



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

WRIT PETITION NO. 13429 OF 2024

Pramod S/o Murlidharrao Khedkar,
Age – 49 years, Occ – Agriculturist &
Ex – Municipal Councillor,
R/o H.No. 174, Block No.12,
Labour Colony, Nanded,
Tq. & Dist. Nanded.

.....PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032.
2. The Collector, Nanded,
Tq. & Dist. Nanded.
3. Kala Mandir Trust Nanded,
Through its authorized President,
Sheetal W/o Santosh Bhalke,
Age – 46 years, Occ – Medical Practitioner,
R/o Opp. DSP Office, Vazirabad, Nanded,
Tq. & Dist. Nanded.
4. Nanded Waghala City Municipal Corporation,
Nanded, Through its Commissioner,
Municipal Corporation, Nanded,
Tq. & Dist. Nanded.
5. Nanded Waghala City Municipal Corporation,
Nanded, Through its Administrator,
Municipal Corporation, Nanded,
Tq. & Dist. Nanded.

6. M/s Shikhar Infra (SPV),
Through its Partner,
Sanman Buildcon PVT, LTD.
Through its Authorized Signatory,
Siddhant S/o Satish Maheshwari,
Age – Major, Occ – Business,
R/o Shop No. 39, 1st Floor,
Sanman Prestige, Station Road,
Nanded – 431601
7. Sanman Buildcon PVT LTD.
Through its Authorized Signatory,
Satish S/o Purushottam Maheshwari,
Age – Major, Occ – Business,
R/o Shop No. 39, 1st Floor,
Sanman Prestige, Station Road,
Nanded.

.....RESPONDENTS

Mr. V. D. Salunke, Senior Adv. i/b Mr. Y. R. Barhate, Advocate
for the Petitioner

Mr. V. M. Chate, AGP for respondent-State

Mr. G. A. Gadhe, Advocate for Respondent no.3

Mr. S. A. Mulla h/f Mr. R. H. Ingale, Advocate for Respondent
nos.4 and 5

Mr. P. R. Katneshwarkar, Senior Adv. i/b Mr. A. A. Fulfagar,
Advocate for respondent nos.6 and 7

CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 02ND JULY, 2025

PRONOUNCED ON : 08TH JULY, 2025

JUDGMENT :-

. The respondent no.3 in the present petition namely;
Kala Mandir Trust, Nanded is a Public Trust, registered under
the Maharashtra Public Trusts Act, 1950.

2. Vide judgment and order dated 23.03.2023, passed in application no.09 of 2023, the learned Joint Charity Commissioner, Aurangabad region Aurangabad, granted permission to the respondent no.3 to enter into Concessionaire (Development) Agreement and Lease Agreement with respect to its property bearing Municipal No.2-12-220 (CTS No.3419) admeasuring 9757 Sq. meters, situated at Vazirabad, Nanded for a period of thirty years with Sanman Buildcon Private Limited. The said order is passed under Section 36(1)(b) of the Maharashtra Public Trusts Act, 1950. The trust deed provides that the properties of the trust shall be utilized mainly for the furtherance of art, culture, literature, government functions and for other purposes to be unanimously decided by the trustees.

3. Apart from the said objectives, which are mentioned in the deed of trust deed 21.10.1957, the respondent no.3 has also framed rules and regulations for regulating its activities. Rules and Regulations provide that there shall be Program Sub-Committee dedicated to look after the fields of i) music and dance, ii) drama, iii) literature and iv) drawing. The

Rules and Regulations provide that the Program Sub-Committee shall comprise of five to fifteen persons to be nominated by the trustees from the trustees and respectable citizens of Nanded.

4. The present petition is filed challenging the judgment and order dated 23.03.2023, granting permission to enter into the aforesaid agreement.

5. The petitioner is admittedly not a member or a trustee of the respondent no.3/Trust. The petitioner states that he is a resident of Nanded and has keen interest in the development of Nanded City. He has stated that he is Ex Municipal Councilor.

6. The respondent no.3 has filed reply in the matter in which, amongst other grounds, a preliminary objection is raised with respect to *locus-standi* of the petitioner to challenge the impugned order. The petitioner has therefore, filed a rejoinder, wherein he has stated that he has *locus-standi* to challenge the order, since he is an Ex-Councilor and a resident of Nanded, who has vested interest in protecting properties of Public Trusts. He claims that he is not a

stranger, but a stakeholder in development of Nanded City. He has claimed that the trust property is a public asset and being a resident of Nanded, he is aggrieved by the misuse of the property of Public Trust.

