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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5110 OF 2024

Rajendra Dattatray Warule

.. Petitioner

Versus

State of Maharashtra and Anr.

.. Respondents

.....

- Mr. Yuvraj Narvankar a/w Ms. Jayashri Mane, Advocates for Petitioner.
- Mr. Hamid Mulla, AGP for Respondent – State.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2025.

P.C.:

1. Heard Mr. Narvankar, learned Advocate for Petitioner and Mr. Mulla, learned AGP for Respondent – State.

2. None appears for private Respondent despite notice having being duly served. Affidavit of service dated 03.12.2024 is already filed on record.

3. The present Writ Petition impugns order dated 06.02.2024 passed by the Joint Charity Commissioner, Pune dismissing Application filed by Petitioner below Exhibit 24 under Section 73(A) Maharashtra Public Trusts Act, 1950 (for short '**the said Act**'). The impugned order is appended at page No. 67 of the Petition.

4. Briefly stated, Shri Bhageshwar Devsthan is a religious Trust. Petitioner before me is the son of late Dattatray Genubhau Warule,

who was an erstwhile Trustee of the said Trust. The said Dattatray Genubhau Warule expired on 19.12.2015 during the pendency of Scheme Application No. 11 of 2015. The said Scheme Application was allowed by the Assistant Charity Commissioner but Appeal thereto is pending under Section 70 of the said Act before the Joint Charity Commissioner.

5. Petitioner's claim is that he is an interested party since his father was an erstwhile Trustee of the Trust which managed the affairs of Shri Bhageshwar Devsthan situated in Taluka – Junnar, District - Pune. According to Petitioner the impugned order is passed without following the principles of natural justice, denying Petitioner's right to be heard and in violation of the provisions of Section 2(10) of the said Act.

6. Hence, the present Writ Petition.

7. Mr. Narvankar, learned Advocate for Petitioner has drawn my attention to the impugned order to contend that the reasons given therein for rejecting Petitioner's Application below Exhibit 24 are incongruous, illegal and unsustainable in law. While drawing my attention to para No. 7 of impugned order wherein reasons are given, he would contend that, Application filed by Petitioner below Exhibit 24 is dismissed on the ground that there are 10 Appellants already arraigned as Appellants in the pending Appeal under Section 70 of the

said Act challenging the Scheme framed by the Assistant Charity Commissioner in Scheme Application No. 11 of 2015 and therefore Petitioner need not be heard. The second ground for rejection is that it is not clear as to how Petitioner will assist the Joint Charity Commissioner to adjudicate the proceeding.

7.1. One of the reasons for rejecting Petitioner's request for intervention is on the ground that he filed Application below Exhibit 24 under Section 73(A) of the said Act after a delay of more than 7 years. It is held that Petitioner was not a party before the Assistant Charity Commissioner who allowed the Scheme Application and challenge to which is pending before the Joint Charity Commissioner in Appeal No. 28 of 2023.

7.2. In support of his submissions, learned Advocate for Petitioner has referred to and relied upon the decision of the Single Judge (Coram: S.P.Deshmukh) of this Court in the case of ***Krushna Mali Samaj Hitswanrdhak Sanstha Vs. Ashok Nathu Mali and Ors.***¹

7.3. According to him the aforesaid two grounds for rejection of Exhibit-24 are unsustainable in law as Petitioner is admittedly a 'person interested' falling under Section 2(10) of the said Act. Hence, he would persuade the Court to set said the impugned order and allow the Application below Exhibit 24 before the Joint Charity

¹ MANU/MH/1651/2015

Commissioner.

8. Mr. Mulla, learned AGP for Respondent State would support the order passed by the Joint Charity Commissioner, Pune and would submit that Petitioner failed to show any interest to participate in the proceeding of Scheme Application No. 11 of 2015. He would submit that Petitioner was not a party when the Scheme Application was allowed hence he is not made a party in Appeal. He would submit that impleadment of Petitioner as a party now is nothing but a futile effort to protract the matter before the Joint Charity Commissioner.

9. I have considered the submissions made by Mr. Narvankar, learned Advocate for Petitioner and Mr. Kankal, learned AGP for Respondent - State and perused the record of the case. Submissions made by them have received due consideration of the Court.

10. Before proceeding further, it would be apposite to set out the provisions of Section 2(10) of the said Act which read as under:-

“(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 (XXI of 1860), any member of such society, and

(e) in the case of any other public trust, any trustee or beneficiary.”

11. A plain reading of the aforesaid Section would indicate that if it is a temple then a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or a person who is entitled to partake or is in that habit of partaking in the distribution of gifts would have interest. Though the definition of ‘person having interest’ in the said Act is an inclusive definition, however, the principle of *ejusdem generis* would become applicable while considering who could be a ‘person having interest’ in the affairs of the public trust. This means persons of same exact type as mentioned in Section 2(10) of the MPT Act would be eligible to be considered as ‘person having interest’.

