

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10622 OF 2014**

Nashik Zilla Maratha Vidya Prasarak
Samaj, Nashik

...Petitioner

Versus

Nitin Baburao Thakare & Ors.

...Respondents

**WITH
WRIT PETITION NO.10349 OF 2014**

M/s. Thakkers Developers Ltd.

...Petitioner

Versus

Nashik Zilla Maratha Vidya Prasarak
Samaj, Nashik.

...Respondents

...

Mr. Y.S. Jhagirdar, senior Advocate with Mr. P.B. Shah i/b. Mr. K.P. Shah
for the Petitioners in WP/10622/2014 and Respondent No.1 in
WP/10349/2014.

Mr. R.A. Thorat, senior Advocate i/b. Mr. P.J. Thorat for Petitioner in
WP/10349/2014 and Respondent No.2 in WP/10622/2014.

Mr. P.K. Dhakephalkar, senior Advocate with Mr. A.G. Damle, senior
Advocate i/b. Mr. S.D. Dharmadhikari for R.No.2 in WP/10349/2014
Mrs. R.A. Salunkhe, AGP for Respondent No.3.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 27th SEPTEMBER , 2016.

P. C. :

Heard the learned counsel appearing for the respective
parties.

2. The Petitioner in writ petition No.10622 of 2014 is a public Trust and shall be hereinafter referred to as “the Trust”. M/s. Thakkers Developers Ltd., the Petitioner in writ petition No.10349 of 2014 is a Developer and shall be hereinafter referred to as “the Developer”. The Petitioners in both these petitions i.e. the Trust and the Developer sought to quash and set aside the order dated 4th October, 2014 passed by the Joint Charity Commissioner, Nashik, rejecting the Misc. Application No.13 of 2013 arising out of application No.46 of 2012 and further to allow the application No.12 of 2013.

3. The Trust had filed an application No.20 of 2010 under section 36 (1) (a) of Bombay Public Trust Act seeking permission for sale of TDR of 22,767.75 sq. meter in favour of the Developer for consideration of an amount of Rs.17, 86, 57, 488/-. By an order dated 28th February, 2011 the Joint Charity Commissioner, Nashik, allowed the said application and granted sanction under section 36 (1) (a) of the Bombay Public Trust Act for sale of TDR of 22, 767.75 sq. meter in favour of the Developer for consideration of an amount of Rs.17, 86, 57, 488/-. The Joint Charity Commissioner directed that the transaction should be completed within a period of six months from the

date of the order. Since the sale transaction could not be completed within the stipulated time, the Trust filed an application No.46 of 2012 for extension of time. The Joint Charity Commissioner, Nashik by an order dated 16.2.2013 extended the time by a further period of three months.

4. Both the orders viz. order dated 28th February, 2011 under section 36(1) (a) and order dated 16.2.2013 for extension of time were challenged by one Balasaheb Kolhe by filing writ petition No.2334 of 2013 in this Court. The learned Single Judge of this Court by order dated 9th April, 2013 dismissed the writ petition No.2334 of 2013. The Court referred the statement of the learned counsel for the Trust that during the pendency of above writ petition the Trust would not take any further steps in the matter and this statement would be continued till disposal of the petition. While disposing of the writ petition No.2334 of 2013 the learned Single Judge observed that the period during which the statement made by the learned counsel of the Respondent-Trust and which was accepted by the Court as an interim arrangement shall be excluded from the period of three months to complete the transaction as per the order under section 36(1) (a) of the Bombay Public Trust Act.

5. The order dated 9th April, 2013 passed by the learned Single Judge in writ petition No.2334 of 2013 was challenged in the Supreme Court by SLP No.16456 of 2013. However, this petition was also dismissed by order dated 30th April 2013, by accepting the statement made on behalf of the Developer that it is ready and willing to enhance the purchase price of TDR from Rs. 17,86,57,533/- to 21,50,00,000/-. There is no dispute that the amount of Rs.17,86,57,533/- was already deposited by the Developer with the Trust and balance amount as per the statement made by the Developer in Apex Court was also subsequently deposited.

6. Thereafter on 10.5.2013, the Developer called upon the Trust to execute the sale deed in respect of the TDR. By legal notice dated 15.5.2013 the Developer once again called upon the Trust to execute the sale deed. Despite this notice, the Trust could not complete the transaction in favour of the Developer due to non-cooperation of the Sabhapati / President of the Trust.

7. It is the common ground of the Trust and the Developer that under clause 17 of the constitution of the Trust, such transaction

has to be executed by the Sabhapati /President and Secretary of the Trust. It is further their case that the secretary is agreeable to execute the transaction however, the President of the Trust is not cooperating and therefore the transaction could not be completed.

8. In above circumstances, the Trust filed an application No.13 of 2013 before the Joint Charity Commissioner, Pune, under section 36(1) (a) (c) for direction to authorise any other Trustee / Member of Managing Committee to execute the sale transaction. The Developer was party respondent in the said application. The Trust also filed an application No.12 of 2013 for extension of time to complete the transaction. Both these applications came to be rejected by order dated 6th January, 2014 and 4th October, 2014 respectively.

