

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 9581 OF 2011**

Vilas Sarjerao Borade  
age 51 years, occ. service  
r/o Permanent at Pathrud, Tq. Bhum  
Dist. Osmanabad

**.. PETITIONER**

**VERSUS**

1. Santosh Sukhdeo Shinde  
age 35 years, occ. service  
r/o near Shankarrao Patil College, Chincholi  
Bhoom, Tq. Bhum, Dist. Osmanabad.
2. Joint Charity Commissioner,  
Latur Region, Latur.
3. Assistant Charity Commissioner  
Osmanabad Region, Osmanabad

**.. RESPONDENTS**

Mr. R.A. Tambe, advocate for petitioner.  
Mr. V.D. Salunke, advocate for respondent no. 1.  
Mr. G.R. Ingole, AGP for respondent nos. 2 and 3.

=====

**CORAM : R.M. BORDE, J.  
DATE : 31<sup>st</sup> JANUARY, 2012**

**ORAL JUDGMENT :**

1. Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties, petition is taken up for final disposal at admission stage.

3. Petitioner who is third party applicant presented an application as contemplated by section 73-A of the Bombay Public Trust Act, at ex. 24 in Appeal No. 14/2011 for his impleadment in the proceeding of appeal pending before the Jt. Charity Commissioner, Latur. Applicant contends in the application that he is a person interested in the trust and that he is a member and has been appointed to assist the fit person by the Assistant Charity Commissioner, Osmanabad. Application tendered by petitioner came to be turned down by the Jt. Charity Commissioner, Latur by order dated 8-11-2011 which is subject matter of challenge in this petition.

4. Appeal No. 14/2011 pending before the Jt. Charity Commissioner, Latur is directed against the order of rejection of change by the Assistant Charity Commissioner. Elections to the trust were held on 7-8-2009 and the change report came to be tendered on 30-8-2009. The proceedings were initiated before the Assistant Charity Commissioner regarding change as contemplated by section 22 of the Bombay Public Trust Act. The Assistant Charity Commissioner, while rejecting the change report appointed one Mr.

Gaikwad as an Administrator to conduct the affairs of the trust whereas petitioner was appointed to assist the Administrator in discharging of his functions. The order passed by the Assistant Charity Commissioner on 21-7-2011 refusing to record the change as well as appointing Administrator to conduct the functions of the trust is subject matter of challenge in the appeal pending before the Jt. Charity Commissioner. It is contended by learned counsel for respondent that part of the order passed by the Assistant Charity Commissioner issuing direction in respect of rendering assistance by the petitioner herein to the Administrator in discharge of his functions is stayed by the appellate authority. Petitioner herein tendered application for his impleadment to the proceeding of appeal since he is a person interested and is a member of the trust and he having been appointed as a person to assist the Administrator in discharging his functions. Learned counsel for petitioner contends that the petitioner is a person interested in the affairs of the trust since he is member of the trust and, in view of section 73-A of the Act he being a person having interest in the trust, can be added as party to such proceeding on an application made by him. It is also contended that one Dr. Uddhav Borade was an elected member of the trust who tendered his resignation on 26-4-2010 which has been accepted by the Managing Committee on 16-5-2010. In the meeting of the Managing Committee

conducted on the same day, petitioner herein has been taken as member in place of Dr. Uddhav Borade. Change report in that regard was presented to the Assistant Charity Commissioner on 17-5-2010. However, according to the petitioner, change report has been disposed of in view of rejection of change by the Assistant Charity Commissioner vide his order dated 21-7-2011. These aspects enumerated above reveal that petitioner is a person interested in the trust.

5. Mr. Salunke, learned counsel for respondent vehemently opposes the contentions raised by petitioner and submits that petitioner who is appointed as a fit person to render assistance to the Administrator cannot claim himself to be a person interested in the affairs of the trust. It is also contended that part of the order appointing the petitioner as fit person to render assistance to the Administrator is stayed. Reliance is placed on a judgment in First Appeal No. 580/2007 delivered by learned Single Judge of this Court on 17-7-2008. It is recorded by learned Single Judge that a fit person appointed temporarily and as a stop gap arrangement, to perform functions of the trust only until a trustee is duly appointed according to the provisions of the instrument of trust cannot take recourse to provisions of section 41D to challenge his removal. According to me, the judgment cited at bar is of little

assistance to the respondent.

6. Reliance is placed on a judgment in the matter of Suresh Hiralal Shah Vs. Shree Mahavir Swami Digambar Jain Mandir Trust reported in 2001(3) Mh.L.J. 147 wherein it has been held by learned Single Judge of this Court that person interested in the affairs of the trust shall be required to be added as party to the proceeding by taking recourse to section 73-A of the Act. In the instant matter, applicant / petitioner herein in his application has contended that apart from the fact that he was appointed as a fit person to render assistance to the Administrator, he is a member of the trust. It has been also brought on record that petitioner herein was appointed as a member of the Managing Committee in place of one Dr. Uddhav Borade by virtue of resolution adopted by the Managing Committee on 16-5-2010. Change report in that regard was also presented to the Assistant Charity Commissioner. These factual aspects disclosed in the petition strengthen the contention raised by petitioner that he is a person interested in the affairs of the trust. Accordingly, I am of the considered opinion that appellate authority has committed a serious error in turning down the application tendered by petitioner for his impleadment as party respondent to the proceeding. Order passed by the appellate authority below exh. 24

deserves to be quashed and set aside and the same is accordingly quashed and set aside. It is hereby directed that petitioner be permitted to implead himself as party respondent in the proceeding of Appeal No. 14/2011 pending before the Jt. Charity Commissioner, Latur. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

7. Pending civil application, if any, does not survive and stands disposed of.

**( R. M. BORDE )**  
**JUDGE**

dyb