

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1713 OF 2015

Mr. Yusuf Jamir Kazi

...Petitioner

Versus

State Of Maharashtra

And Ors.

...Respondents

....

Mr.R.D. Soni, Advocate i/b. Dharam & Co. for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for respondents No.1 & 2.

Mr.S.R. Waghmare, Advocate for Respondent No.3.

Mr. Abdul R. Shaikh, Advocate for Respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 06th APRIL, 2017

P.C.

1. Heard Mr.R.D. Soni, learned Counsel for the petitioner, Ms. Vaishali Nimbalkar, learned A.G.P. for respondents No.1 & 2, Mr. S.R. Waghmare, learned Counsel for respondent No.3 and Mr. Abdul R. Shaikh, learned Counsel for respondent No.4, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 3.2.2015 passed by the Jt. Charity Commissioner, Maharashtra State, Mumbai in Misc. Application No.33/2014. By that order, Jt. Charity Commissioner rejected the application

made by the petitioner for extension of sanction under Section 36(1)(a) & (c) of the Maharashtra Public Trusts Act (for short, 'Act') dated 13.12.2013 for further period of six months from the date of passing of the order on the application as also suitably amend the words 'nominee' or 'nominees' against the name of the developer M/s. Sayeban Realtors so as to read as M/s. Sayeban Realtors – LLP.

3. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. In support of this Petition, Mr. Soni submitted that initially the trustees of third respondent Trust had made an application under Section 36(1)(a) & (c) of the Act for developing the immovable property belonging to the trust bearing plot No.92, admeasuring 860 square meters situate at Madhavrao Gagan Marg, Agripada, Mumbai 400 011 through M/s. Sayeban Realtors, Mumbai as per M.O.U. Dated 2.7.2008 read with additional affidavit for the total consideration of Rs.3

Crores in addition to 3000 square feet carpet area to be given to the trust, free of cost, in the newly constructed premises. He submitted that the application was allowed by order dated 13.12.2013 subject to certain terms and conditions. He submitted that in pursuance of the sanction accorded on 13.12.2013, the developer took necessary steps of shifting the tenants in the property as also obtained I.O.D. He submitted that because of the litigation, the development could not be completed. He submitted that the application was made by the petitioner for extension of time. It was duly supported by all the trustees by filing affidavit. He has invited my attention to affidavit at Exhibit-D (page-102) made on behalf of third respondent. That affidavit is made by Mr.Chen Jacob Nagawkar.

5. Mr.Waghmare appearing on behalf of respondent No.3 reiterates before this Court that all the trustees of the third respondent have no objection for extension of time. Mr. Shaikh appearing on behalf of the fourth respondent society, consisting of tenant members, has also no objection for extension of time.

6. Mr. Soni also invited my attention to the order dated

9.10.2014 passed by this Court (Coram: Ranjit More, J.) in Writ Petition No.9136/2014 [Pragatee Developers vs. The Charity Commissioner and others] and in particular paragraph-7 thereof. He submitted that even in that case, application for extension was rejected by the Charity Commissioner on the ground that trustees did not make application for extension. He submitted that for the reasons recorded in that order, the Charity Commissioner was not justified in rejecting the application only on the ground that the application for extension is not made by the trustees. As the trustees are supporting the application, the Charity Commissioner should have allowed the application.

7. On the other hand, Ms. Nimbalkar supported the impugned order. She submitted that the application was filed by the Developer through its Proprietor Mr. Yusuf Jamir Khan. The application ought to have been made by the Trustees of the third respondent. As the trustees have not made application for extension of time, the same is liable to be rejected.

8. After perusing the material on record as also having regard to the fact that Mr. Chen Jacob Nagawkar has filed

affidavit on behalf of all the trustees giving no objection for granting extension as also said fact is reiterated by respondent No.3 Trust as also respondent No.4 Society in this Court, in my opinion, the Charity Commissioner should have allowed the application instead of rejecting on technical ground that the application for extension is not made by the trustees. When all the trustees are supporting the application as also earlier application made by the trustees under Section 36(1)(a) & (c) was allowed by the Charity Commissioner on 13.12.2013, the Joint Charity Commissioner should have allowed the application. Hence, the following order.

- i. Impugned order dated 3.2.2015 is set aside. Misc. Application No.33/2014 is allowed in terms of prayer clauses (b) and (c).
- ii. Rule is made absolute with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)