SAINATH SANJAY BODKHE
Digitally signed by SAINATH SANJAY BODKHE
Date: 2026.08.11 21:01:09 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7780 OF 2025

1. C.A. Anand Sudhir Sanghvi
Age: 40, Occ. Business
Residing at B-33, Mandhana
Manor, Mogal Lane, Matunga West,
Mumbai – 400 016.
(M) – 9167098055
Email ID: sanghvianand@gmail.com

2) Sudhir Vinayak Sanghvi
Age: 71, Occ. Business,
Residing at B-33, Mandhana
Manor, Mogal Lane, Matunga West,
Mumbai – 400 016.
(M) – 9773782202
Email ID: sudhirsanghvi60@gmail.com

3) Ajit Nandlal Singh
Age: 42, Occ. Business
Residing at 9, Manbhau Chawl,
T.H. Kania Marg, Matunga West,
Mumbai – 400 016
(M) – 9619656868
Email ID: ajitsingh7689@gmail.com ...Petitioners

Versus

1) Kishor Gopaldas Sanghvi
Age- Adult, Occupation – NA
Address – 1201, Sanghvi Majestic CHS Ltd,
Manmala Tank Road, Matunga (W),
Mumbai – 400 016
(M) – 9322994353
Email ID: NA

2) Satish Gopaldas Sanghvi

Age- Adult, Occupation – Business
Address – Bungalow No. ASD/40,
Shrihari, Ashwin Nagar, CIDCO,
Nashik – 422 009, Maharashtra,
(M) - 9422253056
Email ID: ancillaryengg@gmail.com

3) Devang Kishor Sanghvi
Age- 56, Occupation – Business
Address – Flat No. 1202, 12th Floor,
Sanghvi Majestic CHS, Manmala Tank
Road, Matunga West, Mumbai – 400 016
(M) – 9892505128, Email ID: NA

4) Prashant Kishor Sanghvi
Age- 53, Occupation – Business
Address – Flat No. 1401, 14th Floor,
Sanghvi Majestic CHS, Manmala Tank
Road, Matunga West, Mumbai – 400 016
(M) – 9221424659, Email ID: NA

5) Hemangi S Sanghvi
Age- 73, Occupation – Housewife,
Residing at Bungalow No. ASD/40,
Shrihari, Ashwin Nagar,
CIDCO, Nashik – 422 009.
(M) – NA, Email ID: NA

6) Praful G Sanghvi
Age – 80, Occupation – Doctor,
Address: CC/o Satish G Sanghvi
Bungalow No. ASD/40, Shrihari,
Ashwin Nagar, CIDCO,
Nashik – 422 009.
(M) – NA, Email ID: NA

7) Kashyap B Sanghvi
Age – Adult, Occupation – Business
Residing at : 1103, Sanghvi Majestic
CHS Ltd, Manmala Tank Road,
Matunga West, Mumbai – 400 016
(M) – 9820398114, Email ID- NA.

8) Hansa K Sanghvi

Age -84, Occupation – Housewife
Address – 1402, Sanghvi Majestic
CHS Ltd, Manmala Tank Road,
Matunga West, Mumbai – 400 016
(M) – NA, Email ID -NA.

9) Vipul G Sanghvi
Age – 48, Occupation – Business,
Address – Nisarg Bungalow, 140/A,
Iskon Ground, Palitana Sugar Mill Lane,
Bhavnagar – 364001.
(M)- NA, Email ID- NA.

10) Pratima D Laiwala,
Age – Adult, Occupation – Housewife,
Residing at Dwarka, 4th Floor,
57, Tagore Road, Santa Cruz West,
Mumbai – 400 054.
(M) – NA, Email ID – NA.

11) The Sanghvi Majestic CHS Ltd,
A society registered under the Maharashtra
Cooperative Societies Act, 1960,
through its Chairman, having its
address at Manmala Tank Road, Matunga
West, Mumbai – 400 016.
(M) – NA, Email ID – NA.

12) Sanghvi Jagmohandas Bhagwandas Trust,
Bearing P.T.R. No. E-3158 (Mumbai),
A Public Trust registered under the provisions
of the Bombay Public Trusts Act,
1950, through its Managing Trustee Kishor G
Sanghvi having its address at Govardhan Baug,
Manmala Tank Road, Matunga (W),
Mumbai – 400 016
Email ID: sanghvibtrust@gmail.com

13) The Chief Officer of M.B.R.R.
Board, Griha Nirman Bhavan, Kala
Nagar, Bandra East, Mumbai – 400 051.

