



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3189 OF 2019

PETITIONERS

1. Mohd. Sabir Usman Naik, aged major
2. Sk. Banu Sk. Abdulah, aged major, Petitioner nos. 1 and 2 residents of Ridhapur, Tq. Ridhapur, District Amravati **(Deleted as per Court's order dt. 7/11/2025)**

...VERSUS...

RESPONDENTS

1. Joint Charity Commissioner, Amravati Division, Amravati
2. Mohd. Kasim Mohd. Hayat, aged major, by occupation – President
3. Attaullah Kha Sarfaraj Kha, aged major, by occupation – Vide President
4. Shoyebur Rahuman Mohd. Hanif, Secretary, aged major.
5. Mohd. Mujibur Rehman Mohd. Hanif Joint Secretary,
6. Mohd. Najibur Rahaman Mohd. Hanif, aged major, treasurer
7. Sau Taslim Bee Mohd. Hanif, aged major, member
8. Mohd. Yusuf Mohd. Hayat, aged major, Member, **(Deleted as per Court's order dt. 7/11/2025)**
9. Ku. Ajara Parveen Mohd. Hanif, aged major, member,

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10. Nadeem Ajhar Mohd. Kasim, aged major, membre
11. Sau Raisa Bano Attalullah Khan, aged major, member
12. Ku. Jahera Yasmeen Mohd. Haneef, aged major, member
13. Ku. Asma Shaheen Mo. Haneef, aged major
14. Imroddin Mohd. Aahan, aged major,

Respondent nos.2 to 14, residents of
Ridhapur, Tq. Morshi, District
Amravati

Mr. P.R. Parsodkar, Advocate for Petitioner(s).
Mrs. M.R. Kavimandam, AGP for Respondent/State.
Mr. A.J. Gilda, Advocate for Respondent Nos.2 to 14.

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 07/11/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the respective parties at the stage of admission.

2. At the beginning the learned counsel for the petitioners submits that the petitioner No.2 and respondent No.8 who are trustees, are reported to be dead. Being trustees, it is not necessary to bring the

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legal representatives on record. Therefore, he seeks permission to delete their names. Leave is granted. Necessary amendment shall be carried out forthwith.

3. The present petition is directed against the order dated 27.12.2019 passed by the Learned Joint Charity Commissioner, Amravati in Revision Case No.6/2019 filed by the present petitioners under Section 70-A of the Maharashtra Public Trusts Act, 1950 (for short “the Act, 1950”).

4. The petitioners have challenged the order passed by the Assistant Charity Commissioner-I, Amravati Region, Amravati thereby accepting the change report No.207/2017 vide its order dated 18.09.2019. As the petitioners were the founder trustees and they were not given a notice about the general body meeting held on 27.06.2017. The petitioners were not aware about the meeting held on 27.06.2017 and they were not given an opportunity to participate. Therefore, after getting the knowledge about the meeting and the change report proceedings, they assailed the order passed by the Assistant Charity Commissioner-I, Amravati Region, Amravati.

5. Learned counsel for the petitioners Mr. PR. Parsodkar, submits that the learned Joint Charity Commissioner dismissed the

revision on the ground that the petitioners are not the interested persons and therefore, he urged to remit the matter to the learned Charity Commissioner to decide it afresh.

6. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in the case of *Shree Gollaleshwar Dev and Others Vs. Gangawwa Kom Shantayya Math and Others* reported in *(1985) 4 Supreme Court Cases 393* and submitted that the petitioners who are the founder trustees remain interested persons. He would further submits that once the Joint Charity Commissioner held that the petitioners are not the interested persons, it was not expected on the part of the learned Joint Charity Commissioner to go through the rights of interested persons and decide upon it and therefore, on this ground also he submits that the learned Charity Commissioner have committed apparent error.

7. Learned counsel for the respondent Nos.2 to 14, Mr. A.J. Gilda, vehemently submits that as the persons who filed the revision under section 70-A of the Act, 1950 are not interested persons. He submits that the revisional petitioners were trustees only till the year 2007. They were made trustees in the first meeting held on 01.03.1996 and thereafter, their membership was cancelled in the year 2010. They

were never elected as trustees neither on executive committee nor on the Board of Directors. He would submit that as the case pertains to a registered society as per Section 2(10)(d) of the Act, 1950, the petitioners do not fall under the category of the members.

