

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10335 OF 2014

Shobha Chandrakant Rajebahadar : Petitioner
versus
Rachana Trust and anr. : Respondents.

Mr. S D Shinde for the Petitioner.
Mr. N S Patil for the Respondent No.1.
Ms. M S Bane "B" Panel Counsel for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 27th July 2015

P.C.

1 The order dated 26/09/2007 and the order dated 23/04/2012 passed by the learned Joint Charity Commissioner, Nashik Region, Nashik are taken exception to by way of the above Petition.

2 By the first order the learned Joint Charity Commissioner has rejected the application filed by the Respondent No.1 Trust seeking permission to sell the property to M/s. Gauravshri Builders instead of the highest bidder Sau. Shobha Chandrakant Rajebahaddar i.e. the Petitioner herein, by extending the time to complete the sale, and by the second order the review application filed by the Petitioner seeking review of the said order dated 26/09/2007 came to be rejected.

3 The Respondent No.1 Trust has been granted permission by the

learned Joint Charity Commissioner by the order dated 22/08/2003 passed under Section 36(1)(a) of the Bombay Public Trust Act to sell the trust property being Block No.16, Survey No.707/1 to the highest bidder Sau Shobha Chandrakant Rajebahaddar. The said sale was on the terms and conditions mentioned in the said order dated 22/8/2003. In terms of the said order the sale was to be completed within three months of the said order. The Respondent No.1 herein filed an application that the permission be granted for selling the said property to M/s. Gauravshri Builders through partners Shri Ashok Aba Hembad and Shri Bansi Babulal Bodke who were the residents of Nashik instead of the sale being completed in the name of Shobha Chandrakant Rajebahaddar. This was pursuant to the request made to the Respondent No.1 Trust by the highest bidder i.e. the Petitioner. The said relief was sought on the ground that the husband of the Petitioner was holding lands in excess of the ceiling limit as stipulated by the Urban Land Ceiling Act which was then in force. The said application filed by the Respondent No.1 came to be rejected by the learned Joint Charity Commissioner, Nashik by his order dated 30/01/2006. After rejection of the said application, the Respondent No.1 Trust once again filed an application for permission to sell the said property to the said M/s. Gauravshri Builders instead of the highest bidder Shobha Chandrakant Rajebahaddar. The Petitioner herein was shown as Applicant No.2, having given her consent to the said Application. The said application was also rejected by the learned Joint Charity Commissioner,

Nashik by his order dated 26/09/2007 which is the first impugned order. The said rejection is on the ground that since the order dated 22/08/2003 was passed in favour of the said Shobha Chandrakant Rajebahaddar, the Trust property could not now be sold to the said M/s. Gauravshri Builders, as the said order dated 22/08/2003 does not provide for sanction to sell the property to the highest bidder Shobha Chandrakant Rajebahaddar or her nominees. The learned Joint Charity Commissioner has observed that the partners of M/s. Gauravshri Builders Shri Ashok Aba Hembade and Shri Bansi Babulal Bodake are not the nominees of Shobha Chandrakant Rajebahaddar. The learned Joint Charity Commissioner accordingly by the first impugned order dated 26/09/2007 rejected the said Application and directed the trustees to issue fresh tender notice for selling the trust property in question. The Petitioner thereafter filed an application for review of the said order dated 26/09/2007 which application came to be rejected by the second impugned order dated 23/4/2012 on the ground that the said review could not be undertaken under the provisions of the said Act. The Petitioner thereafter filed an Appeal before the District Court Nashik being Civil Appeal No.349 of 2012. The said Civil Appeal came to be dismissed on the ground that the same was not maintainable. It is thereafter that the instant Petition has been filed by the Petitioner some time in October 2014 i.e. almost after one and half years of the order being passed by the District Court, Nashik.

4 It is the contention of the learned counsel for the Petitioner that though the Respondent No.1 had earlier sought the sale in the name of the said M/s. Gauravshri Builders, the Petitioner now seeks the sale deed to be executed in her own name as there is now no impediment for the sale deed being executed in favour of the Petitioner. It is further contended that the Petitioner has complied with the conditions mentioned in the said order dated 22/8/2003. The Petitioner has paid the full price which has also been utilized by the Respondent No.1 Trust.

5 In so far as the order dated 26/09/2007 passed by the learned Joint Charity Commissioner is concerned, the learned Joint Charity Commissioner having regard to the fact that the Respondent No.1 at the request of the Petitioner had applied for the sale to be made in favour of the said M/s. Gauravshri Builders had rejected the said Application and directed the trustees to issue fresh tender notice for selling the trust property in question.

6 The question that is therefore posed is whether at this length of time i.e. almost after a period of 12 years of the permission granted by the order dated 22/08/2003, and after about 14 years of the offers being invited, the sale deed is required to be executed in favour of the Petitioner by granting extension of time to carry out the mandate of the order dated 22/8/2003. In

my view, the said course of action cannot be permitted at this length of time and the learned Joint Charity Commissioner has therefore rightly directed that the Respondent No.1 Trust may again invite fresh offers for the property in question. It is required to be noted that the offers for the property in question were invited in the year 2001 and the permission for sale in favour of the Petitioner was granted by the learned Joint Charity Commissioner by his order dated 22/8/2003 passed under Section 36(1)(a) of the said Act. In so far as the said order dated 22/8/2003 is concerned, as of date the said order has remained to be implemented as no sale deed has been executed in favour of the Petitioner.

7 It is also required to be noted that the order dated 26/9/2007 rejecting the application filed by the Respondent No.1 Trust for the sale deed to be executed in the name of the said M/s. Gauravshri Builders was challenged after about 5 years before the District Court, Nashik when the District Court Nashik did not have the jurisdiction to entertain the Appeal. The order passed by the District Court Nashik is in March 2013, and the instant Petition has been filed one and half years thereafter i.e. in October 2014. This shows the manner in which the matter has been dealt with by the Petitioner. In my view, the time for carrying out the mandate of the order dated 22/8/2003 cannot be extended at this stage. It would therefore be appropriate to see to it that the directions contained in the impugned order of the learned Joint Charity

Commissioner directing the Trust to invite fresh offers are carried out. In so far as the amount paid by the Petitioner is concerned, she would be entitled to recover the same from the Respondent No.1 Trust. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

8 At this stage the learned counsel appearing for the Petitioner Shri S D Shinde prays for the stay of the instant order. In the facts and circumstances of the instant case, the said prayer is rejected.

[R.M.SAVANT, J]