14) Arvind G Sanghvi
Age – Adult, Occ.- Retired,

L'Avenir-3, Flat No. 4, 2nd Floor,
108, Pappammal Koli Street,
Vaithikuppam, Puducherry – 605001.

15) Purvi A Sanghvi,
Age – Adult, Occ.- Business,
L'Avenir – 3 Flat No. 4, 2nd Floor,
108, Pappammal Koli Street,
Vaithikuppam, Puducherry – 605001.
Mob – 9344291785

16) Sumeet A Sanghvi
Age – Adult, Occ.- Business,
C/0 Arvind G Sanghvi,
L'Avenir – 3 Flat No. 4, 2nd Floor,
108, Pappammal Koli Street,
Vaithikuppam, Puducherry – 605001.

17) Suresh Anant Gambhir,
Age – Adult, Occupation – NA,
Address – 2301, Shreeji Heights,
T.H. Kataria Marg,
Opp. Ganga Vihar Hotel, Mahim,
Mumbai – 400 016.
(M) – 9867255070.

18) The Ld Charity Commissioner
Maharashtra State, Mumbai, Office
of the Charity Commissioner,
2nd Floor, C/o Sasmira Institute
Studies & Research, Sasmira Road,
Worli, Mumbai – 400 030.

19) The State of Maharashtra
Through the Government Pleader
High Court, Appellate Side Civil.

…Respondents

Mr. Prathamesh Kamat, with Kayush Zaiwalla, i/b Suresh Kamble, Shashank Thatte and Yuvaraj Takale, for the Petitioners.
Mr. Girish Godbole, Senior Advocate, i/b Aditya Joshi & Niharika Chandurkar, for Respondent No.1.
Ms. Savina Crasto, AGP, AGP, for the Respondent-State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 22nd JULY 2026
PRONOUNCED ON : 11th AUGUST 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners take exception to an order passed by the learned Joint Charity Commissioner, Mumbai, whereby the Application, being Application No. 26 of 2022, filed by the Petitioners seeking injunctive reliefs in respect of Sanghvi Jagmohandas Bhagwandas Trust, under the provisions of Section 41E of the Maharashtra Public Trusts Act, 1950 ("the Trusts Act, 1950"), came to be rejected on the ground that the Petitioners-Applicants were not the persons having interest in the Trust.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 Late Gopaldas Bhagwandas Sanghvi, the great grandfather of Petitioner No.2, had settled the Trust under the Indenture of Trust dated 8th December 1965, in the memory of his elder brother, Jagmohandas Sanghvi, under the name and style of "Sanghvi Jagmohandas Bhagwandas Trust". The Trust came to be registered as a public charitable trust under the provisions of the Trusts Act, 1950, on

24th December 1965. Advancement of education, health and social works were the objects of the Trust. A first board of trustees, comprising Respondent No.1, Vinayak Sanghvi, Rasiklal Sanghvi and Gulabben Sanghvi was constituted by the settlor. The surviving trustees were empowered to fill in the vacancies in the office of the trustees; the number of which shall not be less than two and more than seven.

3.2 The Petitioners preferred an Application under Section 41E of the Trusts Act, 1950, alleging, *inter alia,* that Petitioner No.1 is the son of Petitioner No.2. Late Vinayak, father of Petitioner No.2, was one of the first trustees. Petitioner No.3 resides in the vicinity of the trust property. The Petitioners are thus the "persons having interest", within the meaning of Section 2(10) of the Trusts Act, 1950. The Petitioners asserted that they were also entitled to take the benefits as per the objects of the Trust enumerated in the Indenture of Trust.

3.3 Respondent Nos. 1 and 2 were the persons whose names appeared as the trustees in the Schedule I of the Trust. Respondent Nos. 3 and 4 were subsequently inducted as the trustees of the Trust. The Petitioners professed to file the Application seeking injunctive reliefs for protecting the trust property as there was imminent danger of the wasting, damaging and improper alienation of the trust property.

3.4 Respondent Nos. 3 to 10 were stated to be the near relatives of Respondent Nos. 1 and 2. Respondent Nos. 3 to 10 had allegedly taken

undue benefits, and caused loss and damage to the property of the trust. Certain allegations were made in regard to the transactions between the Trust and Respondent No.12- a cooperative housing society of the occupants of the property developed on behalf of the Trust. Attributing the acts of commission and omission to the Respondents, the Petitioners sought certain prohibitory and mandatory injunctions against the Respondents.

