

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.967 OF 2024

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Jagdish Keshubhai Chudasama & Ors ... Petitioners

V/s.

Vipul Ishwardas Mody & Ors ... Respondents

Mr. Nimish Mehta a/w Ms. Seema Chettri Rana &
Mr.Mohammed Khalik, for Petitioner.

Mr. Abhinav Chandrachud a/w Mr. Jinay Jain a/w
Ms. Nikita Kanojiya and Mr. V. Srivastav and Mr. Nikhil
Waje, for respondent No.1.

Mrs. M., S. Srivastava, AGP for State/Respondent
Nos.3 & 4.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13, 2024

PC.:

1. The writ petition arises out of rejection of an objection raised by the petitioner regarding maintainability of an application under Section 41-D of the Maharashtra Public Trusts Act, 1950 filed by the respondent No.1.

2. The locus pleaded in the application is that respondent No.1 is the life time manager of the Gujarati Mochi Dnyati Navnath Trust. It is also stated that, respondent No.1 was always connected with the Trust and devoted his precious time to serve services of the temple.

3. The petitioner filed an application before the Charity Commissioner challenging the locus of respondent No.1. The Charity Commissioner by the impugned order dated 21 November 2023 rejected the application treating as 'application is filed'. The Charity Commissioner appears to have been persuaded himself by observing that respondent No.1 had participated in civil litigation pertaining to the said Trust. Therefore, at this stage, it is not proper to conclude that, he is not interested in the Trust.

4. Whether a litigant is a person interested in the Trust needs to be decided as per Section 2(10) of the Maharashtra Public Trust Act, 1950. An object of the Trust is in relation to the temple; hence, Section 2(10)(a) is relevant provision which defines 'person having interest'. Section 41-D of the Maharashtra Public Trusts Act, 1950 confers power of the Charity Commissioner on an application filed by the Trustees or person interested in the Trust or *suo moto* to take cognizance of the application alleging ingredients of sub-Section (a) to (f) of Section 41-D of the Maharashtra Public Trusts Act, 1950. It is, therefore, evident that the Charity Commissioner can *suo moto* exercise such power or such power can be invoked by a Trustee or a person having interest in the Trust.

5. According to respondent No.1, he falls in the category of 'person having interest' in the Trust. It is submitted on behalf of respondent No.1 relying on the constitution of the Trust that any Hindu person who is entitled to visit the temple can be treated as 'person having interest' in the affairs of the Trust. For the said purpose, respondent No.1 will have to make such averment in the

application.

6. It is, therefore, submitted on behalf of respondent No.1 that, he will file an application for amendment of his application under Section 41-D of the Maharashtra Public Trusts Act, 1950 to plead sufficient locus for maintaining an application under Section 41-D of the said Act. Considering the scheme of the Act, it is necessary that only the person interested in the affairs of the Trust need to file such application under Section 41-D of the said Act. Hence, it shall be open for respondent No.1 to file an application for amendment. If such application is filed, the Charity Commissioner shall decide such application on its own merits. In case, the Charity Commissioner allows the application for amendment, the Charity Commissioner shall decide the petitioner's application for maintainability of application on its own merits.

7. However, on the date of passing of an order, the locus pleaded in the application was not sufficient to treat respondent No.1 as 'person having interest' and, therefore, the Charity Commissioner was not justified in rejecting preliminary objection of respondent No.1. Hence, the impugned order passed by the Charity Commissioner is set aside with liberty to respondent No.1 to file an application for amendment.

8. With this, the writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)