8. He further submits that the petitioners are not members of the trust within the meaning of Section 2(10)(e) of the Act, 1950 therefore, not being interested persons, they cannot challenge the order of acceptance of the change report.

9. He further submits that six persons had filed revision under Section 70-A of the Act, 1950, out of which only two have challenged the orders passed by the Joint Charity Commissioner before this Hon'ble Court. The other four have not been added as a party respondents to the present writ petition and therefore, on this ground also he submits that the petition is not maintainable on the ground of non-joinder of necessary party. Learned counsel for the respondents relied upon the following judgments :-

i) *Ravindra Shrikrishna Joshi Vs. Samarth Shiksha Mandal and Charity Trust and Others* reported in *2025 SCC OnLine Bom 714* dated 11.03.2025.

- ii) *Ashok Shreekrishna Beharay Vs. Joint Charity Commissioner and Another* reported in *2025 SCC OnLine Bom 3993* dated 20.09.2025.
- iii) *Dr. Ravindra Balaji Govindwar Vs. Dr. Sanjay Vasant Bhawsar and Others* reported in *2015(5) Mh.L.J. 209*.
- iv) *Sheikh Yusuf S/o. Haji Sheikh Usman and Others Vs. Haji Mohammad Jamil Ahemad and Others* reported in *2015(2) Mh.L.J. 431* dated 23.04.2014.

10. Learned counsel for the respondents invited my attention to the judgment of this Hon'ble Court in the matter of Ravindra's case (supra), Ashok's case (supra), Dr. Ravindra's case (supra) and Sheikh Yusuf's case (supra). The relevant paragraphs of respective judgments are referred as follows :-

Ravindra Shrikrishna Joshi Vs. Samarth Shiksha Mandal and Charity Trust and Others:-

16. By a separate judgment pronounced today, this Court has dismissed First Appeal No. 847 of 1992. Therefore, Petitioner's ouster as a trustee ordered by the Joint Charity Commissioner vide order dated 29 April 1991 is upheld. Petitioner has thus ceased to be a trustee from 29 April 1991. He therefore would not have any locus to maintain proceedings for removal of other trustees under provisions of Section 41D of the MPT Act.

Ashok Shreekrishna Beharay Vs. Joint Charity**Commissioner and Another:-**

30. *At this juncture, the fact that the petitioner has been removed from the membership of respondent No. 2 Trust assumes material significance. Once the petitioner ceased to be a member of respondent No. 2 Trust, the petitioner loses the essential qualification as in the case of a society registered under the Societies Registration Act, a "member" of such Trust can be said to be a person having interest under Section 2(10)(d) of the Trust Act, 1950. Likewise, to qualify under Clause (e) of sub-section (10) of Section 2, the person is required to be either a trustee or beneficiary."*

Sheikh Yusuf S/o. Haji Sheikh Usman and Others Vs. Haji**Mohammad Jamil Ahemad and Others :-**

"12. In the said case of Rajeswari Amma (supra), which was cited before the learned District Judge as well as this Court by learned Counsel for respondents No. 1 and 2, the Hon'ble Apex Court has held that when there is a common and inseparable decree in favour of three persons, such decree in appeal filed against only two persons cannot be set aside only against two persons. It would be useful to refer to the observations of the Hon'ble Apex Court in this regard (page 160) which read thus:

"Since the order of delivery of possession in favour of the decree-holders is common and inseparable and since it has become final as against Neelamma, the High Court was not right in setting aside the order as against the appellants. No doubt, as rightly pointed out by the learned counsel for the respondents this contention was not raised before the High Court. But being a question of law, it is open to be raised and can be considered as the order is an inseparable one. Since the order against Neelamma had attained finality, we think that the High Court was not right in reversing the order of the executing Court as against two respondents."

13. Same factual scenario being present in the instant case, the learned District Judge, rightly applied the ratio of the above referred case and recorded a finding that the two objectors, Haji Ismail and Hamid Khan, were necessary parties as without their impleadment, the learned Joint Charity Commissioner could not

have set aside the order of the learned Assistant Charity Commissioner and accepted the change report.