3.5 Respondent Nos. 1 to 4 appeared and filed Application (Exhibit "89") seeking rejection of the main Application under Section 41E of the Trusts Act, 1950, questioning the *locus standi* of the Petitioners to file such Application. It was, *inter alia,* contended that, in an Application under Section 36 of the Trusts Act, 1950, being Application No. 1 of 2024, Petitioner Nos. 1 and 2 herein had sought impleadment by filing an Application (Exhibit "7") and the said Application was rejected by the learned Joint Charity Commissioner observing that the Petitioners were not persons having interest in the Trust, nor were Petitioner Nos. 1 and 2, the beneficiaries of the Trust. Even otherwise, the Petitioners were neither the 'persons having interest' in the Trust nor the 'beneficiaries' of the Trust.

3.6 The Petitioners resisted the Application by filing a Reply (Exhibit "90").

3.7 In the wake of the pleadings and material on record, the learned Joint Charity Commissioner framed two points for determination, namely, whether the issue as to the tenability of the main application under Section 41E of the Trusts Act is a pure question of law, and whether the Petitioners proved that they were the persons having interest in the Trust or were the beneficiaries of the Trust.

3.8 Answering the first point in the affirmative and the second in the negative, the learned Joint Charity Commissioner rejected the main Application. The learned Joint Charity Commissioner was of the view that the Petitioners failed to plead and demonstrate as to how the Petitioners were the persons having interest in the Trust or the beneficiaries thereof. The claim of the Petitioners that they were entitled to avail the services of a pathology laboratory run by the Trust would not render them the beneficiaries of the Trust.

3.9 Being aggrieved, the Petitioners-Applicants have preferred this Petition.

3.10 An Affidavit in Reply has been filed on behalf of the Respondents.

4. I have heard Mr. Prathamesh Kamat, the learned Counsel for the Petitioners, and Mr. Girish Godbole, the learned Senior Advocate, for Respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. Mr. Kamat, the learned Counsel for the petitioners, took a slew of exceptions to the impugned order. First and foremost, Mr. Kamat would urge, that the learned Joint Charity Commissioner committed a grave error in law in holding that the question as to whether the petitioners were the "persons having interest" in or the "beneficiaries" of, the Trust is a pure question of law and could be determined without recording evidence. In the very nature of the inquiry that is required to be conducted to determine that aspect, Mr. Kamat would urge, the question can be said to be firmly rooted in facts. At best, it could be a mixed question of law and fact. Secondly, the learned Joint Charity Commissioner, on the one hand, observed that, the question of locus of the petitioners was a pure question of law and, on the other hand, non-suited the petitioners by observing that, the petitioners failed to produce any evidence to prove; at least *prima facie*, that they were the persons having interest in, or the beneficiaries of, the Trust. Thirdly, the learned Joint Charity Commissioner also recorded that, the question whether a particular person has an interest in the Trust is one of fact and must be decided with reference to the circumstances of each case. Thus, the impugned order suffers from manifest contradictory findings.

6. Mr. Kamat next urged that, the petitioners had filed an application under Section 41E of the Trusts Act, 1950 and furnished all the particulars as mandated under Rule 25AA of the Maharashtra Public

Trust Rules, 1951 ("Trust Rules, 1951"). The learned Joint Charity Commissioner completely misread the averments in the application under Section 41E of the Trusts Act, 1950 to return a factually incorrect finding that, the petitioners had nowhere pleaded that they were the beneficiaries as per the objects of the Trust.

7. Mr. Kamat further submitted that, the aspect of locus to seek relief in order to protect the Trust property or the larger public interest, has received a liberal construction. Under the indenture of Trust, all the persons were entitled to the benefits of the activities for securing health. It was not absolutely necessary for the petitioners to actually avail the benefits as per the objects of the Trust. The pivotal question was whether the petitioners were entitled to receive the benefits as per the objects of the Trust. The learned Joint Charity Commissioner, thus, completely misdirected himself in holding that, the petitioners were neither the persons having interest in the Trust nor the persons entitled to receive the benefits as per the objects of the Trust.

8. To lend support to the aforesaid submissions, Mr. Kamat placed strong reliance on the judgments of this Court in the cases of ***Shree Khambhati Modh Vanik Samaj Vs. State of Maharashtra & ors.***[1], ***Ashok***

1 2023 SCC OnLine Bom 2725

Shreekrishna Beharay vs. Joint Charity Commissioner & anr.[2], and *Mataprasad Durgaprasad Rai & ors. Vs. Girish Mulji Vora & anr*[3].

9. Per contra, Mr. Godbole, the learned Senior Advocate for the Respondent No.1, supported the impugned order. Mr. Godbole submitted that, the learned Joint Charity Commissioner has correctly appreciated the question as to whether the petitioners can be said to be the persons having interest in, or the beneficiaries of, the Trust. Mr. Godbole submitted that, the mere fact that the Petitioner Nos.1 and 2 are the descendants of one of the trustees of the Trust, does not confer the status of "persons having interest" upon the petitioners. The learned Joint Charity Commissioner was, thus, well within his rights in discarding the claim of the petitioners on the said count, which is, in essence, the substratum of the claim of the Petitioner Nos.1 and 2.