12. Attention is drawn to the decision of the Division Bench judgment of this Court (Coram: C.S. Dharmadhikari and A.A. Ginwala, JJ.) in the case of ***Digambar Pralhad Jot and Ors. vs. Satyanarayan Biharilal Zunzunwala and Ors***² wherein the Court adverted to the legislative change brought by substituting the word, “includes” for the word “means” and emphasized that the definition of the phrase, ‘person having interest’ is not exhaustive.

2 AIR 1978 Bom 196

13. The import of the phrase, ‘person having interest’ came up for consideration before the Supreme Court in the case of ***Shree Gollaleshwar Dev v. Gangawwa Shantayya Math***³. The correctness of the view of the Full Bench decision of Karnataka High Court that the expression ‘person having interest in the trust’ occurring in section 2 (10) and section 50 of the said Act does not include the Trustees when they institute the suit in their capacities as Trustees for vindicating their private rights, was challenged before the Supreme Court. After advertent to the provisions of section 2(10) and 2(18), which defines “a trustee”, and section 50 of the said Act, the Supreme Court did not approve the view of the Full Bench of the Karnataka High Court. It, *inter alia*, observed as under:

“12] The definition of the words “person having interest” in section 2(10) of the Bombay Public Trust Act, as amended in 1953 was made inclusive to set at rest all doubts and difficulties as to the meaning of these words, which were intended and meant to be used in a generic sense so as to include not only the trustees but also the beneficiaries and other persons interested in the trust. The definition of the expression person having interest in section 2(10) is wide enough to include not merely the beneficiaries of a temple, math, Waqf etc. but also the trustees. Therefore appellants Nos. 2 and 3 who undoubtedly are members of the founder's family i.e. beneficiaries, are entitled to attend at performance of worship or service in the Distribution of offering to the deity and thus answer the description “person having interest” as defined in Section 2 (10) of the Act.

(emphasis supplied)”

14. The moot question before this Court is whether Petitioner has interest in the trust, whether as member of the erstwhile deceased

3 (1985) 4 SCC 393

Trustee's family is entitled to attend or performance of worship or service in the distribution of offering, and answers the description 'person having interest' which entitle him to participate in the pending proceeding under Section 70 of the said Act?

15. The relevant provision of the said Act, which bear upon the answer to the aforesaid question needs to be noted. Section 73A, which was inserted by Maharashtra 20 of 1971, reads as under:

***"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."*

16. The legal position which thus emerges is that Section 73A of the said Act allows intervention by a party who is having interest in the public trust in any proceeding under the said Act. Hence a 'person having interest' in the trust can legitimately invoke the provisions contained in section 73A of the said Act.

17. Petitioner is son of an erstwhile deceased Trustee of the Devasthan, the public religious trust. It is Petitioner's case that he regularly participates in worship and service of the temple and therefore he is a 'person having interest' within the meaning of Section 2(10)(a) of the said Act. This is not disputed by the Respondents neither by Joint Charity Commissioner. The definition under Section 2(10) is inclusive and does not restrict the category of interested persons to hereditary Trustees alone.

18. Hence, in the present case it is clear that Petitioner squarely falls under the category of ‘person having interest’ as discussed herein above under Sub-section 10(a) of Section 2 of the said Act and satisfies the definition of person of the same type. Thus, Petitioner satisfies the requirement of *locus standi* to seek impleadment in the pending challenge to the Scheme Application under Section 70 of the said Act. Also it is evident that Petitioner’s absence from Scheme Application No. 11 of 2015 does not defeat his right to seek impleadment under Section 73A of the said Act.

19. On perusal of the impugned order dated 06.02.2024 it reveals that the Petitioner’s Application below Exhibit 24 filed under Section 73A of the said Act has been dismissed primarily on the ground that there are already 10 Appellants before the Joint Charity Commissioner and Petitioner has failed to demonstrate how his participation would assist in the adjudication of the Appeal. These reasons, in my opinion, are neither legally tenable nor supported by the statutory provisions. There is no provision under the Act that limits the number of interested persons who can participate in proceedings concerning a public trust.

20. With regard to the delay on the part of Petitioner for more than 7 years in seeking impleadment, that by itself cannot be a ground to reject his impleadment, particularly in the absence of any prejudice

caused to the existing parties.

21. It is seen that the impugned order came to be passed without according the Petitioner an opportunity of being heard. Such denial of hearing, especially when the Application involves statutory right of a 'person having interest' under the said Act, even otherwise renders the impugned order unsustainable in law.

22. In view of the above observations and findings, the impugned order dated 06.02.2024 passed by the Joint Charity Commissioner, Pune below Exhibit - "24" in Appeal No. 28 of 2023 is quashed and set aside. Petitioner's Application below Exhibit - "24" seeking his impleadment under Section 73A of the Maharashtra Public Trusts Act, 1950 in the pending Appeal as Respondent is allowed. Petitioner is directed to be joined as a party - Respondent to the pending proceeding in Appeal No. 28 of 2023 and entitled to be heard by the Joint Charity Commissioner, Pune. Writ Petition succeeds.

23. It is directed by this Court that Joint Charity Commissioner shall proceed to adjudicate and determine the said Appeal on its own merits and strictly in accordance with law.

24. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

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by HARSHADA
HANUMANT
SAWANT
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