IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4188 OF 2025

Nikhil Appasaheb Magdum,
Age: 31 years, Occu.: Doctor,
R/o. Jaysingpur, Tal.: Shirol,
Dist.: Kolhapur. …..Petitioner

Vs.

1. State of Maharashtra,

2. Joint Charity Commissioner,
Kolhapur Division, Kolhapur.

3. Vijay Jaypal Magdum,
Age: 50 years, Occu.: Business,
R/o. Jayingpur, Tal.: Shirol,
Dist.: Kolhapur.

4. Dr. J. J. Magdum Trust, Jaysingpur,
C/o. Deep Public School,
Sambhajipur, Tal.: Shirol,
Dist.: Kolhapur. …..Respondents

Mr. Surel Shah, Senior Counsel i/b. Mr. Ishaan Kaspse, for the Petitioner.
Dr. Uday Prakash Warunjikar with Mr. Hrishikesh Nabar, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 12th SEPTEMBER 2025

PRONOUNCED ON : 3rd OCTOBER 2025

ORAL JUDGMENT :-

1. Petitioner impugns order dated 6th March 2025 passed by

learned Joint Charity Commissioner, Kolhapur on Application filed under Section 73A of the Maharashtra Public Trust Act, 1950 (For short, '**the Act**') below Exhibit 5 in C.C.No.1 of 2024, thereby rejecting the Petitioner's prayer seeking intervention in the proceedings initiated by Respondent No.3 under Section 36A of the Act for *ex post facto* sanction of loan amount.

2. Petitioner contends that Dr. J. J. Magdum Trust, registered on 7th February 1977, has objective to promote education on all fronts and Trust is running various educational institutions. Late Dr. J. J. Magdum is founder trustee, who died in the year 2012. The approved trust deed dated 23rd March 1994 includes various clauses governing functioning of the Trust, which provide for appointment of President/Chairman, Vice-President/Vice-Chairman of the Trust from legal heirs of Dr. J. J. Magdum and rest of the three members can be appointed by them. According to Petitioner, he being grandson of founder trustee Dr. J. J. Magdum has direct interest in the functioning of Trust.

3. According to Petitioner, Mr. Viajy Magdum-Respondent No.3 illegally took control over the Board of Trustees and appointed his

wife as Vice-President. The dispute regarding appointment of President and Vice-President is subject matter of Appeal No.6 of 2019 pending before Joint Charity Commissioner.

4. Petitioner further contends that Respondent No.3 is not functioning in the interest of Trust. He has *modus oprendi* to take large loans against mortgage of Trust property without prior permission required under Section 36A of the Act and then seek *ex post facto* sanction to such loans and derive personal benefits like purchasing vehicles and property. Petitioner has already taken serious objections regarding functioning of Trust vide Inquiry Application filed under Section 41D of the Act. According to Petitioner, he has already submitted Change Report No.910 of 2022 for bringing him on the post of President of the Trust being grandson of late Dr. J. J. Magdum in terms of Clause 15 of by-laws of the Trust. Petitioner has, therefore, filed application below Exhibit 5 in Application No.1 of 2024 seeking his impleadment in the proceedings filed by Respondent No.3 under Section 36A(3) of the Act, whereby Respondent No.3 claimed for *ex post facto* sanction to loan of Rs.25,00,000/- taken from Toyota Financial Services for

purchase of vehicle. Learned Joint Charity Commissioner rejected Petitioner's application giving reason that he is not the interested person in terms of Section 2(10) of the Act.

5. Mr. Surel Shah, learned Senior Advocate appearing for Petitioner would submit that Trust is registered under the deed. The Clause 15 of the Trust by-laws stipulates that family member of the founder Mr. J. J. Magdum be appointed as trustee. Learned Joint Charity Commissioner misinterpreted Section 73A of the Act and on erroneous reading of Section 2(10) of the Act declined to entertain Petitioner's application for impleadment in the proceedings instituted by Respondent No.3 under Section 36A(3) of the Act. In support of his contention, he relies upon the observations of this Court in case of ***Suresh Hiralal Shah v. Shree Mahavir Swami Digambar Jain Mandir Trust***[1] and ***Shri. Khambhati Modh Vanik Samaj v. State of Maharashtra & Ors.***[2]

6. Per contra, Dr. Uday Warunjikar, learned Advocate appearing for Respondents supports impugned order contending that Petitioner is unconcerned with the Trust. He is acting adverse to the interest of

1 2001 (3) Mh.L.J. 147.
2 2023 SCC OnLine Bom. 2725.

the Trust. He can not be treated as 'person having interest' in terms of Section 2(10) of the Act and seek his impleadment under Section 73A of the Act. He would therefor urge to reject the writ petition.

