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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1051 OF 2014

Harish Jamnadas Madiyar	 Petitioner
V/s.	
State of Maharashtra and ors	 Respondents

Mr. Mohammed Husain, for the Petitioner.
Mr. Mohit Jadhav, AGP for the Respondent Nos 1 & 2..
Ms. Priya Ranade with Ms. Triveni Jani, I/by M/s Markand Gandhi & Co.
for respondent No.3.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 22nd APRIL, 2016.

P.C. :

1. In a writ of mandamus the relief claimed by the petitioner cannot be granted unless there is established and proved legal right of the petitioner. The petitioner claiming through a trust proclaims to be a tenant of the trust which is a Public Charitable Trust. The property belonging to the trust is disposed of by that trust and the grievance is that the purchaser may pull down old structure and commence construction of new building. The land belongs to Government and for dealing in such land, lease would have to be obtained or renewal thereof from the

Government or the Collector, that is still not obtained. The tenants or those who claim through the trust would, therefore, suffer hardship and difficulty in the event the construction is not held to be authorised and legal one.

2. We do not think that for such far-fetched and remote claim, we can exercise our power to issue prerogative writ under Article 226 of the Constitution of India. There are disputed questions of fact. If the Collector is not attending to any complaint does not mean that the petitioner's legal rights, if any, are in jeopardy. Petitioner's civil suit is also pending. In these circumstances, we decline to exercise our writ jurisdiction. Th Writ Petition is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]