

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5581 OF 2024

Deccan Education Society,
through its Trustee

....Petitioner

: Versus :

Dr. Ashutosh Bhupatkar & Anr.

....Respondents

Mr. Y.S. Jahgirdar, Senior Advocate with *Mr. R.S. Datar, i/by. Ms. Druti Datar, for the Petitioner.*

Mr. S.R. Ronghe, for Respondent No.1.

Ms. Gauri Jadhav, 'A' Panel Advocate with *Mr. J.P. Patil, AGP for Respondent No.2-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 7 March 2025.

P.C. :

1) The petition challenges the order dated 13 December 2023 passed by the Deputy Charity Commissioner, Pune allowing the application preferred by Respondent No.1 under the provisions of Section 73A of the Maharashtra Public Trusts Act, 1950 (**Trust Act**). Respondent No.1 is permitted to intervene in the proceedings by being added as a third party/intervenor in Change Report No. 3682/2021.

2) I have heard Mr. Jahgirdar, the learned counsel appearing for the Petitioner, Mr. Ronghe, for Respondent No.1 and Ms. Jadhav, 'A' Panel Advocate for Respondent No.2.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Petitioner has expressly admitted in reply filed to the intervention application that Respondent No.1 is a Retired Life Member. Even the Rules and Regulations of the Society clearly make provision for admission of a person as a 'Retired Life Member'. Therefore, it cannot be contended that there is complete disconnect between Respondent No.1 and the Petitioner-Trust. In that view of the matter, Respondent No.1 would fall in the wider definition of the term '*person having interest*' under Section 2 of the Trust Act.

4) In *Nimboni Shikshan Prasarak Mandal Versus. Vitthal Maruti Mali & Ors.*¹, this Court in paras-11 to 15 as under :

11. The learned Counsel for the Petitioner would, however, urge that the interest of the person who seeks impleadment ought to be bonafide and not an adverse interest. To lend support to this submission, the learned Counsel for the Petitioner placed reliance on the decisions of this Court in the cases of People's Education Society and Ors. V/s. Mansing S. Moray and Ors.² and Ashok Eknathrao Vikhe Patil and Anr. V/s. Joint Charity Commissioner, Pune and Ors.³

12. In the case of People's Education Society (supra), the learned Single Judge of this Court expounded the import of the 'person having interest' as under :

¹ *Writ Petition No.7630/2022 decided on 17.08.2023*

² *2015 (6) Bom.C.R. 786*

³ *WP 796 of 2018 dt. 4 May 2021*

“25..... The authorities considering such application under section 73A of the said Act cannot mechanically, without application of mind to the aforesaid provisions of the Act and merely for the sake of asking, permit any person claiming to have an interest in such trust, to participate in the proceedings. The expression “person having interest in the public trust” represents the persons having bona fide and genuine interest in public trust as against an interest with an ulterior motive or mala fide intention. The authority is, therefore, required to consider the contents of any such application, if made and the bona fides in claiming participation. If required, the Authority may ask the party concerned to enter the witness box and be subject to the cross-examination so as to establish his bona fides and the status as a “person having interest in the public trust”. The recording of finding that the person is or is not having such bona fide interest in the public trust, is a sine qua non for permitting interevent in the matter. Otherwise, the very objection in introducing the provision of Section 73A of the said Act, shall frustrate, resulting misuse of the provision. No doubt, the definition is inclusive, but it cannot be said that the person acting against the interest of such public trust or has no interest in the public trust or having hostile interest or has no connection with such public trust can be permitted to participate in the proceedings without establishing the bona fides and testing his case on the touchstone of the provision of Section 73A read with Section 2(1) of the said Act.”

13. In the case of **Ashok Eknathrao Vikhe Patil (supra)**, this Court had observed as under :

“13. From the phraseology of newly inserted clause 2A, it becomes evident that the legislature has endeavoured to give a definite meaning to the term “beneficiary”. Its scope is sought to be restricted to a person entitled to any of the benefits as per the objects of the Trust and no other person.

14. A conjoint reading of clause (10) (e) and Clause 2A of Section 2 of the Act, 1950, would indicate that a person who claims interest in the affairs of the trust is required to demonstrate some substantial, real and direct beneficial interest

in the trust. A person who has no interest whatsoever in the trust cannot be clothed with the status of a person having interest in the trust on the general premise that the object of the trust is advancement of public charities, unless he falls within the definition of “beneficiary”.

14. There can be no duality of opinion that a person who claims interest in the affairs of the trust ought to have a bona fide and real interest in the affairs of the trust, and not a fanciful or litigious interest. However, in the facts of the case at hand, the aforesaid pronouncements do not advance the cause of the Petitioner.

15. Incontrovertibly, the Respondent No.1 is a member of the Petitioner Trust. In the application for impleadment, Respondent No.1 has made categorical averments to question the factum as well as the legality of the change, reported by the reporting trustee. By opposing the acceptance of the change report, at best, Respondent No.1 can be said to have taken a stand which is adverse to the interest of the reporting trustee and not against the trust as such. Thus, the submission on behalf of the Petitioner that the interest of the Respondent No.1 is adverse to that of the trust, does not merit acceptance.

5) In my view, once the status of Respondent No.1 as ‘Retired Life Member’ is accepted and once the connection between the Petitioner and Respondent No.1 is retained, it becomes difficult to believe that Respondent No.1 would fall outside definition of the term ‘*person having interest*’ under Section 2(10) of the Trust Act. Therefore, no serious error can be traced in the impugned order passed by the Deputy Charity Commissioner. The petition is accordingly **rejected**.

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[SANDEEP V. MARNE, J.]