7. Having considered submissions advanced by learned Advocate appearing for respective parties, it can be observed that the Charity Commissioner is empowered under Section 73A of the Act to entertain application for impleadment of person as party to the proceedings, which reads thus:

> ***"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 on such terms and conditions as the officer holding the inquiry may order."*

8. Plain reading of the aforesaid provision shows that the Inquiry Officer can permit to join person as party to proceedings subject to condition that such person is having interest in the public trust. Sub-Section (10) of Section 2 of the Act defines the term 'person having interest', which reads thus :

"Section 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 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"

9. The Trust in question would be governed by Sub-Clause (e) of Clause (10) of Section 2 of the Act, which deals with 'any other public trust', since it has been formed on the basis of trust deed. Therefore, in present case, any trustee or its beneficiary would fall

within the meaning of ‘person having interest’ for purpose of the Act. It is desirable to find out if Petitioner can be treated as ‘person having interest’ in relation to Trust in question. Undisputedly, Petitioner is not trustee. Although his Change Report for bringing him on the post of Chairman is pending, that itself would not recognize him as a trustee, when other trustees are in-charge of business of Trust. The term ‘trustee’ is defined under Clause (18) of Section 2 of the Act, which stipulates that trustee means a person in whom either alone or in association with other person, the Trust property is vested and includes a manager. Certainly, Petitioner does not fall in either of the categories, required to bestow upon him the status of trustee.

10. Second category of interested person is ‘beneficiary of the Trust’. The definition of term ‘beneficiary’ under Section 2(2A) of the Act states as under:

> *“**Sec.2(2A) - “beneficiary”** means any person entitled to any of the benefit as per the <u>objects of the trust</u> explained in the trust deed or the scheme made as per this Act and constitution of the trust and no other person”.*

11. This issue has been broadly discussed by Division Bench of this Court in case of ***Ramdas Club, Akola v. Mayur Dilip Vikhe & Ors.***[3] and it is held that the person having interest adverse to the Trust or who challenges grant of permission of alienation of the property, can never be treated as interested person. In yet another judgment in case of *Shri. Khambhati Modh Vanik Samaj (supra)*, this Court elaborately discussed Clause (e) of Sub-Section (10) of Section 2 and laid down a test to identify the beneficiary of the Trust. In paragraph No.42 of the Judgment, the Single Judge of this Court observed as under:

> *"42. The legal position which thus emerges is that the Section 73A of the Trust Act, 1950 allows intervention by a party who is having interest in the public trust in any proceeding under the Trust Act, 1950. In view of wide amplitude of power exercised by the Charity Commissioner under section 36 of the Trust Act, 1950, especially when the question is of alienation or otherwise disposition of the property of the public trust, a person having interest in the trust can legitimately invoke the provisions contained in section 73A of the Act, 1950. An application under section 36 of the Act, 1950 is one of the proceedings*

3 (2014) 2 AIR Bom. R. 226.

> *envisaged by section 73A in which intervention can be sought by a person having interest in a public trust of which the property is sought to be alienated. Undoubtedly, the definition of "person having interest" is inclusive and thus of wide import.* ***However, where the public trust is covered by the clause (e) of section 2(10), the person who is to be included in the definition, ought to be either a trustee or beneficiary.*** *The definition of "beneficiary", in turn, as noted above, is precise. and confined to a person who obtains benefit under the object of the trust. Even if the expression "person having interest" is construed rather generously, there is an essential distinction between the interest in the public trust and interest in the property of the trust. In the latter case, an inquiry into the nature of the interest is warranted. If it turns out that such interest is adverse to, or in conflict with, the interest of the trust, the person propounding such interest, cannot be said to be a person having interest."*

12. Apparently, this Court recognized person to be 'beneficiary of Trust', who is benefited out of object of Trust. In present case, object of the Trust is imparting the education, essentially the person who is deriving benefit of education or charitable activities of Trust can be

termed as ‘interested person’. However, it is difficult to hold that Petitioner, who is claiming his right to hold the post of President of the Trust being grand-son of original trustee, can be considered as beneficiary of the object of Trust. The person claiming entitlement to hold a particular post under Deed of Trust cannot be equated with the ‘beneficiary of the object of Trust’ in terms of Clause (e) of Section 2(10) of the Act.

13. Although Mr. Surel Shah, learned Senior Advocate relies upon the observation of this Court in case of *Suresh Shah (supra)*, such observations are in relation to the temple Trust, wherein the person seeking impleadment was a donor of the temple and resident of village, where the temple was located. He was also shown as opponent in the Change Report and served with notices in relation to the inquiry. In the set of those facts, he was treated as the interested person and permitted to join as party in inquiry under Section 22 of the MPT Act. The facts of present case are clearly distinguishable, as Trust in present matter is creation of Trust deed and governed by Clause (e) of Section 10(2) of the MPT Act.

14. The petitioner would not fall within the meaning of ‘beneficiary’. In result, there is no merits in Writ Petition. The writ petition stands dismissed.

(S. G. CHAPALGAONKAR, J.)

15. At this stage, learned counsel appearing for Petitioner seeks continuation of interim relief granted vide order dated 25th March 2025, so that Petitioner may take a chance before Hon’ble Supreme Court.

16. Considering submissions advanced, interim relief granted on 25th March 2025 to continue for a period of six weeks from today.

(S. G. CHAPALGAONKAR, J.)

RAJU DATTATRAYA GAIKWAD Digitally signed by RAJU DATTATRAYA GAIKWAD Date: 2025.10.03 20:33:25 +0530