

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6529 OF 2025**

Dr. J. J. Magdum Trust,
At Jaysingpur, Tal. Shirol, Dist. Kolhapur.
Through its Vice Chairman,
Adv. Dr. Mrs. Sonali Vijay Magdum,
Residing at Gat No.18, Deep Public School,
Shirol Kolhapur bypass road, Jaysingpur,
Tal. Shirol, Dist. Kolhapur.Petitioner

Vs.

1. The State of Maharashtra,
Through its Joint Charity Commissioner,
Kolhapur Division, Kolhapur.
2. Vandana Appasaheb Magdum,
Age: 58 years, Occu.: Housewife,
Residing at 11th Galli,
At post Jaysingpur, Tal.: Shirol,
Dist.: Kolhapur.Respondents

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

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 12th SEPTEMBER 2025

PRONOUNCED ON : 3rd OCTOBER 2025

ORAL JUDGMENT :-

1. The Writ Petition takes exception to order dated 18th March
2025 passed by learned Joint Charity Commissioner, Kolhapur (For
short, 'JCC') in Application No.9 of 2024 below Exhibit 49, thereby

allowing application of Respondent No.2 for impleading her as Respondent No.2 in Application No.9 of 2024.

2. Petitioner contends that Dr. J. J. Magdum and his wife created a Trust in the year 1974. Dr. J. J. Magdum and his wife Dr. Prabha Magdum expired. Thereafter, as per Change Report No.1895 of 2012, Mr. Vijay Jaypal Magdum is appointed as Chairman and his wife Dr. Sonali Vijay Magdum is appointed as Vice-Chairman. Respondent No.2 was also appointed as the new trustee.

3. Since Respondent No.2 failed to attend meetings of Trust and her activities were detrimental to interest of Trust, she was removed as a trustee. The Change Report No.10 of 2014 regarding her removal was filed, which has been allowed vide order dated 26th September 2018 by Assistant Charity Commissioner, Kolhapur (For Short, 'ACC'). Respondent No.2 has preferred Appeal No.3 of 2019 against the order of Assistant Charity Commissioner, which is pending without any interim order.

4. It is contention of Petitioner that Petitioner-Trust has got sanctioned loan of Rs.5 Crores from ICICI Bank for raising funds to

maintain the institutions run by Trust. Petitioner has filed application under Section 36A(3A) of Maharashtra Public Trust Act, 1950 (For short, '**MPT Act**') for *ex post facto* sanction, which is subject matter of Application No.9 of 2024 before Respondent No.1.

5. In that proceeding, Respondent No.2 filed application below Exhibit 49 under Section 73A of MPT Act seeking her impleadment in the application filed by Petitioner for *ex post facto* sanction. Petitioner opposed said application on the ground that Respondent No.2 cannot be treated as 'interested person' as defined under Section 2(10) of the MPT Act. However, vide impugned order dated 18th March 2025, learned Joint Charity Commissioner, Kolhapur directed Petitioner to implead Respondent No.2 as opponent in Application No.9 of 2024. Hence, this Petition.

6. Dr. Uday Warunjikar, learned Advocate appearing for Petitioner submits that impugned order is passed *de hors* object and purport of Section 73A of MPT Act. Respondent No.2 filed application for impleading her as opponent in Application No.9 of 2024 contending that she is a trustee. The Trust is formulated on the basis of Trust Deed. Further, she is legal heir of founder trustees. She alleges that

Dr. Vijay Magdum, who is acting as President of Trust and his wife have siphoned huge amount of Trust. They have purchased vehicle out of Trust funds. Further, without prior sanction of Competent Authority bank loan was obtained in the name of Trust.

