

“A CRITICAL STUDY ON EFFECTIVE IMPLEMENTATION OF THE MAHARASHTRA PUBLIC TRUSTS ACT, 1950 WITH SPECIAL REFERENCE TO REGISTRATION OF TRUSTS AT PUBLIC TRUSTS REGISTRATION OFFICE”

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Abstract

During 19th century charitable trusts were booming in India. With the passage of time and advancement of education, religious and social field the people were attracted towards registration of public trusts. Earlier this was managed by various associated laws but necessity was felt to enact uniform and effective laws in this regards. In 1948, Government appointed a committee under the leadership of Justice *S.R.Tendolkar* to investigate the questions of administration and management of trust and endowments in the province of Bombay Public purpose. With the recommendation of said committee the bill was passed and Maharashtra Public Trust Act, 1950 (hereinafter MPT Act) was enacted which proved very useful and effective to regularised the affairs of public trust. For the smooth function of this Act vivacious and foremost powers are given in the hand of officers working at Public Trusts Registration Office situated at each district place in Maharashtra. The registration authority is empowered with judicial and quasi-judicial powers. The Act authorised the Deputy and Assistant Charity Commissioner powers of registration and extraction of Public Trust. But all the inquiries done by these officers are treated as Judicial Inquiries.

The enhanced development and focus on economy felt compulsion to register the society under this Act. Registration of public trust play potential role particularly for non-profit organisation. Registration process of public trust create fiscal and legal framework to regularise and restrain particular hostile behaviours of trustees. Additionally registration of public trust boosts the policy of direct and indirect tax policies. It means the registration authorities plays very crucial role before and after registration process. The registration officers play two fold role for regularising the trust and secondly to monitor the aftermaths. Therefore, it is said that Charity Commissioners are the custodian and guardian of Public Trusts.

The present article has attempted to focus on various procedure of implementation of MPT Act 1950 with special reference to The Public Trusts Registration Office. The analysis is from legal and practical point of view and various aspects of registration process of public trust. Additionally this article consider practical situation in The Public Trusts Registration Office.

This article also focuses existing laws and rules which are interpreted in the context of registration of public trusts. This research paper also focus on administrative difficulties faced by the administrative officers. The objective of this analysis is to verify the practical and real problem faced by the trustees and other people who are involved in this process.

Keywords: MPT Act, Public Trusts Registration Office, registration process, trust, trustee, charity.

Introduction

Trust is created to confer some confidence and repose it to other relating to property transferred in trust. Trust can be created for benefit of property and person. It is kind of obligation on others to work for the benefit of third party without any bias and personal interest. In India trusts are created as per the existing provision of laws and rules. The trust is of two kinds firstly it is public trust and secondly private trust for the benefit of particular person. Moreover trust is kind of relationship which create obligation annexed with the property. Person who creates this kind of relationship is called author of trust whereas the persons who enjoy the benefit of property are called beneficiaries and in whom confidence is reposed is called as trustee. The MPT Act define Public Trusts which means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a waqf, church, synagogue, agiary or other place of public religious worship a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860ⁱⁱ. It means trust is an organization which created obligation to associate and provide benefits to the targeted groups. The trust can be created for various purposes. The core function of trust is to give benefits to the public by executing worth cause to help the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy.ⁱⁱⁱ Every trust has own agendas and programme but the fact is all are active to raise funds through various activates which can be utilize for the welfare of society at large or common people. All trust irrespective of their nature generally functions as welfare organisation and work for enhancement of civilization over and done with their function.

The present MPT Act is to regulate and make better provisions for the administration of public and religious charitable trust additionally it also provides provision for the better administration of trust.^{iv} The present act provides time to time solution for registration procedure and effective working of trust in Maharashtra. This Act provides in detail provision for the registration of trusts.

Registration of Trust^v

As per the law the intended person has to file a written application to The Public Trusts Registration Office within the limits of which the trust office or trust property is situated. Every application must be filed within three months after trust's creation or operation. The application must contain all the necessary information about the trust and manager along with all necessary detail of property including value of trust property. If any discrepancies are found in the application the registration officers has right to return and ask for the correction if necessary or reject the application.

After receiving the application and careful scrutiny of the application the Deputy or Assistant Charity Commissioner has right to make an review and inquiry in the prescribed manner for the purpose of ascertaining the trust. The officers have right and duty bound to inquire about existence of trust and its nature regarding public or private, the property of trust, whether the property is situated in the local limits of their jurisdiction, the verification and confirmation of trustee and their other details provided in the application, the mode of succession, the origin, nature and object of trust, the average of income and expenditure, documents creating trust, source of income of trust, encumbrances on trust property etc. if the inquiry officer is not satisfied with the above particulars he is having right to reject the application or direct to the trustees for review and correction.^{vi}The registration officer has ample power to monitor the affairs and activities of trust before registration. If he found any shortcoming he is having right to reject the application. The trust registration officers are dutybound to maintain the books, indices and other registers as may be prescribed by the act.^{vii}Once the registration procedure is completed the registration officer issues the certificate of registration in this regards. Basing on the above the registration officers has confirmed that,

- The trust be created formally which indicate its programme, objectives and rules and regulation for its governance
- It may also confirm its nature whether it is Private or public
- The trust must be self-governing it must be managed by trustees or governing councils and it should not be controlled by particular person it must be in fiduciary capacity
- It must be not for profit organisation. It should not be created for distributing the profits among members
- The trust must be voluntary. There must be voluntary participation by all the members
- It must be non-political
- Mainly it must works for public benefit

The Public Trust registered in Maharashtra is bifurcated in following six categories for their identification.

