

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL 348 OF 2012

IN

WRIT PETITION NO. 740 OF 2012

Wasudeo Jagduji Chaudhari

-vs-

The Joint Charity Commissinoer, Nagpur and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.R.Deshpande, counsel for the appellant.
Mr. A. S. Fulzele, A.G.P for the respondent No.1.
Ms Ritu V. Kalia, counsel for the respondent Nos.7 & 9.

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 10.08.2015.

By this Letters Patent Appeal, the appellant has challenged the order of the Joint Charity Commissioner, Nagpur, dated 13/10/2011, refusing to grant permission to alienate the Trust property under Section 36 of the Maharashtra Public Trusts Act. The order of the learned Single Judge, dated 02/04/2012 is appealed against.

The appellant had offered to purchase the Trust property in the year 1990. Before the said offer was made, there was no permission by the Joint Charity Commissioner under Section 36 of Maharashtra Public Trusts Act to alienate the Trust property. The appellant secured the possession of the property in pursuance of the offer to purchase the property and the Trust filed a civil suit seeking the possession of the suit property from the appellant. The appellant filed a counter claim seeking the execution of the sale deed in respect of the suit property in favour of the appellant. The trial Court decreed the counter claim of the appellant while

dismissing the suit filed by the Trust. The trial Court, however, held that before executing the sale deed of the suit property, the permission from the Joint Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act should be secured. In pursuance of the decree passed in the counter claim, filed by the appellant, an application was made before the Joint Charity Commissioner for permission to alienate the Trust property. The Joint Charity Commissioner allowed the application and granted the permission. The judgment of the Joint Charity Commissioner was challenged by the trustees in Writ Petition No.528 of 2006. The said writ petition was allowed by the learned Single Judge and the matter was remanded to the Joint Charity Commissioner for deciding the application for permission to alienate the property, in accordance with law and in the light of the observations made by the learned Single Judge in the said judgment. After the matter was remanded by the learned Single Judge, by the judgment dated 13/10/2011, the Joint Charity Commissioner rejected the application for alienation of the Trust property under Section 36 of the Act. The said order was challenged by the appellant in Writ Petition No.740 of 2012, but the writ petition was dismissed by the learned Single Judge, by the order dated 02/04/2012, that is appealed against.

On hearing the learned counsel for the parties and on a perusal of the order passed by the Joint Charity Commissioner as also the order of the learned Single Judge, it appears that the view expressed by the learned Single Judge is the correct view and it would not be possible to interfere with the same in this intra court appeal. The Joint Charity Commissioner had clearly observed in the judgment, dated 13/10/2011 that there was no necessity, much less any compelling necessity to alienate or sell the Trust property. The Joint Charity Commissioner held that not only were the prices of the property increased manifold during the intervening period, but the price offered by the appellant for the land was found to be

inadequate while rejecting Application No.24 of 1991. The Joint Charity Commissioner held and rightly so that the reason for permission to alienate the land, i.e. the construction of temple stood frustrated due to long lapse of time, as the cost of construction must have multiplied due to passage of time. The Joint Charity Commissioner held that there was no compelling necessity to sell the land of the Trust. The learned Single Judge rightly found that the Joint Charity Commissioner being the custodian of the property had taken a decision that there was no necessity to alienate the property and the learned Single Judge could not have sat over the decision of the Joint Charity Commissioner in the writ jurisdiction.

Since there is no merit in the intra Court appeal, the same is dismissed with no order as to costs.

JUDGE

JUDGE