7. According to Dr. Warunjikar, Respondent No.2 cannot be treated as 'person having interest in the Trust'. He submits that Clause (e) of Section 2(10) of MPT Act governs the present Trust, which contemplates that only trustee or beneficiary can be treated as 'person having interest'. Section 73A of MPT Act qualifies entitlement of person for impleadment as party to proceeding, only when such person is having interest in Public Trust. Respondent No.2 is neither trustee nor beneficiary of Trust. Learned JCC permitted her impleadment *de hors* limitations and restrictions embodied under Section 73A of MPT Act.

8. Per contra, Mr. Surel Shah, learned Senior Advocate supports impugned order. According to him, in view of constitution of Trust family members of founder Dr. J. J. Magdum are entitled for trusteeship. Respondent No.2 was appointed as trustee in the year 2012, however, she has been illegally removed in the year 2014. The

issue as to legality of her removal from trusteeship is subject matter of pending appeal. Therefore, she would fall within the meaning of interested person as defined under Section 2(10) of MPT Act. In support of his contention, he relies upon observations of this Court in *Suresh Hiralal Shah v. Shree Mahavir Swami Digambar Jain Mandir Trust*¹ and *Shree Khambhati Modh Vanik Samaj v. State of Maharashtra & Ors.*²

9. Having considered submissions advanced by learned Advocates 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.”

10. Plain reading of the aforesaid provision shows that the Inquiry

1 2001 (3) Mh.L.J. 147.

2 2023 SCC OnLine Bom. 2725.

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”***

11. The Trust in question is governed by Clause (e) of Section 2(10) of MPT Act, since it has been formed on the basis of Trust Deed. Therefore, in present case, only trustee or its beneficiary would fall within the meaning of 'person having interest' for purpose of Act. It is, therefore, desirable to find out, if Respondent No.2 can be treated as 'person having interest' in relation to Trust in question. Undisputedly, at present Respondent No.2 is not trustee. It is true that she was trustee as per change report of 2012, however, later on, she has been removed from the post of trustee and change report regarding her removal has been accepted by ACC. Although order of ACC is subject matter of appeal, there is no interim order, thereby continuing status of Respondent No.2 as trustee. Presently, she cannot be recognized as trustee.

12. Pertinently, term 'trustee' is defined under Clause (18) of Section 2 of MPT 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, Respondent No.2 does not fall in either of the categories required to bestow upon her status of trustee.

13. Second category of interested person is ‘beneficiary of the Trust’. The definition of term ‘beneficiary of Trust’ is given under Section 2(2A) of MPT Act, which reads thus:

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

14. The issue as to who can be treated as beneficiary of Trust is broadly discussed by Division Bench of this Court in case of ***Ramdas Club, Akola v. Mayur Dilip Vikhe & Ors.***,³ wherein it is held that person having interest adverse to 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 *Shree Khambhati Modh Vanik Samaj (supra)*, this Court elaborately discussed Clause (e) of Sub-Clause (10) of Section 2 of MPT Act and laid down a test to identify the beneficiary of Trust. In paragraph No.42 of the judgment, the Single Judge of this Court observed thus:

“42. The legal position which thus emerges is that the Section 73A of the Trust Act, 1950 allows

³ (2014) 2 AIR Bom. R. 226.

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 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.”

15. Apparently, this Court recognized person to be beneficiary of Trust, who is benefited out of object of Trust. In present case, object of Trust is imparting 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 Respondent No.2, who is already removed from the post of trustee can be given status of ‘interested person’, only because her appeal against removal from the post of trustee is pending or she is family member of founder of Trust. The person, who is claiming entitlement to hold a particular post under Deed of Trust cannot be equated with the ‘beneficiary of object of Trust’ in terms of Clause (e) of Section 2(10) of MPT Act.

16. 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.

17. In light of discussion above, Respondent No.2 would not fall within the meaning of 'beneficiary'. In result, order impugned permitting impleadment of Respondent No.2 in pending proceeding cannot be sustained in law. Accordingly, the Writ Petition is allowed in terms of prayer clause (a).

(S. G. CHAPALGAONKAR, J.)

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