

(2025) 10 BOM CK 1105
In the Bombay High Court
Case No : Writ Petition No. 8180 Of 2025

Ashok Shreekrishna Beharay	Vs	APPELLANT
Joint Charity Commissioner		RESPONDENT

Date of Decision : 16-10-2025

Acts Referred:

Maharashtra Public Trust Act, 1950 — Section 2, 36, 50, 73

Citation : (2025) 10 BOM CK 1105

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Shailendra Kanetkar, Nikhil Dongre, Ram Apte, Padmanabh Pise, Sejal Hariyan, P. Padmanabh, M. S. Bane

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

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

2. The challenge in this petition is to an order dated 2nd April, 2025 passed by the learned Joint Charity Commissioner, Pune, on an application under Section 73A for impleadment of the petitioner as a party to a proceeding under Section 36A(3) of the Maharashtra Public Trust Act, 1950 ("the Trust Act, 1950"), whereby the said application came to be rejected.

3. The background facts necessary for the determination of this petition can be stated as under:

3.1 The Maharashtra Technical Education Society (R2) is a Society registered under the Societies Registration Act, 1860 and a Trust under the Trust Act, 1950. The petitioner claims to be a member of respondent No.2 Trust and also a member of the Board of Control (BOC) of respondent No.2. The petitioner was the Chairman of the BOC of the Trust (R2) from the year 1999 to 2007. The

respondent No.2 is a well-known charitable institution, which runs educational institutions including reputed Medical and Engineering Colleges.

3.2 In the wake of the disputes in regard to the management of the affairs of respondent No.2 Trust, numerous proceedings have been initiated by and on behalf of the petitioner and the rival faction. The petitioner was removed from the BOC and, eventually, as a member of respondent No.2 Trust. The proceedings instituted at the instance of the petitioner and others assailing those decisions are sub-judice.

3.3 The Secretary of respondent No.2 Trust filed an application being loan Application No.58 of 2023, under Section 36A(3) of the Trust Act, 1950 seeking permission for availing loan of Rs.10 Crore from Janata Sahakari Bank, to be repaid in seven years, alongwith interest at the rate of 9% p.a to finance the balance construction of MTES International English School building at CTS No.4397, Sangli,

Maharashtra. Copy of the sanction letter dated 1st September, 2023 issued by the Bank was annexed to the said application.

3.4 The petitioner preferred an application under Section 73A of the Trust Act, 1950 seeking a direction to implead him as a party respondent to the said application. It was, inter alia, asserted that the applicant had no authority to file the said application and represent respondent No.2 Trust. Various litigations are pending before the Authorities as well

as in Courts. The Resolution dated 8th February, 2023, passed by the Trust to seek permission of the Charity Commissioner to avail the loan is false and illegal. The alleged Trustees have no authority to pass such Resolution. In fact, the person, who filed application on behalf of respondent No.2 Trust, is neither a trustee nor a member of respondent No.2 Trust. Therefore, it was necessary to give an opportunity to the petitioner to bring all the relevant facts on record.

3.5 The application was resisted by respondent No.2.

3.6 By the impugned order, the learned Joint Charity Commissioner rejected the application for impleadment observing inter alia that there was nothing to show that, the intervenor was interested in the loan application filed on behalf of the respondent No.2. Nor the intervenor could demonstrate that, his intervention would assist the Authority in deciding the loan application. Though there were several proceedings between the parties, yet, having regard to the nature of the prayer in the application under Section 36A(3) of the Trust Act, 1950, the impleadment of the petitioner did not appear to be necessary.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Shailendra Kanetkar, the learned Counsel for the petitioner, and Mr. Ram Apte, the learned Senior Advocate for respondent No.2 – Trust, at some length. The learned Counsel took the Court through the pleadings before

the learned Charity Commissioner and filed in this Court.

6. Mr. Kanetkar, the learned Counsel for the petitioner, submitted that, the petitioner is a member of respondent No.2 Trust. The petitioner was the Chariman of the BOC of respondent No.2. The petitioner and other members of the BOC were allegedly illegally removed in an Extraordinary General Body Meeting held on 3rd August, 2011. The legality of all those actions is sub-judice. Therefore, till the contentious issues are finally decided, it cannot be said that the petitioner is not an interested person.

