

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3858 OF 2017

Narayan Chandrakant Choudhary	...Petitioner
<i>Versus</i>	
Ramsurat Ramkhilavat Pande	
And Ors.	...Respondents

....
Mr.B.N.J. Pillai, Advocate for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondent No.16-State.

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CORAM : R. G. KETKAR, J.

DATE : 27th APRIL, 2017

P.C.

1. Heard Mr.B.N.J. Pillai, learned counsel for the petitioner and Ms.Vaishali Nimbalkar, learned A.G.P. for respondent No.16-State, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 24.11.2016 passed by the Jt. Charity Commissioner-I, Mumbai in Application No.9/2010. By that order, the application made by the petitioner as Trustee of Juna

Thakurdwar Ram Mandir Trust (for short, 'Trust') along with two other trustees under Section 36(2) of the Maharashtra Public Trusts Act, (for short, 'Act') for revocation of the order dated 7.1.2009 passed by the Joint Charity Commissioner, Mumbai in application No.J.4/113/2008 by which permission was granted for development in respect of land bearing City Survey No.3406, 3407 at Kalyan (for short, 'suit property') was rejected.

3. Shri Ratanlal Ramgopal Asawa, Chairman of the Trust had filed application No.J.4/113/2008 under Section 36(1)(a) of the Act for alienating the suit property. By order dated 7.1.2009 the Joint Charity Commissioner, Maharashtra State, Mumbai allowed the application and accorded sanction under Section 36(1)(a) of the Act to the Trustees of the Trust, develop the suit property admeasuring 16263.24 square meters on 'as is where is basis' in favour of M/s. Gurudutt Developer, a partnership firm for consideration of land admeasuring 9400 sq. ft. built up area and refundable security deposits of Rs.15,00,000/- as per the development agreement dated 24.8.2008 and on the terms and conditions more particularly set out therein.

4. The petitioner along with two other trustees Babulal Sarda and Mohan Bagade filed proceedings being application No.9/2010 under Section 36(2) of the Act for revocation of the permission granted on 7.1.2009. During pendency of these proceedings, the petitioner individually filed application No.3/2011 under Section 36(2) of the Act for revocation of the permission/sanction dated 7.1.2009. On 14.12.2011 the petitioner filed application for withdrawal of the said proceedings. By order dated 29.12.2011, the Joint Charity Commissioner, Maharashtra State, Mumbai granted permission to the petitioner to withdraw the application No.3/11 unconditionally. Respondents No.1, 2 and 4 filed application for disposing of the proceedings, namely, application No.9/2010 on the ground that the petitioner had withdrawn application No.3/2011 filed for the self same relief unconditionally. By the impugned order, the Joint Charity Commissioner has dismissed the application No.9/2010 filed by the petitioner. It is against this order, the petitioner has instituted the present Petition.

5. In support of this Petition, Mr. Pillai submitted that on 22.6.2011, the petitioner had made a complaint to the Senior

Police Inspector attached to Mahatma Phule Police Station, Kalyan (West) setting out therein that the petitioner is given threats. He submitted that till date no action is taken by the concerned police station and no cognizance is taken by the concerned police station. He has taken me through application No.9/2010 filed by the petitioner as a Trustee of the Trust along with two other trustees Babulal Sarda and Mohan Bagade. He has also taken me through the Razanama of the said proceedings. Mr.Pillai submitted that application No.3/2011 was withdrawn unconditionally as prior in point of time the petitioner along with two other trustees had already filed application No.9/2010 for revocation of the sanction/permission accorded on 7.1.2009. In other words, withdrawal of the subsequent proceedings for the self same relief will not affect the merits of the proceedings of application No.9/2010 filed in earlier point of time. He submitted that the application was made by respondents No.1 and 2 in application No.9/2010 for framing preliminary issue as regards maintainability of application No.9/2010 in view of the order dated 29.12.2011 passed by the Joint Charity Commissioner in application No.3/2011 under Section 36(2) of the Act. He

submitted that respondents No.1 and 2 did not file any say or written statement to application No.9/2010.

6. Mr. Pillai submitted that the Memorandum of Understanding was executed by and between the Trust through its Trustees on one hand and M/s.Gurudatta Developers, through its Partners on the other. As per the terms and conditions of M.O.U. the developer was supposed to deposit Rs.15 Lakhs with the Trust towards security deposit. The developer was also supposed to give 25% super built up area. The developer has neither paid the security deposit nor handed over possession of 25% super built up area. He further submitted that basically the developer could not have carried out any construction over the suit property as the suit property is an agricultural land as also it is a devasthan Inam land. Unless and until the application is made for conversion to the Collector, the developer could not have proceeded with the construction. He has also invited my attention to the order dated 17.8.2015 passed by the Sub-Divisional Officer which records that the suit property is a trust property. He submitted that the application for withdrawal of the proceedings being No.3/2011 was made by the developer and the same was

merely signed by the petitioner because of the threats given by the developer. In other words, withdrawal by the petitioner was not of free will and volition but was out of compulsion and under duress. He submitted that the developer has played fraud on the authority while obtaining the sanction under Section 36(1)(a) of the Act. He, therefore, submitted that the Joint Charity Commissioner was not justified in dismissing the application on the ground that the petitioner had withdrawn application No.3/2011 unconditionally. The Joint Charity Commissioner failed to appreciate that as earlier application No.9/2010 was pending for the self same relief, the petitioner had withdrawn the subsequent proceedings, namely, No.3/2011 which, however, will not have any impact on the earlier proceedings. He, therefore, submitted that the petition requires consideration and interim relief as prayed for may be granted.

