



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

7 WRIT PETITION NO. 7816 OF 2024

Suresh Koduram Varayani

VERSUS

The State Of Maharashtra Through The Joint Charity Commissioner 1 And
Another

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Advocate for the Petitioner : Mr. Patil Mangesh G
AGP for Respondents: Mr. S. B. Pulkundwar

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CORAM : R. M. JOSHI, J.

Dated : July 29, 2024

PER COURT :-

1. By consent of both sides petition is heard finally at admission stage.
2. This petition takes exception to order passed below Exhibit 16 in Inquiry Application No.02/2023 filed under Section 41 D of the Maharashtra Public Trust Act.
3. The petitioner is respondent in above proceeding. An application is moved by the petitioner vide Exhibit 16 raising objection to the locus standi of respondent in filing application under Section 41 D of the Act. It is stated therein that the applicant is not trustee of the trust nor has any concern with the management of the trust. It is also contended that there is no mention in the application by the respondent as to how he is concerned with the affairs of the trust and for want of details to that effect, application is not tenable.
4. This application was opposed by respondent by filing say at Exhibit 17 wherein it is specifically stated that there is a temple managed by the trust. He further claimed that the ancestors of the respondent had taken

initiative for formation of the trust and the temple.

5. Learned Counsel for the petitioner submits that unless the respondent shows that he is trustee or beneficiary of the trust, he cannot be called as person having interest as per Section 2 (10) of the Act. It is his submission that the definition of beneficiary under Section 2 (A) is restrictive one and unless the respondent shows that he is entitled to get any benefits as per the object of the trust, he has no locus standi to file any application under Section 41 D of the Act. To support his submission, he placed reliance on the Judgment of this Court in case of ***Maganlal Himatram Barfiwala and Others vs. Mridangraj Hiralal Suchak, reported in (2019) 2 AIR Bom R 674.***

6. It is his submission that there serious consequences of the order passed under Section 41 D of the Act, and as such, the person who is has no concern with the management of the trust or nor he is beneficiary, can be allowed to invoke the said provision. It is his further submission that the respondent is in habit of making false allegations and even in earlier proceedings such unsubstantiated allegations were made, as observed in the order passed by the competent authority.

7. In order to consider objection with regard to the locus standi of respondent, it needs to be seen as to whether these person having

interest as defined in Section 2 (10) of the Act. For the sake of convenience, the said Section 2 (10) of the Act is reproduced here : -

“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 the 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 wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf 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 wakf or to participate in any religious or charitable institution under the wakf,

(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.”

8. Bare perusal of the said provision indicates that a person having interest is the one in case of a temple who is entitled or is in habit of attending the performance of worship as a service in the temple.

Similar is the provision in respect of Math and Wakf. As far as society registered under the Society Act is concerned, he needs to be a member of such society. Whereas in case of any other public trust, he should be any trustee or beneficiary. It is thus clear that in case of a trust other than managing temple and Math, such person is required to establish that he is trustee or beneficiary thereof. In the instant case however, undisputedly the petitioner trust manages a temple. Perusal of the application Exhibit 16 filed by petitioner does not show that the respondent is not entitled to attend the temple. If it is so, he can be prima facie a person having interest in the trust in order to invoke provisions of Section 41 D of the Act. This Court therefore finds no perversity in the order passed by the learned Joint Charity Commissioner rejecting the application of the petitioner at this stage.

9. Needless to say that it is open for the petitioner to defend the allegations and burden would be on the respondent herein to prove his contention before the said authority. Having regard to the aforesaid facts, there is no merit in the petition, hence petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.