



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

FIRST APPEAL NO. 1229 OF 2024

APPELLANTS

- : 1. Shankar Vitthal Sawarkar,
R/o Mahal, Nagpur.
2. Vikram Shankar Sawarkar,
R/o Mahal, Nagpur.
3. Sau. Darshani Sureshrao Zungare,
R/o Urja Nagar, Chandrapur,
Dist. Chandrapur.
4. Sau. Varsha Shankar Sawarkar,
R/o Mahal, Nagpur.

VERSUS

RESPONDENTS

- : 1. Bhagyawan Sampatrao Bagade,
R/o Nagsen Nagar, Nagpur.
2. Smt. Sushila Digambar Khandekar,
R/o Buddha Nagar, Nagpur.
3. The learned Joint Charity Commissioner II,
Civil Lines, Nagpur.

Mr. S. D. Abhyankar, Advocate for the appellants.
Mr. H. D. Dubey, A.G.P. for respondent No.3
Nobody appears for respondent nos.1 and 2.

CORAM : M. W. CHANDWANI, J.
DATE : SEPTEMBER 29, 2025

ORAL JUDGMENT

1. This appeal filed under section 47(5) of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the “Act of 1950”) challenges the order passed by respondent no.3-Joint Charity Commissioner, Nagpur in Application No. 16/2022, whereby the application of the appellants filed under Section 47 of the Act of 1950 for their appointment as Trustees of the Trust was rejected.

2. Thumbnail sketch of the facts is as under :

The appellants claim to be having interest in a Trust, namely Ravindra Shikshan Sanstha, Kargaon, Dist. Nagpur, registered as a public charitable trust. They filed an application u/s 47 of the Act of 1950, *inter alia* contending that, though the names of respondent nos.1 and 2/original non-applicant nos.1 and 2 were recorded in ‘Schedule-I’ of the Trust but they are not interested in the affairs of the trust and only applicant no.5 – Harichand Ramji Wasnik, one of the trustees was managing the trust. It was contended that out of seven founder Trustees, four Trustees have already passed away and applicant no.5, who was managing the affairs of the Trust also passed away during the pendency of the application. The coram for the meeting is 2/3rd. Since, there was no coram available for meeting because two trustees i.e. respondent nos.1 and 2 were not having interest and did not cooperate and one of the trustees i.e.

applicant no.5 died during the pendency of the application, the affairs of the trust came to a stand still. The appellants along with original applicant no.5 were managing the trust. Therefore, the appellants by filing the application under Section 47 of the Act of 1950 sought for their appointment as trustees of the Trust.

3. Respondent no.3 - Joint Charity Commissioner, Nagpur considering the submissions of the appellants, dismissed the application filed under Section 47 of the Act of 1950, mainly on the ground that the society in question is registered under the Societies Registration Act, 1860 and the appellants are not the legally enrolled members of the society. Therefore, they were not considered to be fit for appointment as trustees of the Trust under Section 47 of the Act of 1950. The another ground for rejection is that, as per clause 7 of the Bye Laws of the Trust, the strength of the Managing Committee is seven and the application was moved by five persons only. Therefore, the application was not considered by respondent no.3- Joint Charity Commissioner, Nagpur.

4. I have heard Mr. S. D. Abhyankar, learned counsel appearing for the appellants and Mr. H.D.Dubey, learned Asstt. Government Pleader for respondent no.3. Nobody appears for

respondent nos.1 and 2. With their assistance, I have gone through the record and the proceedings.

5. At the outset, it will be appropriate to refer to the definition of “Public Trust”, provided under Section 2 (13) of the Act of 1950, which reads as under :

“2(13). “public trust” means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, [church, synagogue, agiary or other place of public religious worship] [a dharmada] or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860;

6. Needless to mention that, the purpose of the society i.e. Ravindra Shikshan Sashta is charitable and it is duly registered under the Societies Registration Act, 1860. The society in question satisfies both the conditions namely, that it is a registered society and is formed for a charitable purpose Therefore, the said Sanstha is a Trust within the meaning of Section 2(13) of the Act of 1950.

