

CIRCULAR No.41

SUBJECT – Power of inspection and supervision under Section 37 of the Bombay Public Trusts Act,1950

Precaution to be adopted

A question of the possibility of mis-use of powers of inspection under Section 37 of the Bombay Public Trusts Act,1950, was raised in the petitioners, filed in High Court, challenging the validity of the Act. It was contended that the officers working under the Charity Commissioner may exercise these powers, unmindful of the religious feelings and susceptibilities of the persons, concerned. Relevant extract from the judgment delivered by the Chief Justice of the Bombay High Court is reproduced overleaf.

Attention is invited to the remarks made by the Chief Justice in this connection. Attention is also invited to the statutory provision contained in the proviso to Section 37 which requires, inter alia, that in entering upon any property belonging to the trust, the officer making the entry shall give due regard to the religious practices and usages of the trust.

The following instructions shall be followed in this connection :-

i)Inspectors should not, while inspecting the properties of public trusts, enter the sacred places, unless absolute necessary.

ii)If they consider such entry absolutely necessary and can not themselves enter because of their religions, they should cause the entry to be made and the property inspected by a person to whose entry their will be no objection according to the religious practices and usages of the trust and after reporting the facts to the Deputy/Assistant Charity Commissioner and obtaining his previous permission in this behalf.

Breaches of these orders will be severely dealt with.

D.R.PRADHAN.

Charity Commissioner, Bombah

Dated : 20th December,1952.

Relevant extract from the judgement delivered by the Chief Justice of the Bombay High Court in the petitions filed in the High Court, challenging the validity of the Bombay Public Trusts Act,1950.

“Sir Jamshedji says that he is not concerned with the administration of property, but his clients are agitated by the possibility that under this Act a serious encroachment might be made upon the Parsi Zoroastrian religion. In my opinion the apprehension felt by Sir Jamshedji is entirely unjustified. It is first pointed out that under section 37 of the Act power is given to the Charity Commissioner and the other officers to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust, and Sir Jamshedji says that it is part of the Parsi Zoroastrian religion not to permit any non-Zoroastrian to enter their

Agiaries, Ateshebeharms and Dokhmas. According to Sir Jamshedji it is sufficient if even the eyes of a non-believer were to fall upon a sacred fire in Agiaries and Ateshbehrams for the complete desecration of that particular charity, and Sir Jamshedji says that here we have a provision in the law by which the officers appointed under the Act can enter the Fire Temple of the Parsis in order to inspect it and to see whether it is being run on the interest of the public trusts. In putting forward this contention Sir Jamshedji is overlooking the proviso to that section and that proviso is that in entering upon any property belonging to the public trust the officers making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust. I am sure that the Charity Commissioner and the officers working under him know what the religious feeling of the Parsi community is, and it is inconceivable that the Charity Commissioner or any of his officers would think of entering a Fire Temple of the Parsis of the community of the Charity Commissioner or his officers happens to be other than the Parsi community."