10. Mr. Godbole strenuously submitted that, the Petitioner Nos. 1 and 2 disguised as the "persons having interest" or "beneficiaries" are pursuing a private cause against the respondents. The Petitioner Nos.1 and 2 have left no stone unturned in putting hindrances in the development of the trust property. Apart from instituting the proceedings before the other forums, the Petitioner Nos.1 and 2 tried to intervene in the application under Section 36 of the Trusts Act, 1950, which turned out to be abortive. Having failed in their endeavors, the

---

2 2025 SCC OnLine Bom 3993

3 2020 SCC OnLine Bom 3369

Petitioner Nos.1 and 2 have filed the application under Section 41E of the Trusts Act, 1950. This litigative streak of the Petitioner Nos. 1 and 2, with an oblique motive of putting hindrances in the affairs of the Trust, ought to enter the judicial determination.

11. To lend support to the submission that, the mere fact that a person is a descendant of the settlor or trustee, does not clothe such person with the character of 'a person having interest' in the Trust, or a 'beneficiary', Mr. Godbole placed reliance on the judgment of a learned Single Judge in the case of ***Maganlal Himatram Barfiwala & ors. Vs. Mridangraj Hiralal Suchak***[4]***.***

12. Refuting the submissions on behalf of the petitioners that, in any event, they were the beneficiaries as per the objects of the Trust, Mr. Godbole submitted that, in accordance with the object of the Trust under the Indenture of the Trust, the promotion of the health facilities was meant for poor and needy persons. It is not the case of the petitioners that, they have ever availed the facilities nor the petitioners have asserted that their financial condition is not sound and they are otherwise required to avail the benefits of the facilities provided by the Trust. In the absence of such a clear assertion in the application, the bald claim that, the petitioners are entitled to receive the benefits as per the objects of the Trust, is not sufficient to hold that, the petitioners

---

4 2019 SCC OnLine Bom 336

were the beneficiaries. Thus, no fault can be found with the impugned order, urged Mr. Godbole.

13. In the light of the aforesaid pleadings and submissions, the core controversy revolves around two questions. First, whether the learned Joint Charity Commissioner was justified in holding that, the question of locus of the petitioners to file an application under Section 41E of the Trusts Act, 1950 was a pure question of law ? Second, whether, in the facts of the case at hand, the application under Section 41E of the Trusts Act, 1950 could have been dismissed at the threshold on the ground that, the petitioners were not the persons having interest in the Trust and, thus, not entitled to maintain such an application ?

14. Before adverting to explore answers to the aforesaid questions, it may be advantageous to note the relevant provisions of the Trusts Act, 1950 and the Rules framed thereunder. Section 41E of the Trusts Act, 1950 empowers the Charity Commissioner to act in protection of the charities. The relevant part of Section 41E of the Trusts Act, 1950, reads as under :-

> "**41E.Power to act for protection of Charities**
>
> (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by

at least two persons having interest supported by affidavit:

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit."

15. A bare perusal reading of the aforesaid section would indicate that, if it is brought to the notice of the Charity Commissioner that there is a danger of waste, damage, alienation, sale, removal or disposition of the property of the Trust, either by any Trustee or any other person, the Charity Commissioner in exercise of parens patriae jurisdiction has been empowered to grant temporary injunction or make such order to stay

and prevent such waste, damage, alienation, removal or disposition of the Trust property.

16. Two modes of initiation of action under Section 41E of the Trusts Act, 1950 are specified in the opening part of sub-section (1) of Section 41E. First, on the basis of the reports by the Deputy or Assistant Charity Commissioner. Second, by an application by at least two persons having interest in the Trust. The legislature thus considered it appropriate to provide that, the action under Section 41E of the Trusts Act, 1950 for protection of charities can be on the basis of the information provided by the Authorities under the Trusts Act, 1950, or on an application by two or more persons having interest. It is quiet conceivable that, unbeknownst to the Authorities under the Trusts Act, 1950 or surreptitiously the trustee or any other person may by act or omission, jeopardize the trust property and thereby threaten to defeat the object of the Trust. To address such a situation, the legislature has conferred locus on two or more persons having interest to move the Charity Commissioner seeking injunctive or other orders.