7. On the other hand Ms.Nimbalkar submitted that the petitioner had filed application No.3/2011 under Section 36(2) of the Act for revocation of sanction granted on 7.1.2009. Pending that application, the petitioner filed application Exhibit-31 on 14.12.2011 for withdrawal of the said

proceedings. By order dated 29.12.2011, the Joint Charity Commissioner permitted the petitioner to withdraw the proceedings unconditionally. As the petitioner has given up all the allegations about suppression, concealment and/or fraud played upon the Trustees and/or developer, in obtaining permission under Section 36(1)(a) of the Act, the Joint Charity Commissioner was justified in dismissing application No.9/2010. She, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the petitioner has instituted proceedings under Section 36(2) of the Act being application No.9/2010 *inter alia* praying for revocation of sanction dated 7.1.2009 accorded under Section 36(1)(a) of the Act. Said proceedings was filed by the petitioner as Trustee along with two other trustees Babulal Sarda and Mohan Bagade. It is also not in dispute and is rather a matter of record that during pendency of this proceeding, the petitioner in his individual capacity instituted application No.3/2011 under

Section 36(2) of the Act for revocation of the sanction granted on 7.1.2009. During pendency of these proceedings, the petitioner filed application on 14.12.2011 at Exhibit-31 for withdrawal of the said proceedings. Paragraphs-1 to 3 of that application read thus :

- “1. The Applicant has read and understood carefully written reply of the opponents and have heard the oral arguments and have perused the documents produced by the Opponent no.1, 4 to 7 and 10. After going through the entire documents, submissions of the aforesaid trustees, building construction permission and approved building plan of the Trust's land property, the applicant has come to know that there is no suppression, concealment and or fraud played upon by any of the trustees and or developer while obtaining permission dated 7/1/2009 under section 36(1) (a) of Bombay Public Trust Act, 1950.
2. Therefore applicant's application has become ineffective and infructuous. Now the misunderstanding and doubts of the Applicant and supporting trustees are completely removed. For the above reason, the applicant is withdrawing his all allegations made against the trustees and developer unconditionally.
3. It is therefore, prayed to the Hon'ble Court to allow the applicant to withdraw the above matter and allegations in interest of justice.”

9. A perusal of paragraph-1 of the application, extracted hereinabove, shows that the petitioner herein asserted that he

had read and understood carefully written reply of the opponents and after hearing the oral arguments and perusing the documents produced by opponents No.1, 4 to 7 and 10. After going through the entire documents, submissions of the trustees, building construction permission and approved building plan of the trust's land property, the petitioner came to know that there is no suppression, concealment and or fraud played upon by any of the trustees and or developer while obtaining permission dated 7.1.2009 under Section 36(1) (a) of the Act.

10. In paragraph-2 of the application, the petitioner asserted that the proceedings No.3/2011 become ineffective and infructuous. Now the misunderstanding and the doubts of the petitioner and supporting trustees are completely removed and for that reason the petitioner is withdrawing his all allegations made against the trustees and the developer unconditionally.

11. In paragraph-3 of the application, the petitioner prayed for allowing him to withdraw the proceedings and allegations in the interest of justice. The application was heard

by the then Joint Charity Commissioner on 29.12.2011. By order dated 29.12.2011, the petitioner was permitted to withdraw the application unconditionally. In that order it was noted that the petitioner is present before the authority. He submitted that he does not want to proceed with the application filed by him. The authority repeatedly asked him if he really intends to withdraw the application unconditionally to which he confirmed that he is satisfied that there is no suppression, concealment and/or fraud played upon by any of the trustees and/or developer while obtaining permission from the authority. After recording these facts, the Joint Charity Commissioner permitted the petitioner to withdraw the proceedings.

12. It is material to note that perusal of the application Exhibit-31 filed in application No.3/2011 does not remotely indicate reason which is sought to be advanced here, namely, as application No.9/2010 filed in earlier point of time for the self-same relief pending before the authority, subsequent application No.3/2011 may be permitted to be withdrawn. That is not the ground for withdrawal of the subsequent proceedings. On the other hand perusal of the application

Exhibit-31 unmistakably shows that the petitioner gave up his challenge to the sanction dated 7.1.2009 on the ground that there was no suppression, concealment and/or fraud played upon the Trustees and/or developer. Once the petitioner having given up the allegations, he cannot proceed with the present application which is based upon the self-same allegations. He is estopped from alleging suppression, concealment and/or fraud played upon the trustees and/or developer.

13. That apart, a perusal of the impugned order shows that in paragraph-7, it was observed that in pursuance of the order dated 7.1.2009, the construction was completed and the construction to which the Trust was entitled to was given in possession. In paragraph-10 the development agreement dated 25.2.2009 was referred, which shows that it is signed by the petitioner and two others. It is, therefore, not open for them to challenge the legality of the development agreement. In paragraph-11 it was noted that the development agreement itself shows that the petitioner along with two others had participated in execution of the development agreement. Therefore, there is no question of any fraud being played on the petitioner. The impugned order also records that the petitioner

is a retired Tahsildar and that he had withdrawn all the allegations made by him against the Trustees and the Developer, unconditionally. In other words, the petitioner is not a novice or a layman who did not understand the implications of withdrawal that too after giving up allegations made for seeking revocation of the sanction accorded under Section 36(1)(a) of the Act. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)