

(2022) 07 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 6001 Of 2022

Sanket Janardan Bhase

APPELLANT

Vs

Assistant Charity Commissioner And Others

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Maharashtra Public Trust Act, 1950 — Section 73A
Maharashtra Public Trust Act, 1950 — Section 2(10), 73A

Citation : (2022) 07 BOM CK 0058

Hon'ble Judges : Abhay Ahuja, J

Bench : Single Bench

Advocate : Niranjan Bhavake, V. S. Nimalkar, Satish Muley

Final Decision : Dismissed

Judgement

Abhay Ahuja, J

1. By this Petition, Petitioner is challenging the order dated 8th April, 2022 passed by the Respondent No.1- the Assistant Charity Commissioner, Greater Mumbai Region, Mumbai in an application (Exh.38) for permitting him to lead oral evidence in support of his application under Section 73A of the Maharashtra Public Trust Act, 1950 ("MPT Act"). The Assistant Charity Commissioner rejected the application and therefore, Petitioner is before this Court.

2. It is the contention of the Petitioner that he is a person having interest as defined under Section 2 (10) of the MPT Act and as such pursuant to the section 73A, he ought to be joined as party to the proceedings before the Charity Commissioner. The proceedings before the Charity Commissioner relate to change report no. 1803/2011, with respect to the Respondent No.2-Trust viz. Kokan Gyanpeeth, filed by the Respondent No.3, who is the reporting trustee. Petitioner submits that the Respondent No.3 had, in the year 2011 filed an application for change report no. 1803/2011 before the Respondent No.1-Charity Commissioner for addition of his name as trustee, but till date no decision has

been taken on the said change report. He submits that there have been no elections in the trust for more than 20 years and therefore, the trust has become defunct. He refers to two orders of the Charity Commissioner in support of his contention that no regular election has been held in the trust for more than 20 years and that the management of the trust is not being conducted in accordance with the terms of the constitution of the trust. He is aggrieved that no new members have been allowed to become members nor trustees. Petitioner contends that the trust has become non-functional and defunct since the year 1994 as despite the constitution of the said trust requiring a minimum of seven trustees, there are only two trustees viz. Shishir Dharkar and Anupama Dharkar. The two trustees have been illegally and wrongfully operating the Respondent No.2-Trust. He submits that despite the trust having become defunct since last 25 years, the two trustees have been taking financial and other decisions of the Respondent No.2-trust in an unlawful, illegal and arbitrary manner.

3. It is submitted that the Petitioner is an old student of the college conducted by Respondent No. 2-trust and has been volunteering the cause of Respondent No.2 and working hard for the same since the year 2015, i.e. for last more than 7 years. That after becoming aware of the sorry state of affairs of the Respondent No.2-Trust, the Petitioner volunteered for the trust, but he has not even been allowed to be admitted as member along with several other volunteers, who have worked for Respondent No.2-trust and given time and years of life for its cause. It is submitted that now the said trust has become defunct with no elections, no admission of the new members and no proper quorum of trustees for last 20 years. Petitioner submits that the orders passed by the Charity Commissioner are clear proof of the gross violations committed by the two trustees in the operation and management of the Respondent No.2-trust.

4. Mr. Bhavke, learned counsel for Petitioner submits that being pained by the state of affairs of the Trust, on 1st April, 2022, Petitioner as Objector filed an application for leading oral evidence in the Change Report application filed by Respondent No.3 under Section 73A of the MPT Act. However, Respondent No.1-the Assistant Charity Commissioner has vide order dated 8th April, 2022 rejected Petitioner's application.

5. Mr. Bhavake, submits that the impugned order is bad in law in as much as the said order has clearly ignored the fact that the Petitioner is a person having interest in the trust. Learned counsel submits that Petitioner is not only an ex-student of a school run by the trust, but he is a Corporator, who has assisted in the development of roads next to the college being conducted by the Respondent No.2-trust. He submits that despite the fact that the constitutional documents of the trust requires seven trustees, there are only two trustees. There has neither been any election nor any new membership nor any proper quorum of the meetings of the managing committee of the Respondent-Trust. Learned counsel submits that as such the Petitioner is a person having interest in the affairs of the trust and concerned about the affairs of the trust.