7. Inviting the attention of the Court to an order dated 10th September, 2023 in an application for intervention in Change Report No.850 of 2010, whereby the petitioner and Mr. Vijay Pusalkar were allowed to intervene under Section 73A of the Trust Act, 1950, Mr. Kanetkar would urge the locus of the petitioner to be heard in the matter could hardly be questioned.

8. Mr. Apte, the learned Senior Advocate for respondent No.2 – Trust, would urge that, the endeavour of the petitioner has been to put hindrances in the smooth management of the affairs of respondent No.2 – Trust. The petitioner has been resorting to unwarranted litigation so as to derail the activities of the Trust and prevent the Trust from achieving its object. The petitioner has been removed by passing a resolution in Extraordinary General Body Meeting in view of the illegal acts and gross misconduct on the part of the petitioner and the other members of the BOC. Attention of the Court was invited to the minutes of the Extraordinary General Body Meeting dated 3rd August, 2011, wherein, the General Body of respondent No.2, resolved to hold the petitioner and others responsible for the illegal acts and the misconduct, and removed them from the BOC with immediate effect.

9. Mr. Apte laid emphasis on the fact that, the challenge to the said resolution in a civil suit, i.e. RCS/1085/2011, did not succeed. An application for temporary injunction was rejected by the trial Court on 17th there-against also failed. October, 2011. An appeal preferred A writ petition, being WP/2055/ 2020, was also dismissed by this Court by an order dated 4 th March, 2021.

10. In the intervening period, Mr. Apte would urge, by a further resolution passed in the Extraordinary General Body Meeting of the Trust on 3rd December, 2016, the petitioner and others were removed from the membership of respondent No.2 Trust. The said resolution has not been challenged. In this view of the matter, the person, who has been removed from the membership of the Trust for the illegal acts and gross misconduct, cannot be said to be a person having interest in the affairs of the Trust. The learned Joint Charity Commissioner was, therefore, justified in rejecting the application for intervention.

11. In the light of the aforesaid submissions, especially the contention that the petitioner had been removed from the very membership of respondent No.2 Trust, a further affidavit came to be filed on behalf of the petitioner. It was asserted that the action of removal of the petitioner from the membership of the

Trust under a purported Resolution passed in the Extraordinary General Body Meeting of the Trust on 3rd December, 2016 was illegal as a change report incorporating the amendment to the constitution of respondent No.2 Trust giving power to remove a member from the Trust has been rejected by the Deputy Charity Commissioner. Once the change report proposing amendment in the constitution of the Trust giving power to remove a member is not accepted, all the consequential actions, in the intervening period, on the strength of the proposed change, stand vitiated, submitted Mr. Kanetkar.

12. Mr. Apte joined the issue by canvassing a submission that the resolution dated 3rd August, 2011 removing the petitioner from the BOC for the misconduct still holds the field and the subsequent resolution removing the petitioner from the very membership of the Trust dated 3rd December, 2016 has nowhere been challenged. In these circumstances and especially having regard to the proceedings in which intervention is sought, the learned Joint Charity Commissioner cannot be said to have exercised the discretion in such a manner as to warrant interference in exercise of the writ jurisdiction.

13. Mr. Apte strenuously submitted that each day's delay in availing the loan is causing grave prejudice to the respondent No.2 Trust. Mr. Apte would urge, recognizing the urgency in such matters, the legislature has provided that an application for loan shall be decided expeditiously and preferably within a period of 15 days if the Bank or financial institution has provisionally sanctioned the loan.

14. I have given careful consideration to the submissions canvassed across the bar. Evidently, two factions are at loggerheads. Numerous proceedings making allegations and counter allegations have been filed. Though the challenge to the removal of the petitioner and the then co-members of the BOC in a suit is sub-judice, yet, the fact remains that there is no restraint on execution, operation and implementation of the said resolution passed on 3rd August, 2011. In 2016, the petitioner and other members have also been removed from the membership of respondent No.2 Trust. An endeavour was made on behalf of the petitioner to urge that, the petitioner could not challenge the said resolution as he was unaware of the said resolution.