7. This takes me to Section 47 of the Act of 1950, which gives power to the Charity Commissioner to appoint any person who has interest in the trust, as a Trustee. However, by the impugned

order, the application of the appellants has been dismissed on the ground that they are not the enrolled members of the society.

8. The Act of 1950 defines “person having interest” under Section 2 (10) of the Act of 1950, which reads as under :

“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. Reference can be made to the decision of the Division Bench of this Court in *Digambar Pralhad Jot and others vs Satyanarayan Biharilal Zunzumwala and others* (1977 SCC OnLine

Bom 37) wherein, it has been held that the petitioners, though were not members of the Shikshan Prasarak Mandal for the reason that their membership applications were arbitrarily rejected, were treated as persons having interest in the trust considering the nature of their involvement in the trust. While interpreting the words “person having interest” it has been held as under:

....It is well settled that the word 'include' in the interpretation clause is intended to be enumerative and not exhaustive. It has an extending force and it does not limit the meaning of the term to the substance of the definition.

... ..This intention of the Legislature is further clear from the substitution of the word 'includes' for the word 'means' by Bombay Act No. 28 of 1953. Therefore, it is quite obvious that the definition of the phrase "person having interest" is not exhaustive.

...

10. A useful reference can also be made to the decision of the Coordinate Bench of this court in the case of ***Pyarchand Maniram Wasnik and Ors. Vs. Nandkishor Uttam Shyamkunwar and Ors.*** (*Writ Petition No. 1996 of 2021 Decided On: 05.01.2022*) wherein, it has been held as under:

10. Prima facie, it appears to me that the expression "any person having interest in the public trust" cannot be read in a pedantic or narrow manner. Ultimately, the foremost consideration must be the interest of the trust and any person who has some interest in the administration of the trust, and whose presence in the

proceedings may sub-serve the interest of the trust by assisting the authority to frame an appropriate scheme, deserves an opportunity to participate in the proceedings. No inexorable straight jacket formula can be invoked. However, the definition of person interested in section 2(10) gives some indication and will have to be given due consideration by the authority.

11. Admittedly, in the present case, the appellants were managing the affairs of the trust along with original applicant no.5 who was a Trustee at the time. Moreover, there were no existing trustees who could look after the welfare of the trust and consequently, the trust came to a stand still. In such a case, the Joint Charity Commissioner ought not to have held that the appellants not being members of the trust are not entitled to approach under Section 47 of the act of 1950. The appellants even though, not members of the society, *prima facie* are entitled to be considered as persons having interest, particularly in view of the fact that the appellants were managing the affairs of the trust. In wake of the inclusive definition of “person having interest”, the finding recorded by respondent no.3 – Joint Charity Commissioner, Nagpur does not stand to the scrutiny of law.

12. Another reason rendered by respondent no.3 - Joint

Charity Commissioner for rejection also cannot stand for the reason that even a trust can be run by five trustees. Even otherwise, respondent no.3 has power to additionally appoint any other person having interest in the trust.

13. Therefore, for the reasons mentioned above, the finding recorded by respondent no.3 is required to be set aside. The matter needs to be remanded back to respondent no.3 for deciding it afresh.

14. Accordingly, the first appeal is partly allowed.

i] The judgment and order passed by respondent no.3 – Joint Charity Commissioner, Nagpur dated 18.10.2024 in Application No. 16/2022, is set aside.

ii] The matter is remanded back to respondent no.3 – Joint Charity Commissioner, Nagpur for deciding it afresh in view of the observations of this Court.

iii] Respondent no.3 – Joint Charity Commissioner, Nagpur shall decide the application as expeditiously as possible, preferably within four months from the date of receipt of this order.

iv] The appeal stands disposed of in the aforesaid terms. No order as to costs.

(M.W.Chandwani, J.)