17. That brings to the fore the question as to who can be said to be a person having interest in the Trust. The expression, 'person having interest' finds place in a number of provisions of the Trusts Act, 1950, especially in regard to the initiation of the proceedings before the

Charity Commissioner. Thus, Section 2(10) of the Trusts Act, 1950 defines, “person having interest”, as under :-

> “S.2(10) “person having interest includes” 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 Waqf, a person who is entitled to receive any pecuniary or other benefit from the Waqf 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 Waqf or to participate in any religious or charitable institution under the Waqf,
>
> (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.”

18. Evidently, if a Trust does not fall within the specified classes covered by clauses (a) to (d) of Section 2(10), such Trust would be governed by clause (e) for which, 'person having interest' means any trustee or beneficiary.

19. Sub-section (2A) of Section 2, which was inserted by Maharashtra Act No. 55 of 2017 w.e.f. 10th October, 2017, defines "beneficiary" as under :-

> "(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"

20. In the case of ***Shree Khambhati Modh Vanik Samaj (supra)***, this Court had an occasion to consider the import of the provisions contained in Section 2(10) and Section 2(2A) which defined the expressions, "person having interest" and "beneficiary", respectively. The observations in Paragraph Nos. 31 to 35 of the said judgment are as follows :-

> "31. The object of conferment of locus on "person having interest" becomes clear if the nature of the authority of the trustees is appreciated. As noted above, the property of the trust vests in the trustees for the benefit of beneficiary or for

the discharge of the object of the trust. It is quite conceivable that the trustees may discharge their duties in furtherance of the object of the trust or in derogation thereof. In a given case, the trustees may not be available or may have become defunct or rendered themselves disabled or even might be acting against the interest of the trust. Therefore, the persons who have an abiding interest in the affairs of the trust have been conferred the locus to seek remedies and participate in the proceeding, so that the object of the trust and, ultimately, public interest are not defeated.

32. Evidently, under sub section 2(10) of the Act, the definition, “the person having interest” is inclusive. It would be contextually relevant to note that the word, “includes” in section 2(10) came to be substituted for the word, “means” by Bombay 28 of 1953. It is trite, the use of the word, “includes” in a definition gives the term an expansive meaning. In contrast the legislature uses the word, “means” to give a precise and definite meaning. In substituting the word, “includes” for “means”, the legislative intention of expanding the scope of the term, “person having interest” becomes explicitly clear. An inclusive definition, as is trite, covers in its fold the matters which are not specifically enumerated in the said definition.

33. A profitable reference in this context can be made to a Division Bench judgment in the case of Digambar Pralhad Jot and Others vs. Satyanarayan Biharilal Zunzumwala and Others (AIR 1978 Bom 196). The Division Bench adverted to the legislative change brought by substituting the word, “includes” for the word “means” and emphasized that the definition of the phrase, “the person

having interest" is not exhaustive. The observations of the Division Bench read as under:-

> 7] …. ……. Initially in this definition clause in place of the word 'includes' the word 'means' was used by the Legislature. The word 'includes' was substituted by Bombay Act No. 28 of 1953. 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. When it is intended to exhaust the signification of the words interpreted, the word 'means' is used: -- See Chandrabhagabai Ashtekar v. State oil Bombay (1958 Nag LJ J72).
>
> (emphasis supplied)

34. The import of the phrase, "person having interest" came up for consideration before the Supreme Court in the case of Shree Gollaleshwar Dev and Ors. vs. Gangawwa Shantayya Math and Ors. (1985) 4 SCC 393. 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 Trust Act, 1950 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 adverting to the provisions of section 2(10) and 2(18), which defines "a trustee", and section 50 of the Act, 1950, the Supreme Court did not approve the view of the Full Bench of the Karnataka High Court. It was, 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 also entitled to partake in the distribution of offering to the deity and thus answer the description "person having inter" as defined in Section 2 (10) of the Act.
>
> (emphasis supplied)

35. In the case at hand we are primarily concerned with clause (e) of section 2(10) of the Act under which “person having interest” includes, “any trustee or beneficiary”. As noted above, the definition of “beneficiary” came to be inserted by Amendment Act, 2017. Interestingly, the legislature has used the word, “means” while defining, “beneficiary”. Thus, the “beneficiary” means, any person entitled to any of the benefits as per the object of the trust explained in the trust deed or the scheme made as per the

> said Act and constitution of the trust. What makes the legislative intent abundantly clear is the use of the expression, "and no other person". This implies that the legislature made a conscious effort to exclude a person other than the one who is entitled to obtain any benefit under the objects of the trust, from the definition of "beneficiary". There is no scope to expand the meaning of the term, "beneficiary" under section 2(2A). The legislative intent that the term "beneficiary" is restricted to that class of persons who are entitled to obtain benefit under the trust is underscored by the exclusionary clause "and no other person". It is in the backdrop of these provisions, the import of the term, "person having interest" deserves to be construed. To qualify as "person having interest", under clause (e) of section 2(10) in the class of beneficiary, the person must derive benefit under the trust."