7. On these averments, the petitioner contends that he has *locus-standi* to challenge the impugned order.

8. It will be pertinent to mention here that initially, the petitioner had filed a petition in public interest being Public Interest Litigation No.(Stamp No.14116 of 2024). The said petition was not entertained vide order dated 10.10.2024, holding that challenge to an order under Section 36 of the Maharashtra Public Trusts Act permitting a public trust to deal with its property, cannot be allowed to be challenged under the garb of a PIL. The registration of PIL was refused vide said order dated 10.10.2024, observing that the petitioner was free to take resort to appropriate remedies as were available to him in law.

9. In this backdrop, the petitioner has filed the present petition, challenging the said judgment and order passed under Section 36 of the Maharashtra Public Trusts Act.

10. The respondent no.3 had raised two preliminary objections i) that an order under Section 36 of the Maharashtra Public Trusts Act is an administrative order and therefore, the petition would not lie before a Single Judge and ii) the petitioner does not have any locus to challenge the order impugned in the present petition.

11. As regards the objection pertaining to maintainability of petition before Single Judge, the said objection was given up in view of Full Bench judgment in the matter of ***Shailesh Developers and Others Vs. Joint Charity Commissioner, Maharashtra***, wherein it is held that inquiry contemplated under Section 36 of the Act is a judicial inquiry. It is expressly held that while dealing with an application under Section 36 of the Act, the Charity Commissioner performs a judicial function. Since, the function performed is a judicial function, the order passed under Section 36 will be amenable to jurisdiction of a Single Judge in view of Chapter XVII, Rule 18 of the Bombay High Court, Appellate Side Rules.

12. As regards the locus of the petitioner, Mr. V. D. Salunke learned Senior Counsel for the petitioner has referred to the

aforesaid pleadings in the petition and affidavit to contend that it cannot be said that the petitioner does not have *locus* to challenge the impugned order. The learned Counsel for the petitioner argued that having regard to aims and objectives of the trust, which is to work in the fields of art, culture and literature, the petitioner, who is resident of Nanded and a former Councilor will be a 'beneficiary' within the meaning of Section 2(2A) and also a 'person having interest' within the Section 2(10) of the Act. His contention is that the aims and objectives of the trust include to hold cultural events for public at large and as such being a resident of Nanded City, the petitioner is beneficiary of the trust and therefore, a person having interest in the trust. He also contends that being a person of repute and a resident of Nanded, he is also eligible and entitled for being considered for being nominated on the various Sub-Committees constituted as per Rules and Regulations of the respondent no.3/Trust and on this ground, also it must be held that he is a beneficiary and person having interest in the trust.

13. Per contra, Mr. Katneshwarkar, learned Senior Counsel

appearing for the respondent nos.6 and 7 contends that merely, because the petitioner is a resident of Nanded and a former Councilor, will not mean that he is a person having interest in the Trust or beneficiary of the Trust. He further states that it is not even the case of the petitioner that he is or was ever associated with the activities of the Trust or even that he is an artist, who has utilized the facilities of the Trust for conducting cultural events, shows etc. The learned Senior Counsel contends that petitioner is in no way concerned with the affairs of the trust and is unnecessarily inter-meddling in the matter. He has placed reliance on judgments of this Court in the matter of *Ramdas Club Akola Vs. Mayur Dilip Vikhe and Others (LPA No.49 of 2010)* decided on **21.12.2013** and *Maganlal Himmatram Barfiwala and Others Vs. Mridangraj Hiralal Suchak* reported in **2019 DGLS (Bom) 166**.

14. In the matter of *Ramdas Club, Akola*, the petitioners had filed a petition challenging the order granting permission to sell the property of a trust. The petitioners, who had challenged the order granting permission were using the property of the trust and on that ground, they claimed to be

persons having interest in the trust. An objection was raised with respect to the *locus-standi* of the petitioners. In this context, it is held that mere superfluous averments made in the petition cannot give rise to inference that the petitioners were persons having interest in the trust. It is held that merely because the petitioners were utilizing property of the trust will not mean that they are persons having interest in the trust unless some legal right to use property is established. Holding that the petitioner had failed to make out any such legal right, it was held that the petitioners could not be said to be 'aggrieved persons' to challenge the permission granted under Section 36 of the Act.

