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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7794 OF 2015 WITH
WRIT PETITION NO.7795 OF 2015 WITH
WRIT PETITION NO.7796 OF 2015

Chinchwad Devasthan Trust
Through its Trustees:-
Shri. Satish H. Gadale & Anr. … Petitioners

Versus

The State of Maharashtra & Anr. … Respondents

Mr. P.K. Dhakephalkar, Senior Advocate a/w Mr. Sachin Kadam for the Petitioners in W.P. No.7794 of 2015.

Mr. Sanjeev A. Sawant a/w Mr. Sachin D. Kadam for the Petitioners in WP. No.7795 of 2015.

Mr. Sachin D Kadam for the Petitioners in W.P. No.7796 of 2015.

Mr. P.G. Sawant, AGP for Respondent -State.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATE : 22nd AUGUST, 2016

P.C.

1 Heard the learned Senior Counsel appearing for the Petitioners in Writ Petition No.7794 of 2014. We have also heard the learned counsel appearing for the Petitioners in Writ Petition No.7795 of 2015. We have heard the learned AGP for the Respondents. Perused

the order dated 28th April, 2016 passed by the Division Bench of this Court which directs that an endeavour shall be made to decide the Petition finally at the stage of admission.

2 These three Petitions are filed by the same Trust which is duly registered under the Bombay Public Trust Act, 1950 (for short "the said Act of 1950"). Three separate applications were made by the Petitioner Trust before the learned Joint Charity Commissioner, Pune Region, Pune for grant of permissions under Sub-Section (1) of Section 36 of the said Act to alienate the property of the said public Trust. By a common judgment and order dated 5th February, 2015 the applications were rejected by the learned Joint Charity Commissioner. The learned Joint Charity Commissioner referred to the circular dated 16th January, 2007 issued by the Principal Secretary, Revenue Department. The learned Joint Charity Commissioner observed that in terms of the said circular, before filing applications under Sub-section (1) of Section 36 of the said Act, the Petitioners ought to have obtained prior permission of the State Government for the sale/transfer of the property.

3 Our attention is invited to the circular dated 16th January, 2007 which was issued by the Principal Secretary of the Revenue Department of the State Government. The said circular is in relation to that lands classified as Devasthan Inam-III. It refers to the provisions of

the Exemption from Land Revenue Act, 1863. It records that in case of those Devasthan Inam Lands for which there is an exemption or a partial exemption from payment of revenue, there is no power vesting even in the State Government to grant permission for alienation of such lands and there is no power to cancel the exemption and remove the said lands from the category of Devasthan Inam Class-III. The said circular refers to the power of the Charity Commissioner under Sub-section (1) of Section 36. It records that without seeking permission of the State Government, applications are made under Sub-section (1) of Section 36 before the Charity Commissioner/Joint Charity Commissioner for grant of sale permission which creates complications. The Government circular suggests that a circular should be issued either by the Law and Judiciary Department or by the Charity Commissioner directing that the permissions in such cases under Sub-section (1) of Section 36 of the said Act of 1950 should not be granted without the Trust obtaining prior permission of the State Government.

4 The learned Senior Counsel appearing for the Petitioners in Writ Petition No.7794 of 2015 referred to the scheme of the said Act and in particular Sub-Section (1) of Section 36 of the said Act of 1950. He submitted that the State Government by issuing impugned circular cannot control the power of the Charity Commissioner who exercises

judicial function while deciding the applications under Sub-Section (1) of Section 36. The learned AGP supported the impugned circular.

5 We have considered the submissions. In a sense, the Charity Commissioner or Charity Organisation under the said Act of 1950 is the custodian of the Trust properties. Therefore, there is a provision made under Sub-Section (1) of Section 36 that an alienation of the trust property of the category covered by Clauses (a) and (b) of Sub-Section (1) of Section 36 shall not be made by a public Trust without previous sanction of the Charity Commissioner.

6 The Charity Commissioner has to hold an enquiry and decide whether it is in the interests of the public Trust and its beneficiaries that a particular Trust property should be sold or alienated. If he is satisfied that it is in the interests of any public trust to alienate its property, the Charity Commissioner may grant permission subject to the terms and conditions which can be imposed for protecting the interests of beneficiaries of the Trust.

7 In a given case, if the Charity Commissioner permits alienation, the alienation can be made only after obtaining permission of the Competent Authorities wherever such permission is required in accordance with law.

8 The effect of the impugned circular is that it directly affects and seeks to control the powers of the Charity Commissioner under Sub-Section (1) of Section 36 of granting permission to alienate the Trust property. If the law requires any permission to be obtained for alienation, while granting permission, the Charity Commissioner can always incorporate a condition of obtaining permission of the Competent Authority.

9 The Revenue Department of the State Government has no power to interfere with the exercise of discretion by the Charity Commissioner under Sub-Section (1) of Section 36 of the said Act. The proceedings under Sub-Section (1) of Section 36 are held to be judicial proceedings.

10 In the present case, perusal of the order dated 5th February, 2015 passed by the learned Joint Charity Commissioner shows that the applications were rejected only on the ground that a prior permission of the State Government is necessary. The learned Joint Charity Commissioner could not have rejected the applications on that ground inasmuch as the impugned circular does not bind the Charity Commissioner.

11 Hence, the Petitions must succeed and we pass the following order :-

ORDER

(i) We hold that the impugned circular dated 16^{th} January, 2007 is illegal. However, we have not made any determination of the issue whether alienation of Devasthan Inam Land can be made without prior permission of the Competent Authority. Suffice it to say that before making any such application to the Charity Commissioner under Sub-Section (1) of Section 36 of the said Act, any such permission is not required to be obtained;

(ii) As the applications made by the Petitioners were rejected only on the basis of circular dated 16^{th} January, 2007 we permit the Petitioners to make fresh applications to the learned Joint Charity Commissioner, Pune under Sub-Section (1) of Section 36 of the said Act. Such applications shall be decided in accordance with law without insisting on the Petitioners obtaining prior permission of the Government;

(iii) Rule is made partly absolute on above terms.

(A.A. SAYED, J) **(A.S. OKA, J)**