned order cannot be sustained as the institution and continuation of the proceeding under Section 47 of the Act wherein the right of the petitioner to institute and prosecute the same have not been objected by the respondent No.2. In **Ajitkumar Rameshkumar Patni Vs. Jaywant Madhukar Mishra** (supra), relied upon by Dr. Jamal, learned counsel for the respondent

No.2, the factual position was different inasmuch as on the very say of the respondents therein, there was nothing on record to indicate as to how and in what capacity they were required to be joined as parties to the proceedings as against which in the instant matter as indicated the petitioner has filed objections in the year 2014 and he is also prosecuting the proceedings under section 47 of the Act, Considering which the impugned order is hereby quashed and set aside and application below Exh.88 is dismissed.

(AVINASH G. GHAROTE, J.)

MP Deshpande