15. The decision in the matter of ***Maganlal Barfiwala***, pertains to an application under Section 41(D) of the Act, which provides for suspension, removal and dismissal of trustees. The petitioner in the said matter was a public trust registered under the Act. It was established for upbringing of orphan children. The trust was managed by members of Shri Halai Lohana community. Respondent in the matter was grandson of one Late Seth Maganlal Barfiwala who was settlor

of the trust. He had filed an application under Section 41(D) of the Act, praying for removal of the trustees. An objection was raised regarding his locus to maintain application under Section 41(D) of the Act. It may be stated that an application under Section 41(D) can be filed either by a trustee or any other 'person having interest' in the trust. The question that fell for consideration was whether the respondent who had filed application under Section 41(D) was a 'person having interest' in the trust. In this backdrop, while dealing with definition of the terms 'beneficiary' and 'a person having interest' it is held as under:

64. The expression "person having interest", in case of any other public trust which includes any trustee or beneficiary will have to be read with the definition of beneficiary under section 2(2-A) inserted by 2017 amendment which provides that the beneficiary means any person entitled to any of the benefit as per the objects of the trust explained in the Trust Deed or in the scheme made as per the said Act and the constitution of the trust and no other person. It is thus clear beyond reasonable doubt that the person who claims to be a beneficiary for the purpose of satisfying in the definition of "person having interest" under Section 2(10)(e) of the said MPT Act and for the purpose of invoking section 41-D of the MPT Act has to be a person himself entitled to any of the benefits as per the objects of the trust explained in the Trust Deed or the scheme made as per the provisions of the

MPT Act and the constitution of the trust and no other person.

66. A perusal of the impugned order passed by the learned Joint Charity Commissioner clearly indicates that the learned Joint Charity Commissioner has considered the respondent as a person having interest in the trust under section 2(10) of the MPT Act as well as the beneficiary under Section 2(2-A) of the MPT Act on the ground that he is a member of Shri Halai Lohana Mahajan Community and the grand-son of the settlor. In my view, this finding of the learned Joint Charity Commissioner is ex-facie perverse and contrary to the definition of “person having interest” under section 2(10)(e) of the MPT Act and also the definition of “beneficiary” defined under section 2(2-A) of the MPT Act. The finding of the learned Joint Charity Commissioner that considering the close relationship between the settlor and the respondent as well as he being a member of Shri Halai Lohana Mahajan community, the respondent was a person having interest as required under section 41-D of the MPT Act is also ex-facie perverse and contrary to section 41-D of the MPT Act. In my view, in view of the definition of section 2(2-A) of the MPT Act, the definition of “person having interest” under section 2(10)(e) has to be given a restricted meaning. In my view, even if a person is a member of the community, he does not automatically become a beneficiary defined under section 2(2-A) of the MPT Act.

67. A perusal of the statement of objects and reasons of 2017 Act clearly indicates that after considering the fact that the proceedings under various provisions of the MPT Act remained pending for inordinate long period resulting in hindrance in advancement of the public religious

and charitable objects, various amendments were proposed. Insofar as section 41-D is concerned, in my view, the definition 'beneficiary' has to be given narrow and restrictive meaning. It is thus clear that the legislative intent to insert the definition of 'beneficiary' under section 2-A of the MPT Act is to restrict the interference with the management of the public trust only by the persons having interest in the trust including the trustee and beneficiary and more particularly the beneficiary defined under section 2(2-A) of the MPT Act inserted by 2017 Amendment and no other person.

16. It appears from the reading of the judgment that a person who was a member of the community, which was running a public trust is held not to be a 'beneficiary' or a 'person having interest' in the trust. It is specifically held that the word 'beneficiary' as defined under the Act must receive a narrow and restricted interpretation so as to minimize interference by people with the management of public Trust.

17. It is apparent from the contents of the petition as also from the rejoinder that the petitioner has no direct concern with the Trust. He is a stranger. The averments regarding locus indicate that the petitioner has no concern with the affairs of the Trust and is unnecessarily inter-meddling in the

matter. Having regard to the contents of the petition and the affidavit in rejoinder, this Court is of the opinion that the petitioner cannot said to be a 'beneficiary' or 'a person having interest' in the respondent no.3/Trust.

18. The preliminary objection pertaining to the *locus-standi* of the petitioner is upheld. It is held that petitioner does not have any *locus-standi* to challenge the judgment and order dated 23.03.2023 passed by the learned Joint Charity Commissioner in application no.09 of 2023.

19. The Writ Petition is therefore **dismissed** with no orders as to cost.

20. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)