21. Having noticed what signifies, "person having interest" or "beneficiary", it would be appropriate to consider the question whether the learned Joint Charity Commissioner was justified in holding that, the question of locus could be determined as a pure question of law. The learned Joint Charity Commissioner has, after referring to the provisions contained in Rule 7 of the Trust Rules, 1951, which provides for the conduct of inquiries including, an inquiry under Section 41E(3) of the Trusts Act, 1950, as far as possible in the Greater Bombay region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and, elsewhere under the

provisions of Provincial Small Cause Courts Act, 1887, held that, the provisions contained in the Code of Civil Procedure, 1908 ("Code, 1908") including, under Order VII Rule 11 of the Code, 1908, were attracted to the inquiry under Section 41E of the Trusts Act, 1950. Thus, applying the test for determination of an application for rejection of the plaint, the learned Joint Charity Commissioner proceeded to decide the question of locus as a pure question of law. Whether the aforesaid approach of the learned Joint Charity Commissioner, is sustainable ?

22. In the context of the definition of 'person having interest' under Section 2(10) r/w Section 2(2A) of the Trusts Act, 1950, if a person invokes the jurisdiction of the Charity Commissioner under Section 41E of the Trusts Act, 1950 on the premise that, he is the trustee of the Trust, the controversy may assume the character of an objective inquiry in the sense that, if such person who is not a trustee, he cannot claim to be a person having interest in the Trust. However, where two or more persons also approach the Charity Commissioner with a case that they are the beneficiaries of the Trust, in the considered view of this Court, the controversy assumes a different complexion. Whether a person is indeed a beneficiary of the Trust, though capable of determination on the basis of the averments in the application, yet, cannot be said to be a pure question of law. What is question of law need not detain the Court.

The distinction between the pure question of law and a mixed question of law and fact is well marked.

23. The question of law arises when the conclusion can be arrived at on the application of the rules and the principles of law to certain proved facts and circumstances. Ordinarily, the question of law signifies a question that can be decided by applying the principles of law to the given facts without determining the factual controversy.

24. In the case of **Shakuntala Chandrakant Shreshti V/s. Prabhakar Maruti Garvali and Anr.**[5], the Supreme Court observed that a question of law would arise when the same is not dependent upon the examination of evidence, which may not require any fresh investigation of fact.

25. In a majority of the cases, whether a person is entitled to receive benefit as per the objects of the Trust would hinge upon the facts. A minimal investigation into facts to ascertain whether the claim of entitlement of such person to the benefits as per the objects of the Trust, may be warranted. Indeed, a bald assertion in the application that, the applicants are the beneficiaries as per the objects of the Trust, by itself, is not sufficient. Whether there are particulars indicating the nature of the interest or the benefit which the applicants are entitled to receive as per the objects of the Trust, is required to be spelled out as mandated by clause (e) of Rule 25AA(1) of the Rules, 1951. The said Rule enjoins the applicant to furnish particulars as to the nature of the applicant's

5 (2007) 11 SCC 668

interest in the Trust. Therefore, it cannot be laid down as an absolute proposition of law that, the question whether the applicants are persons having interest in the Trust is a pure question of law; more often than not, the question would be a mixed question of law and fact and, at times, heavily rooted in facts. Therefore, the finding of the learned Joint Charity Commissioner that, the question of locus of the petitioners was a pure question of law, cannot be sustained.

26. This takes me to the question as to whether the material on record sustains the claim of the petitioners that, they are the persons having interest in the Trust. Since the learned Joint Charity Commissioner proceeded to decide the issue of locus, at the threshold, the averments in the application were required to be taken as they stand on the principle of demurrer. In the application, after furnishing the particulars of the circumstances in which the Trust in question came to be formed, the petitioners have asserted that, the Petitioner No.1 is the son of Petitioner No.2. The father of Petitioner No.2 late Vinayak was one of the first trustees of the Trust. The Petitioner Nos.1 and 2 are the descendants of late Gopaldas Sanghavi, the settlor of the Trust. The Petitioner No.3 is a businessman and resides in the vicinity of the Trust property at Matunga. The petitioners were competent and entitled to take the benefits as per the objects of the Trust enumerated in the indenture of the Trust. The petitioners had a bonafide interest in the

Trust and their main object was to protect the property of the Trust from the respondents. They did not have an interest which was adverse to the Trust.

