



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7630 OF 2022**

Nimboni Shikshan Prasarak Mandal ... Petitioner
versus
Vitthal Maruti Mali and Ors. ... Respondents

Mr. Anant Vadgaonkar, for Petitioner.
Mr. Prasad B. Kulkarni, for Respondent No.1.
Mr. S.H.Kankal, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 17 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 11 April 2022 passed by the learned Deputy Charity Commissioner, Solapur on an application (Exhibit 107) in Change Report No.964 of 2011, whereby the application preferred by the Respondent No.1 under Section 73A of the Maharashtra Public Trusts Act, 1950 came to be allowed.
3. Change Report No.964 of 2011 was initially filed by Vitthal Nagappa Mali, reporting change in the trustees of Nimboni Shikshan Prasarak Mandal – Petitioner, a public charitable trust. When the Change Report was ripe for arguments, Mr. Vitthal M. Mali, the reporting trustee, sought to withdraw the said Change

Report. Thereupon, Narsappa Shivling Mali who claimed to have been appointed as a Secretary, pursuant to the resolution of the Managing Committee on 12 June 2011 got himself transposed as the reporting trustee in the said Change Report. In the meanwhile, Respondent No.1 preferred application to implead him as a party to the said proceedings under Section 73A of the Act, 1950, claiming himself to be a person having interest in the public trust.

4. The Petitioner resisted the application. It was, inter alia, contended that at the behest of Mr. Vitthal Nagappa Mali, the erstwhile reporting trustee, the Respondent had preferred an application to resist the acceptance of the Change Report and he had no interest in the affairs of the trust.

5. By the impugned order, the learned Deputy Charity Commissioner allowed the application for intervention holding, inter alia, that it was indisputable that the Respondent No.1 was a member of the trust. It was not denied by the reporting trustee that the Respondent No.1 was a member of the trust, and, therefore, being a person having interest in the trust, Respondent No.1 deserved to be impleaded as a Respondent to the Change Report.

6. The learned Counsel for the Petitioner submitted that in the application for impleadment under Section 73A of the Act, 1950, the Respondent No.1 did not divulge interest which the Respondent No.1 had in the Petitioner Trust. The Application, according to the learned Counsel for the Petitioner, came to be preferred

in the year 2017 only, to delay the adjudication of the Change Report. It was submitted that for being impleaded as a party to the proceedings by invoking the provisions contained in Section 73A of the Act, 1950, a person must have a bonafide and genuine interest in the trust and not interest adverse to that of the trust.

7. Section 73A of the Act, 1950 reads as under :

73A – Power of Inquiry Officer to join persons as party to proceedings -

In any proceedings under 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 or such terms and conditions as the officer holding the inquiry may order.

8. Section 2(10) of the Act, 1950 defines the expression “person having interest” as under :

“2(10) “person having interest”[includes] -

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of a Waqf, a person who is entitled to receive any pecuniary or other benefit from the Waqf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the Waqf or to participate in any religious or charitable institution under the Waqf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust, any trustee or beneficiary;”

9. The definition of “person having interest” is inclusive. Clause (d) of Clause (10) provides that, in case of a society registered under Societies Registration Act, 1860, any member of such Society would be a person having interest. Thus, if a Trust is initially registered as a Society under Societies Registration Act, 1860, and it is shown that a person is a member of such Society, he becomes a person having interest in the society. Under Clause (e), which is residuary in nature and admits expansive interpretation, in case of any other public trust, any trustee or beneficiary can be termed as the person having interest in the Trust.

10. Evidently, the Petitioner is a Society registered under the Societies Registration Act, 1860, and, thus, a public trust within the meaning of Section 2(13) of the Act, 1950. It is not disputed that the Respondent No.1 is a member of the Petitioner Trust. Respondent No.1, thus, satisfies the primary and essential qualification of a person having interest in the Petitioner trust.

11. The learned Counsel for the Petitioner would, however, urge that the interest of the person who seeks impleadment ought to be bonafide and not an adverse interest. To lend support to this submission, the learned Counsel for the Petitioner placed reliance on the decisions of this Court in the cases of **People’s Education Society and Ors. V/s. Mansing S. Moray and Ors.**¹ and **Ashok Eknathrao Vikhe Patil and Anr. V/s. Joint Charity Commissioner, Pune and Ors.**²

1 2015(6) Bom. C.R.786

2 WP 796 of 2018 dt. 4 May 2021

12. In the case of **People's Education Society (supra)**, the learned Single Judge of this Court expounded the import of the 'person having interest' as under :

“25..... The authorities considering such application under section 73A of the said Act cannot mechanically, without application of mind to the aforesaid provisions of the Act and merely for the sake of asking, permit any person claiming to have an interest in such trust, to participate in the proceedings. The expression “person having interest in the public trust” represents the persons having bona fide and genuine interest in public trust as against an interest with an ulterior motive or mala fide intention. The authority is, therefore, required to consider the contents of any such application, if made and the bona fides in claiming participation. If required, the Authority may ask the party concerned to enter the witness box and be subject to the cross-examination so as to establish his bona fides and the status as a “person having interest in the public trust”. The recording of finding that the person is or is not having such bona fide interest in the public trust, is a sine qua non for permitting interevention in the matter. Otherwise, the very objection in introducing the provision of Section 73A of the said Act, shall frustrate, resulting misuse of the provision. No doubt, the definition is inclusive, but it cannot be said that the person acting against the interest of such public trust or has no interest in the public trust or having hostile interest or has no connection with such public trust can be permitted to participate in the proceedings without establishing the bona fides and testing his case on the touchstone of the provision of Section 73A read with Section 2(1) of the said Act.”

13. In the case of **Ashok Eknathrao Vikhe Patil (supra)**, this Court had observed as under :

“13. From the phraseology of newly inserted clause 2A, it becomes evident that the legislature has endeavoured to give a definite meaning to the

term “beneficiary”. Its scope is sought to be restricted to a person entitled to any of the benefits as per the objects of the Trust and no other person.

14. A conjoint reading of clause (10) (e) and Clause 2A of Section 2 of the Act, 1950, would indicate that a person who claims interest in the affairs of the trust is required to demonstrate some substantial, real and direct beneficial interest in the trust. A person who has no interest whatsoever in the trust cannot be clothed with the status of a person having interest in the trust on the general premise that the object of the trust is advancement of public charities, unless he falls within the definition of “beneficiary”.

14. There can be no duality of opinion that a person who claims interest in the affairs of the trust ought to have a bona fide and real interest in the affairs of the trust, and not a fanciful or litigious interest. However, in the facts of the case at hand, the aforesaid pronouncements do not advance the cause of the Petitioner.

15. Incontrovertibly, the Respondent No.1 is a member of the Petitioner Trust. In the application for impleadment, Respondent No.1 has made categorical averments to question the factum as well as the legality of the change, reported by the reporting trustee. By opposing the acceptance of the change report, at best, Respondent No.1 can be said to have taken a stand which is adverse to the interest of the reporting trustee and not against the trust as such. Thus, the submission on behalf of the Petitioner that the interest of the Respondent No.1 is adverse to that of the trust, does not merit acceptance.

16. In any event, since the learned Deputy Charity Commissioner has exercised

discretion to allow a member of the trust to participate in the proceedings reporting change in the trustees of the trust, I do not find any justifiable reason to exercise extraordinary writ jurisdiction as there is neither any procedural defect nor jurisdictional error.

17. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)