6. Mr. Satish Muley, learned counsel for Respondents No. 2 and 3 submits that Petitioner is not a person having interest as in that he is neither a trustee nor a beneficiary. It is submitted that the Petition is politically motivated. Learned counsel points out that the intervention application is still pending before the Charity Commissioner and Petitioner has prematurely rushed to this Court. Learned counsel also draws the attention of this Court to a decision dated 16th June, 2022 passed by this Court (Coram: Nitin W. Sambre, J) in the case of Prasad Manohar Thorve Vs. The Assistant Charity Commissioner and Ors. in Civil Writ Petition No. 6002 of 2022, where he submits that the very same order dated 8th April, 2022 passed by the Assistant Charity Commissioner in a similar politically motivated Petition seeking to interfere with the affairs of the trust has been rejected by this Court.

7. I have heard Mr. Niranjana Bhavake, learned counsel for Petitioner, Mr. V. S. Nimalkar, learned AGP for Respondent No.1 and Mr. Satish Muley, learned counsel for Respondents No.2 and 3 and have also carefully perused the decision dated 16th June, 2022 of my learned brother Justice Nitin W. Sambre in the case of Prasad Manohar Thorve Vs. The Assistant Charity Commissioner and Ors. (supra),

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

“(10) “person having interest” includes—

(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,

(d) in the case of a society registered under the Societies Registration Act, 1860 (XXI of 1860), any member of such society, and

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

9. If it is a temple then a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or a person who is entitled to partake or is in that habit of partaking in the distribution of gifts would have interest; in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs, would be a person having interest; in the case of a wakf, a person who is entitled to receive any pecuniary

or other benefit from the wakf would be a person having interest; it would also include a person who has a 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 would be a person having interest; in the case of a society registered under the Societies Registration Act, 1860, any member of such society would be a person having interest.

10. Though the definition of person having interest in the MPT Act is an inclusive definition, however, the principle of ejusdem generis would become applicable while considering who could be a person having interest in the affairs of the public trust. This means persons of the same type as mentioned in Section 2(10) of the MPT Act would be eligible to be considered as person having interest. Petitioner does not fall in any of the categories discussed above nor can he be considered a person of the same type.

11. Section 73A of the MPT Act is also relevant and is quoted as under:

73A. Power of Inquiry Officer to join persons as party to proceedings.-In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person or such terms and conditions as the officer holding the inquiry may order."

12. In nuce, only a person having interest in the public trust can be joined as party to proceedings under the MPT Act.

13. From a perusal of the Petition in relation to Section 2(10) of the MPT Act, quoted above, it emerges that Petitioner has not been able to demonstrate that he is a person having interest in the Respondent No. 2-Trust. The Petitioner is neither a trustee nor a beneficiary nor a member of the Respondent No.2-Trust, though he claims that he was a student of one of the schools run by the Respondent no. 2- Trust. There is no reason to disbelieve that Petitioner is not an ex-student. However, merely being an ex-student of the school run by the trust, in my view, would not make Petitioner eligible to be a person having interest in the Respondent No.2-Trust. Bald and unsubstantiated claims are sought to be made with respect to Petitioner's body of work for the cause of the Trust. Also just because one is a corporator cannot qualify a person to be a person interested in the Trust.

14. A perusal of the constitutive documents of the Respondent No.2-Trust annexed to the Petition, nowhere suggest that Petitioner is in any way connected with or concerned with the object or affairs of the Respondent No. 2-Trust. I am therefore persuaded to quote paragraph no. 9 of the decision in the case of Prasad Manohar Thorve Vs. The Assistant Charity Commissioner and Ors. (supra), as under:-

"9. Petitioner is neither a Trustee of public Trust nor a person interested or having any remote connection whatsoever with the object for which the Trust

was formed. In the aforesaid background, in response to the Courts query, Petitioner is unable to satisfy his locus in regard to his right to participate in change report proceedings thereby seeking a mandate that objection has to be invited by issuing public notice.”

15. No evidence nor any document has been adduced to show that Petitioner has done any work for the Trust or for the institution(s) run by it.

16. In the circumstances, I am, of the view that Petitioner could not be considered to be a person having interest in the trust. Hence, there is no question of joining such a person in the proceedings pertaining to the subject change report pending before the Respondent No.1. The Respondent No.1 has rightly rejected the application of Petitioner. No fault can be found with the said order. I am, therefore, not inclined to interfere with the said order.

17. The Petition is dismissed. No costs.