27. Evidently, the petitioners did not claim that any of them was a trustee of the Trust. Consequently, their qualification of being the persons having interest would turn upon their character as the beneficiaries of the Trust.

28. The learned Joint Charity Commissioner was of the view that, the fact that the Petitioner Nos.1 and 2 were the descendants of the settler or an erstwhile trustee was of no avail to the petitioners. This view of the learned Joint Charity Commissioner appears to be rather impeccable. The settlor has settled the Trust for the advancement of the charitable objects, namely, education, health and societal matters. The mere fact that, the petitioners happened to be either the descendants of the settler or one of the first trustees of the Trust, by itself, was not of any relevance.

29. Reliance placed by Mr. Godbole on the judgment of a learned Single Judge of this Court in the case of ***Maganlal Himatram Barfiwala (supra)***, appears to be well founded. In the said case, the learned Joint Charity Commissioner had reckoned that the respondents therein was a 'person having interest' in the Trust on the ground that he was a member of Shri. Halai Lohana Mahajan Community and grandson of

the settlor. A learned Single Judge of this Court found the said reasoning *ex facie* perverse. The observations in Paragraph Nos.67 and 68 of the said judgment are material and, hence, extracted below :-

> "67. A perusal of the impugned order passed by the learned Joint Charity Commissioner clearly indicates that the learned Joint Charity Commissioner has considered the respondent as a person having interest in the trust under section 2(10) of the MPT Act as well as the beneficiary under section 2(2-A) of the MPT Act on the ground that he is a member of Shri Halai Lohana Mahajan community and the grandson of the settlor. In my view, this finding of the learned Joint Charity Commissioner is ex-facie perverse and contrary to the definition of "person having interest" under section 2(10)(e) of the MPT Act and also the definition of "beneficiary" defined under section 2(2-A) of the MPT Act. The finding of the learned Joint Charity Commissioner that considering the close relationship between the settlor and the respondent as well as he being a member of Shri Halai Lohana Mahajan community, the respondent was a person having interest as required under section 41-D of the MPT Act is also ex-facie perverse and contrary to section 41-D of the MPT Act. In my view, in view of the definition of section 2(2-A) of the MPT Act, the definition of "person having interest" under section 2(10)(e) has to be given a restricted meaning. In my view, even if a person is a member of the community, he does not automatically become a beneficiary defined under section 2(2-A) of the MPT Act.
>
> 68. A perusal of the statement of objects and reasons of 2017 Act clearly indicates that after considering the fact that the proceedings under various provisions of the MPT Act

> remained pending for inordinate long period resulting in hindrance in advancement of the public religious and charitable objects, various amendments were proposed. Insofar as section 41-D is concerned, in my view, the definition 'beneficiary' has to be given narrow and restrictive meaning. It is thus clear that the legislative intent to insert the definition of 'beneficiary" under section 2-A of the MPT Act is to restrict the interference with the management of the public trust only by the persons having interest in the trust including the trustee and beneficiary and more particularly the beneficiary defined under section 2(2-A) of the MPT Act inserted by 2017 Amendment and no other person."

30. In the light of the aforesaid enunciation of law, the petitioners cannot be permitted to draw any mileage from the fact that they are the descendants of the settler or the successor in interest of one of the first trustees of the Trust, appointed by the settler. To sustain an action under Section 41E, the petitioners were required to demonstrate that, they were the beneficiaries within the meaning of Section 2(2A) of the Trusts Act, 1950.

31. Mr. Kamat, the learned Counsel for the petitioners, made a painstaking effort to demonstrate that, if the averments in the application are read in conjunction with the objects of the Trust as specified in the Indenture of the Trust, the status of the petitioners as the beneficiaries thereunder, becomes absolutely clear. Emphasis was laid by Mr. Kamat on the object of the advancement of health, which reads as under :-

"(2) For Health :-

(ka) For starting Dispensaries or Hospitals of any kind and for running the same or helping to run the same or for giving grants to _____.

32. Though in the Application it was not specifically averred that the Petitioners were entitled to receive the benefit of the health related services/medical facilities provided by the Trust, a submission was sought to be canvassed that the Trust runs a pathology laboratory and the Petitioners were entitled to avail the services of said pathology laboratory and, therefore, they were the beneficiaries within the meaning of Section 2 (2A) of the Trusts Act, 1950. From the perusal of the order passed by the learned Charity Commissioner on an Application for intervention in Miscellaneous Application No. CC/01/2024, it becomes clear that, that was also the precise submission canvassed before the learned Joint Charity Commissioner to demonstrate the interest of Petitioner Nos. 1 and 2 in the Trust. The learned Charity Commissioner was of the view that the mere fact that Petitioner Nos. 1 and 2-proposed interveners therein might in the future visit the pathology laboratory to get some medical tests done would not make them beneficiary of the Trust.