A-Hindus (including Jains, Buddhists, Sikhs and other Hindus)

B-Muslims

C-Parsi

D-Christian

E-Cosmopolitan (trust registered by way of Trust Deed).

F-Societies registered under the Societies Registration Act, 1860.

After fulfilment of the entire above requirement the Public Trusts Registration Office grants permission for running administration of the trust as per constitution or rules and regulation of the trust.

Working of registration office

As per the rules the applicant has liability to file application either offline or online to the website or office. The registration proceeding is divided in two categories one is uncontested and other one is contested. In contested registration proceeding two groups are fighting for administration of trust. Due to

the contest in registration preceding the trust remains unregistered for long time. This is because, it is necessary for the officer of the charity to ascertain who are trustees and it is very crucial aspect and all the pendency of registration application revolve around this issue only. This fact can be ascertained on the report of office inspector also, but this usually creates havoc as most of the time place of worship is related to public at large. Therefore, the officers while dealing with the application for registration must apply their mind as it is not empty formality. Another aspect of registration of trust by will is also challenging issue for the officer, because while dealing with such application officer has to go beyond the intention of testator, right of testator to create trust, interpretation of mode of succession as per the testator will and wish and this has to be culled out from the wording used in the will itself.

Normally it is think that, once the trust is registered the role of Public Trusts Registration Office is over. This concept is totally irrelevant and wrong. The registration office has crucial duty to monitor the affairs of trust after its registration. The registration officer has power to monitor and supervise the role of trust. Once the trust is registered, then the officers of Public Trusts Registration Office get the right provided by this act to have inspection, verification of record, book of account from the said trust. The trustee is bound to give reports about their affairs to the registration office. As the trust is designed for the benefits and welfare of the society at large and same must be monitor by the registration office. If the trust diverse form the above purpose the registration officers has right to take necessary and effective action against such trust. The main concern of the registration officer is to monitor the roots of charity. The registration officers must take care about its purpose, objects and working culture. If the trust act against its constitution the registration officers has right to take necessary action against the same. In India the charitable trust sector is quite complex due to applicability of various laws and procedure. The officer will take care of this complexity particularly the legal framework governing the charitable institution. The registration officer / charity commissioner has following powers

- The officer has right to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;
- to call for and inspect any proceedings of the trustees of any public trust, and any book of accounts or documents in the possession or under the control of the trustees or any person connected with the trust;
- to call for any return , statement, account or report which he may think fit from the trustees or any person connected with a public trust;
- to get the explanation of the trustee or any person connected with the public trust and reduce or cause to be reduced to writing any statement made by him.^{viii}

Taking in to consideration all the argument one can said that, the trust registration office play very crucial role in managing, shaping the working of trust. As discussed above the charitable trust is created with pious purpose to charity the heavenly gift to needy people. Trust is not instrument to provide donations or dealing out doles. It is kind of commitment to live and love for humanity and to help other in various difficult situation. This pious purpose is monitor by the registration officer which proved very useful guideline in the interest of public at large. Normally the best charity is which given out of an

impulse to give without any anticipations of profit if anybody expect the return then the purpose of trust will be superficial. And for the reason the charity officers try to shape, the spring of Charity flows eternally, to dismiss the bedridden humanity be it out of a craving to disseminate one's name, to earn a place in heaven or attain Moksha.

By way of amendment in the year 2016 provisions are brought for de-registration of non-functioning registered trusts.

Conclusion

The MPT Act 1950 provides various rules and procedure for registration of trusts for the welfare of society at large. Trusts are independent organisation which developed self-reliant society and build refined social atmosphere for welfare of society at large. The purpose of trust only can be achieved with the advancement and working of registration office. The notion and purpose of charity are imbedded in the human heart since human civilization. With the advancement of charity it required to control and manage its affairs by the proper implementation of law. Same crucial role are played by the officers of Public Trusts Registration Office.

For Public Trusts, there are considerable amount of guidelines, balanced governance for the working, administering and upkeep of such open trusts as it is intended to assist an unclear lion's share of individuals, since the administration of such Trust ought not be left unchecked with the goal that the reason for which the trust is set up isn't vitiated or decimated. Further, an open trust, dissimilar to a private trust is open for review, questions and subtleties of its trustees, the executives and reason and all things considered in open area, unique consideration ought to be taken to guarantee that straightforwardness, viability and utility of such trusts are not decreased and keep on serving the recipients for whom such trust is set up.

To reduce the pendency of contested trust registration application measures can be drawn such as keeping the issue of trusteeship open the trust can be registered and thereafter in another proceeding issue of trusteeship can be decided and in the meantime for making a stop gap arrangement at the time of registration of this contested trust managers/caretakers can be appointed. In this way the hurdles in registration of contested trust can be removed. Ultimately charity means doing something for others without any expectation this quote will become true in practice.

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ⁱⁱ See Section 2 (13) of MPT Act, 1950

ⁱⁱⁱ Meridien Business Consultants Pvt. Ltd, laws governing formation and administration of charitable organisations in India, available at <http://www.mbcindia.com/Image/17%20charitable.pdf> access on 19/04/2019

^{iv} See the preamble of MPT Act, 1950

^v Section 18 of MPT Act, 1950

^{vi} Section 19 of MPT Act, 1950

^{vii} Section 17 of MPT Act, 1950

^{viii} Section 37, Power of inspection and supervision