

CIRCULAR No. 159

SUBJECT- *Position of Section 35 and 36 of Bombay Public Trust Act, 1950.*

Recently, it has been brought to the notice of the Charity Commissioner, Maharashtra State that instructions are issued by a Regional Officer to the trustees of a trust to reconvey a property purchased out of trust fund without prior sanction of the Charity Commissioner under section 36 when no permission of the charity commissioner was taken for investment of trust money under Section 35. Such instructions are contrary to the legal position.

Whenever immovable property is purchased by the trustees on behalf of the trust and from the trust funds, the legal title to the property so purchased will vest in the trustees whether or not the permission under section 35 is necessary or it has been so obtained or not, When an investment is made in contravention of the Section 35, the title of the trust to said the property is not illegal or invalid, but the trustees become liable for contravention of section 35 according to the provisions of the Act. However, such property being legally vested in the trust will attract the provisions of section 36, if any transaction of the nature mentioned in the said section is contemplated. Thus when such property has to be reconveyed to the original owner for whatever reasons, previous sanction of the Charity Commissioner will be necessary. Such a transaction without a previous sanction under section 36 Bombay Public Trust Act, 1950 will not be valid and the title of the trust to the said property will not pass or extinguish.

The distinction between the provisions of section 35 and 36 may clearly be borne in mind and scrupulously followed by the Regional Officers while issuing directions to the trustees, while conducting the inquiries under Section 22 of Bombay Public Trust Act, 1950 or in other cases. In the former case i.e. noncompliance of section 36 the transaction is invalid and trustees would also face consequences, if any as provided in the Act.

Dated, 24th July 1972.

M.D.KAMBLI,
Charity Commissioner,
Maharashtra State, Bombay.