14. If the learned District Judge had not held so, it would have resulted in an anomalous situation, where there would have been two conflicting decrees, one accepting the change report as against the five objectors and other rejecting the change report in favour of the two objectors. This being the question of law, even though not raised before the learned Joint Charity Commissioner in appeal filed under section 70, BPT Act, it could have been raised in the appeal before the High Court. Therefore, the reference made to the provisions of Rules 9 and 13 of Order 1, Civil Procedure Code and also the case law referred to me by learned Counsel for the appellants in respect of these provisions, would not help the case of the appellants. The cases so referred to me by the learned Counsel for the appellants are as follows:

1. State of U. P. vs. Ram Swarup Saroj, reported in (2000) 3 SCC 699, 2. Sri Ram Pasricha vs. Jagannath and ors., reported in AIR 1976 SC 2335 3. Y. G. Chavan vs. Parvatibai and ors., reported in 1973 Mh.L.J. 83 4. Ukha Chamatya Bhil vs. Chatursingh Bilji Bhil and ors., reported in 2008(6) Mh.L.J. 195, 5. Ramchandra Jamnadas Katariya vs. Nutuddinchai s/o Mazhar Ali and ors., reported in 2004(4) Mh.L.J. 185, 5. Addepalli Venkata Laxmi vs. Ayinampudi Narasimha Rao and ors., reported in AIR 1994 A. P. 72, 7. Bhagaban Mahapatra and anr. vs. Palturam Singh and anr., reported in AIR 1916 Cal. 516”

11. He also submits that the petitioners who were not trustees after 2006 and their memberships were cancelled in the year 2010. They cannot be considered as interested persons and therefore, on this ground he submits that the petition is liable to be dismissed.

12. I have gone through the judgments cited by both the parties. It is useful to refer Section 2(10) of the Act, 1950, which is as follows :-

“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]”

13. The definition of “person having interest”, provided under Section 2(10) of the said Act, 1950 contemplates that if any person, who has interest in the Trust, then such person is entitled to claim intervention in the proceedings of the Trust.

14. The provision of Section 73A of the Act, 1950 is wide enough to include even the persons who were not the members of the Trust on the date of filing of the change report, provided they satisfy other criteria available, to be called as the person having interest in the Trust.

Section 73-A is as follows :-

“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 or such terms and conditions as the officer holding the inquiry may order.]”

15. On plain reading of the Section 73-A of the Act, 1950 clears that any person having interest in the public trust may be joined as a party to the proceedings. This obviously an enabling provision and therefore, even if Section 73-A is to be considered and the person itself if reads as it is, any person having interest in the public trust could be joined as a party to such a proceedings on an application if filed by such person.

16. In the present case, though, it is not case of the adding of the party, the fact remains that when they were founder trustees they are having interest in the public trust.

17. In Shree Gollaleshwar Dev’s case (supra), this Court in para 12 has observed that :-

“12. By the Bombay Public Trusts (Amendment) Act, 1953, the word 'includes' was substituted for the word 'means'. The definition of the words "person having interest" in Section 2(10) 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. It would therefore appear that 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, wakf etc. but also the trustees. It must therefore follow that plaintiffs 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 temple and also entitled to partake in the distribution of offerings to the deity and thus answer the description "person having interest" as defined in Section 2(10) of the Act.”

18. In view of the specific contentions placed by the petitioners that they are the founder trustees and before holding the general body meeting, no notice was issued to them. Being aggrieved by the same, they have challenged the order passed by the learned Assistant Charity Commissioner, whereby, the change report came to be accepted.

19. The persons who were already founder members are to be considered as interested persons. As far as the cancellation of their membership is concerned, when there is a specific contention of these petitioners that they have no knowledge about the cancellation of their membership that means considering the fact that they were the founder members and therefore, it cannot be said that as per Section 2(10) of the Act, 1950, they are not the interested persons and therefore, the observations of the Joint Charity Commissioner to that effect cannot be sustain in the eyes of law.

20. Therefore, I am inclined to allow the writ petition partly. Hence, I pass the following order :-

ORDER

- A) The Writ Petition No.3189/2019 is hereby **allowed**.
- B) Order dated 27.12.2019 passed by the Learned Joint Charity Commissioner, Amravati in Revision Case No.6/2019 is hereby quashed and set-aside by holding that the petitioners are the interested persons.

- C) Learned Joint Charity Commissioner to hear the petitioners and decide the proceedings within a period of six months from today.

It is made clear that this Court has not recorded any finding on the merits of the case.

Rule is made absolute in above terms.

(SIDDHESHWAR S. THOMBRE, J.)