15. Keeping the aforesaid backdrop in view, the justifiability of the prayer of the petitioner for impleadment in a proceeding under Section 36A(3) of the Trust Act, 1950 is required to be examined. The relevant part of Section 36A reads as under:

"36A. Powers and duties of, and restrictions on, trustees.--

(1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing

with such affairs, funds or property, if they were his own.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust:

Provided that, the Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith and preferably within a period of fifteen days, if the Bank or the Financial Institution has provisionally sanctioned the loan."

16. Section 36A enjoins a trustee of a public trust to administer the affairs of the trust and apply the funds of the Trust for the purpose and objects of the Trust. A Trustee is enjoined to exercise the same amount of care as a man of ordinary prudence would exercise in management of his own affairs, funds or property. Sub-section (3) of Section 36A contains an interdict against borrowing money for the purpose or on behalf of the Trust, by its trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by the Charity Commissioner.

17. The aforesaid restriction in the matter of borrowing is necessary because, though the property of the public trust vests in the trustees, yet, they are not the owners of the trust property. The property vests in them for the purpose of discharge of the object of the Trust or for the benefits of the beneficiaries. It is, therefore, imperative that the trustees of a public trust do not have unfettered power to borrow the money on the credit of the property of the Trust and thereby encumber the property of the Trust. The legislature, therefore, considered it imperative to put restrictions in the matter of borrowing for the purpose or on behalf of Trust and vest authority in the Charity Commissioner to accord sanction for such borrowing as the Charity Commissioner exercises *parens patriae* jurisdiction.

18. The text of sub-section (3) of Section 36A would indicate that, the exercise of the power to sanction the borrowings, by the Charity Commissioner, is governed by the paramount consideration of the interest or protection of the Trust. The power to sanction the borrowing is not unregulated or uncanalized. At this stage, the Charity Commissioner would be required to pose unto himself as to whether, in the given circumstances, borrowings of money by the Trust is necessary or advantageous from the perspective of the administration of the affairs of the Trust and the advancement of its object. And whether the proposal to borrow is in the interest of the Trust in the light of the terms and conditions,

subject to which the loan is to be availed. Thus, the Charity Commissioner is empowered to impose conditions and limitations subject to which the trustees can be permitted to borrow the money for the purposes of or on behalf of the Trust.

19. In the light of the aforesaid nature of the proceedings under Section 36A(3) of the Trust Act, 1950, the necessity of intervention is required to be assessed. The question that would thus crop up for consideration is, whether the petitioner has such interest in respondent No.2 Trust which entitles him to participate in the proceedings under Section 36A(3) so as to influence the exercise of the power by the Charity Commissioner.

20. The relevant provisions of the Trust Act, 1950 which bear upon the answer to the aforesaid question need to be noted. Section 73A, which was inserted by Maharashtra 20 of 1971, reads as under:-

"Section 73A – Power of 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."

21. Section 2(10) of the Act, 1950 defines, "person having interest" as under:-

"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 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."

22. Sub section (2A) of section 2, which was inserted by Maharashtra Act No. 55 of 2017 with effect from 10th October, 2017, defines "beneficiary" as under:-

"Section 2(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”.

23. Evidently, under 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.

24. 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 Others¹. The Division Bench adverted to the legislative change brought about 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 772).

(emphasis supplied)

25. 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.². 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 deity and thus answer the description "person having interest" as defined in Section 2 (10) of the Act."

(emphasis supplied)

26. 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.

27. 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.