33. It is true, the actual availment of the benefit as per the objects of the Trust as specified in the Trust Deed is not a *sine qua non.* In Section

2(2A), the legislature has thus advisedly used the expression, “person entitled to any of the benefit”.

34. Thus, the person who claims to be a person having interest need not necessarily actually avail the benefit as of the date seeking relief from the Charity Commissioner. The test is, whether such person is entitled to receive any of the benefits as per the objects of the Trust. The imminent possibility of availing the benefit may clothe the person with the character of a beneficiary of the Trust. However, a mere theoretical probability of availing the said benefit may not be sufficient as that would expand the scope of “beneficiary” too widely. The intendment of the Legislature in using the expression “and no other person” would then become redundant. It is a well-recognized principle of interpretation of statute that no word in the statute can be construed to be a surplusage and such interpretation ought to be adopted as does not render any word used by the Legislature redundant. The use of the word, “means” coupled with the negative expression, “and no other person” restricts the meaning of the word “beneficiary” to the class of persons who are entitled to any of the benefits as per the object of the Trust. Therefore, too expansive a construction of the term beneficiary under Section 2(2A) may not be in consonance with the legislative intendment.

35. The submission of Mr. Godbole that there are no averments in the Application that the Applicants/Petitioners were required to avail the benefit of the medical services offered by the Trust, is required to be appreciated in the light of the intention of the settlor, the objects of the Trust and the status of the Petitioners; especially Petitioner Nos. 1 and 2. The intent of the settlor was to promote charities by providing educational, health related and other societal development services to the deserving persons. The objects of the Trust, if considered in juxtaposition with the intention of the settlor, make it explicitly clear that the facilities were to be made available to the persons who could not afford the same for want of resources or other constraints. The status of the members of the settlor's family in a Public Charitable Trust, in contradistinction to a Private Trust, is ordinarily that of a benefactor rather than a beneficiary.

36. From the aforesaid standpoint, the absence of the averments in the Application regarding the necessity of the services for the Petitioners and the imminent possibility of availment of those services cannot be said to be immaterial or inconsequential. The learned Joint Charity Commissioner was, therefore, justified in construing the averments in the Application to hold that the mere possibility of the availing of services at the pathology laboratory run by the Trust may not confer the character of beneficiary upon the Petitioners.

37. The situation which thus, emerges is that, on the meaningful reading of the averments in the application under Section 41E of the Trusts Act, 1950, it becomes clear that the Petitioners did not satisfy the test of being the beneficiaries as per the objects of the Trust. Instead, the claim of the Petitioners, especially the Petitioner Nos.1 and 2, stemmed from their perceived interest in the Trust's property on the basis of their status as the successors in interest of the settlor and one of the first trustees. The assertion of the rights had its genesis in the creation of the trust. In view of the mode of succession provided in the Trust, without reserving any hereditary right in the members of the settler's family, or, for that matter, the successors of the trustees in the first board of trustees, the essential qualification to be the person having interest' in the Trust, would only be in accordance with the scheme envisaged by Section 2(10) read with Section 2(2A) of the Trusts Act, 1950. Since the Petitioners failed to make out that case in the application, the finding of the learned Joint Charity Commissioner that the Petitioners lacked the locus, appears to be unquestionable.

38. The fact that the learned Joint Charity Commissioner determined the said issue by holding that, it could be determined as a pure question of law, though questionable, yet does not detract materially from the ultimate finding rendered by the learned Joint Charity Commissioner. It is trite, if the ultimate finding is justifiable, this court in exercise of its

corrective writ jurisdiction need not interfere with such finding. A profitable reference in this context can be made to the decision of the Supreme Court in the case of **Garment Craft V/s. Prakash Chand Goel**[6], wherein the Supreme Court enunciated the approach to be adopted by the High Courts where the ultimate order is justified, though it may suffer from some legal flaw. The following observations are instructive, and, hence, extracted below :

> "15…….The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.[7] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice". (emphasis supplied)

---

6 (2002) 4 SCC 181

7 Celina Coelho Pereira V/s. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217

39. The conspectus of aforesaid consideration is that the impugned order does not warrant interference in exercise of the supervisory jurisdiction. The Writ Petition, therefore, deserves to be dismissed.

40. Hence, the following order:

: O R D E R :

(i) The Petition stands dismissed.

(ii) Rule discharged.

(iii) No costs.

[N. J. JAMADAR, J.]