

CIRCULAR NO. 81

SUBJECT :- Section 35 and 36 of the Bombay Public Trusts Act, 1950.

Power to alienate trust property or invest trust funds acquired under trust deeds and other instruments executed subsequent to the declaration of the trust whether such powers affect the provisions of sections 35 and 36.

The Deputy Charity Commissioner, Ahamedabad states that he has come across certain trust deeds and other instruments executed by the trustees subsequent to the creation of trust under which trustees are given wider powers of alienation of trust property and investment of trust funds, and inquiries whether such acquisition of powers by such trust deeds or other instruments is valid in law.

2. In view of the recent amendment in section 35 of the Bombay Public Trusts Act, 1950 acquisition of such a power to invest trust funds is of no consequence as section 35 now provides that notwithstanding any direction contained in the instrument of trust, trust money shall be invested in the manner laid down in section 35.

3. So far as the power to alienate trust property is concerned, the question raised is of importance, as section 36 of the Bombay Public Trusts Act, 1950, is subject to the directions in the instrument of trust. The question therefore, is whether trust deeds and other instruments executed subsequent to the creation of the trust can be treated as instruments of trusts within the meaning of section 36. Under section 2 (20) of the Bombay Public Trusts Act,

1950 , words and expressions not defined in that Act are to have the meaning assigned to them in the Indian Trusts Act, 1882 and from the definition of “instrument of trust ” given in section 3 of that Act it appears that only the instrument if any, by which the trust is declared by the author of the trust can be called the instrument of trust. Thus the trust deed made by the author of the trust at the time of the declaration of trust or the trust deed declared in accordance with the will of the Settler will be an instrument of trust. Any other trust deed or instrument executed by the trustees subsequent to the declaration of the trust will not be “instrument of trust” for the purpose of section 36 of the Bombay Public Trusts Act, 1950. Even the author of the trust, can not subsequent to his declaration of trust add to or subtract from the instrument of trust so as to acquire powers contrary to the provisions of section 36.

4. The question whether a scheme framed by the Court and the Memorandum of Association will be instruments of trust within the meaning of section 35 and section 36 of the Bombay Public Trusts Act, 1950 was referred to the Legal Department and it has been decided that these are instruments of trust (vide Legal Department’s U.R. NO. 345/E, dated 7<sup>th</sup> January 1953).

D.R.Pradhan.  
Charity Commissioner, Bombay.

Dated 1<sup>st</sup> March 1955.