28. In the case of *Shree Khambhati Modh Vanik Samanj vs The State of Maharashtra and others*³, this Court had an occasion to cull out the legal position as regards intervention under Section 73A of the Trust Act, 1950, as under:

"42. The legal position which thus emerges is that the Section 73A of the Trust Act, 1950 allows intervention by a party who is having interest in the public trust in any proceeding under the Trust Act, 1950. In view of wide amplitude of power exercised by the Charity Commissioner under section 36 of the Trust Act, 1950, especially when the question is of alienation or otherwise disposition of the property of the public trust, a person having interest in the trust can legitimately invoke the provisions contained in section 73A of the Act, 1950. An application under section 36 of the Act, 1950 is one of the proceedings envisaged by section 73A in which intervention can be sought by a person having interest in a public trust of which the property is sought to be alienated. Undoubtedly, the definition of "person having interest" is inclusive and thus of wide import. However, where the public trust is covered by the clause (e) of section 2(10), the person who is

to be included in the definition, ought to be either a trustee or beneficiary. The definition of "beneficiary", in turn, as noted above, is precise and confined to a person who obtains benefit under the object of the trust. Even if the expression "person having interest" is construed rather generously, there is an essential distinction between the interest in the public trust and interest in the property of the trust. In the latter case, an inquiry into the nature of the interest is warranted. If it turns out that such interest is adverse to, or in conflict with, the interest of the trust, the person propounding such interest, cannot be said to be a person having interest."

29. Reverting to the facts of the case in the light of the nature of the proceedings in which the intervention is sought, it may be apposite to consider the premise on which intervention was sought, which becomes evident from the averments in the application (Exhibit-52). A careful perusal of the said application would indicate that the entire thrust of the application was on the alleged incompetence of the person, who filed the application under Section 36A(3) on behalf of respondent No.2 Trust, to file such application and represent the Trust. The challenge was primarily on the count that the removal of the petitioner and others was illegal and, consequently, the persons, who were in the management of the affairs of respondent No.2 Trust, had no authority to represent the Trust. One gets an impression that, what was essentially sought to be agitated was the right to manage the affairs of respondent No.2 Trust rather than the justifiability of the application for permission to avail loan, or for that matter the necessity of loan, for giving effect to the objects of the Trust. Barring a stray sentence that there is no necessity of the loan, the entire application is replete with the contentions revolving around the right to manage the affairs of the Trust.

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.

31. The submission of Mr. Kanetkar that the removal of the petitioner as a member of the Trust is consequential to his removal as a member of BOC and, therefore, cannot be said to have attained finality, does not merit acceptance in this proceeding and at this stage. The fact remains that the removal of the petitioner under the Resolution dated 3rd December, 2016 has not been yet assailed.

32. If viewed in the backdrop of the chequered history of litigation and the reasons ascribed in the application for intervention, it becomes evident that if the petitioner is allowed to intervene in the proceeding under Section 36A(3) of the Trust Act, 1950, the scope of the said proceeding would be expanded to question

the very authority of the rival faction to manage affairs of the Trust and file the application for permission to avail the loan. In substance, the said proceeding would also become extension of the numerous proceedings in which the petitioner and the current management have been fighting over the right to manage the affairs of the Trust, tooth and nail.

33. Mr. Apte was justified in submitting that the anxiety of the legislature in providing that an application for sanction for borrowing money from Bank or financial institution be decided expeditiously, must enter the determination. An intervention at the instance of the petitioner in the said proceeding is fraught with the risk of converting the said proceeding into the dispute over the management of the affairs of the Trust and thereby unduly protract the decision on the said application.

34. The submission of Mr. Kanetkar that the petitioner was permitted to intervene in the change report proceedings does not advance the cause of the petitioner as the nature of the proceeding in which intervention is sought also assumes significance. In a change report proceeding, in the context of the dispute over the management of the affairs of the Trust, the petitioner may legitimately intervene as the question of lawful appointment and removal of a Trustee/Managing Committee Member would be determined in such proceeding. Conversely, in a proceeding under Section 36A(3), the enquiry would be materially distinct.

35. In the totality of the circumstances, the learned Joint Charity Commissioner was justified in declining to grant permission to intervene in the said proceeding. Hence, the petition deserves to be dismissed.

36. Hence, the following order:

:ORDER:

(i) The petition stands dismissed.

(ii) The learned Charity Commissioner is requested to decide the application for grant of sanction in accordance with law.

(iii) Rule discharged.

(iv) No order as to costs.