

CIRCULAR NO. 164

SUBJECT :- Clarification regarding Section 35 of the Bombay Public Trusts Act, 1950.

A question arises in a Change Report proceeding under section 22 of the Bombay Public Trusts Act, 1950, when the trustees shows the purchase of immovable property by way of change, whether the Regional Officer should himself decide whether the permission of the Charity Commissioner is necessary or not under section 35 of by not deciding that point, he should keep the change report pending, asking the party to refer to the Charity Commissioner for obtaining orders under section 35. In order to avoid conflict of orders. Some common mode of dealing with this question is, therefore, desired to be laid down and following instructions are issued in that behalf. When expenditure is incurred or investment is made without the sanction of the Charity Commissioner, when such sanction is necessary under section 35 of the Bombay Public Trusts Act, expenditure will be illegal. However, if the property is purchased or building is constructed making such expenditure the property would vest in the Trust and absence of sanction would not make the transaction invalid. It is true that if the trustees do not get sanction for such expenditure they would be liable for prosecution under section 35 read with sections 66 and 67 of the Act. However this position should not prevent the Regional Officer from passing the Order under Section 22 in respect of the land purchased or building constructed and bring that land or building on the Public Trust Register. However, when there is no doubt as to the necessity of sanction he should invariably give direction to the trustees to approach the Charity Commissioner and obtain an ex-post facto sanction under section 35 if the trustees do not inform the Regional Officer that they have approached the Charity Commissioner. The Regional Officer, may take steps to issue a show cause notice, as to why the trustees should not be prosecuted. In case where it is doubtful whether sanctioned under section 30 for the particular expenditure ought to have been obtained, the Regional Officer should not give his opinion as to whether the sanction is necessary or not so as to avoid conflicting decisions by the Regional Officer and the Charity Commissioner. He should in such a case say that the trustees may approach the Charity Commissioner, and get such sanction, if they are so advised.

M. D. KAMBLI
Charity Commissioner,
Bombay

Dated :22nd December 1972.