9. Mr. Shah and Mr. Thorat, the learned counsels appearing for the Trust and the Developer invited our attention to the order dated 28.2.2011 passed by the Jt. Charity Commissioner, Nashik under section 36 (1) (a) as well as the provision of clause 17 (2) of the constitution of Petitioner Trust and the subsequent order passed by this Court as well as the Apex Court. They submitted that in the present fact situation the Jt. Charity Commissioner was obliged to pass an

order thereby authorising any trustee of the Trust to execute the sale deed in pursuant to the order under section 36 (1) (a). Being aggrieved by the said order two petitions being writ petition No.7975 of 2014 and writ petition No.7976 of 2014 were filed by the Trust and Developer respectively. By order dated 3rd September, 2014, this Court extended the time to complete sale transaction by six months w.e.f. 3.9.2014 and further directed the Joint Charity Commissioner to dispose of Mis. Application No.13 of 2013 expeditiously. The application was opposed by Mr. Nitin Thakare, the Sabhapati /President of the Trust. By order dated 4.10.2014, the learned Joint Charity Commissioner dismissed the Application No.13 of 2013 as not maintainable.

10. Mr. Dhakephalkar and Mr. Damle, the learned senior counsels appearing for Respondent Nos.1 and 2 in writ petition Nos.10622 of 2014 and 10349 of 2014 respectively contested the petitions very vehemently. They submitted that the provision of section 41 (a) as well as 36 (1) (a) (c) of the Bombay Public Trust Act cannot be resorted to in the fact situation of the present case. They submitted that the Jt. Charity Commissioner was perfectly right in dismissing the application filed by the Trust and this Court in exercise

of Article 226 of the Constitution of India should not interfere in the same.

11. Having heard the rival submissions and having gone through the impugned order as well as the constitution of the Trust and the earlier orders passed by the Jt. Charity Commissioner as well as the orders passed by this Court and the Apex Court we find merit in the petition. There is no dispute that Mr. Nitin Thakare, the Chairman of the Trust had filed an application under section 36(1) (a) of BPT Act. By an order dated 28.2.2011 the Joint Charity Commissioner granted approval to the Trust for sale of TDR of 22,767.75 sq. meter in favour of the Developer for a consideration of Rs.17,86,57,488/-. The Jt. Charity Commissioner had specifically directed the Chairman of the Trust / office bearers and members of the Managing Committee of the Trust to cooperate with the Developer or their nominee for obtaining TDR from Nashik Municipal Corporation. Despite this direction the order under section 36 (1) (a) was unsuccessfully challenged by one Balasaheb Kolhe before this Court and subsequently before the Apex Court. The approval granted by the Jt. Charity Commissioner for sale of TDR in favour of the Developer was not disturbed. However, the Developer had agreed to pay enhanced consideration of

Rs.21.50,000/-. Initially the transaction was to be completed within a period of six months and this period was subsequently extended from time to time. It is not in dispute that the Developer has deposited the entire amount of Rs.21,50,000/-, despite which the Trust could not execute the sale transaction in favour of the Developer because of non cooperation of the Sabhapati /President of the Trust.

12. Under clause 17(2) of the constitution of the Trust such transaction on behalf of the Trust is required to be executed by the President and Secretary of the Trust. Mr. Thorat and Mr. Shah, the learned counsel for the Petitioners submitted that the Secretary is willing to execute the transaction. However, the Chairman i.e. Respondent No.1 in writ petition No.10622 of 2014 and Respondent No.2 in writ petition No.10349 of 2014 is not cooperating, therefore they are constrained to approach this Court.

13. It is pertinent to note that the Joint Charity Commissioner dismissed the application mainly on the ground that there was inter se dispute between the Trustees and provisions of section 36(1) (c) is not a remedy for redressal of inter se dispute. The learned Joint Charity Commissioner lost sight of the fact that order under section 36(1) (a)

has attained finality and he was not required to deal with the inter se dispute between the Trustees of the Petitioner Trust.

14. Be that as it may, section 36 of the Bombay Port Trust Act deals with alienation of immovable property of Public Trust. Clause 1 (c) of section 36 provides that if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust. In the instant case, the order dated 28th February, 2011 had attained finality and the Developer had already deposited the entire consideration. The sale transaction could not be executed only because of non cooperation of the President of the Trust, even though the application under section 36(1) (a) of the BPT Act was filed by him. Under these circumstances, in our considered view, the Joint Charity Commissioner ought to have resorted to the provisions of clause (1) (c) of section 36 of the BPT Act and thereby authorised any other trustee of the said Trust alongwith the Secretary to execute the transaction in favour of the Developer.

15. So far as the application for extension of time to execute the sale transaction is concerned, we find that neither the Trust nor the Developer was responsible for the delay in executing documents/sale transaction. The said documents could not be executed within the stipulated time as the order under section 36(1) (a) was challenged initially before this Court and latter before the Appellate Court. The Developer cannot be made to suffer for no fault on his part. The Joint Charity Commissioner therefore, in our considered view, ought to have extended the time for implementation of the first order under section 36 (1) (a) thereby ensuring finality in the process.

16. Both the petitions are allowed in terms of prayer clause (a). Consequently, the impugned order is quashed and set aside. The application No.13 of 2013 is allowed. In the interest of justice, time to complete the transaction as per the order under section 36 (1) (a) is extended by a further period of two months from the date of receipt of copy of this order.

17. Parties to act on authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)