

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5787 OF 2017

Shree Kutchi Bhanushali
Seva Samaj & Ors.

.. Petitioners

V/s.

The State of Maharashtra & Anr.

.. Respondents

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Mr.Prasad Dhakephalkar, Senior Advocate a/w. Ms.Aarohee Gursale i/b. M/s.Dhaval Vussonji & Associates, Advocate for the Petitioners.

Mr.S.H. Kankal, AGP for Respondent – State.

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CORAM : R.D. DHANUKA, J.

DATED : DECEMBER 12, 2017.

P.C. :

Rule.

2 Learned AGP for respondents waive service.

3 By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 17th September, 2016, passed by the learned Jt. Charity Commissioner-II, Maharashtra State, Mumbai, rejecting the application filed by the petitioner below Exhibit-1 seeking permission to sell 81 units as set out in the Annexure, over and above, the market rate as per regulations mentioned in the ready reckoner.

4 The petitioner had applied for permission under Section 36(1)(a) of the Maharashtra Public Trust, 1950, vide application no.46 of 2013, before the Jt. Charity Commissioner, Maharashtra State, Mumbai. The said application was disposed of by the Jt. Charity Commissioner on 24th April, 2015, thereby granting permission under Section 36 (1)(c) to the petitioner trust for redevelopment and alienation of the construction of the constructed residential and commercial premises after full construction of the building on various conditions. One of the conditions imposed by the Jt. Charity Commissioner was that the tenant's right will be protected while redevelopment of the property. In paragraph no.2(b) of the said order, the learned Jt. Charity Commissioner, however, imposed a further condition that after the construction was fully made, the residential flats and commercial shops be sold after seeking necessary permission from Charity Commissioner as required under Section 36(1)(a) of the Maharashtra Public Trust Act, 1950, subject to the protection of existing rights of 94 tenants, as mentioned in the application.

5 The petitioner, thereafter, filed an application on 31st May, 2016, before the learned Charity Commissioner/Joint Charity Commissioner, Maharashtra State, Greater Mumbai

Region being Misc. Application No.308 of 2016, *inter-alia* provide for modification and /or amendment of the order dated 24th April, 2015, by permitting the petitioner to sell 81 units as set out in the Annexure over and above the market rate as per valuation mentioned in the Ready Reckoner.

6 The said application dated 31st May, 2016, is, however, rejected by the learned Jt. Charity Commissioner-II vide order dated 17th September, 2016, by holding that the order dated 24th August, 2015, passed by learned Jt. Charity Commissioner was passed after going through the documents placed in the said application filed by the petitioner and that the said order was passed after considering the facts and circumstances of the case keeping in view the interest of the said Trust and, thus, it was not justified to modify and/or amend the said order.

7 Mr.Dhakephalkar, learned Senior Counsel appearing for the petitioners invited my attention to the orders passed by the learned Jt. Charity Commissioner in Application No.46 of 2013 and would submit that insofar as the interest of 94 occupants/tenants in the adjacent building is concerned, the

learned Jt. Charity Commissioner has already protected the interest of the said occupants/tenants in paragraph 1(a) of the order dated 24th April, 2015. He further states that if the application filed by the petitioner dated 31st May, 2016 for modification/amendment of the orders passed by the learned Jt. Charity Commissioner is allowed, the petitioner will protect the interest of those 94 occupants/tenants in the proposed building and their rights will not be affected. The statement made by the learned Senior Counsel is accepted.

8 It is submitted that considering the dilapidated condition of the building, if the petitioners are granted permission to sell 81 units, so as to realise the sell proceeds thereof, it would assist the petitioners Trust to spent that amount on constructing about 229 units along with other expenses. He submits that no prejudice would be caused to the tenants or anybody else if the said permission would have been granted by the Jt. Charity Commissioner by modifying/amending the earlier order passed by her. Learned APP on the other hand submits that the interest of the tenants has to be protected. He submits that if this Court comes to the conclusion that the impugned orders passed by the learned Jt. Charity Commissioner to modify and/or

amend the order dated 24th April, 2015, the matter shall be remanded back to the learned Jt. Charity Commissioner for reconsideration.

9 Insofar as the first submission of the learned AGP regarding interest of the occupants/tenants, is concerned, a perusal of the orders passed by the learned Jt. Charity Commissioner dated 24th April, 2015, clearly indicates that permission is granted under Section 36(1)(c) to the petitioner-trust. The tenants right will be protected while redevelopment of property. The petitioners did not apply for modification and/or amendment of that part of the conditions imposed by the learned Jt. Charity Commissioner. Be that as it may, the learned Senior Counsel for the petitioners had reiterated the statement made by the petitioners before the learned Jt. Charity Commissioner that while redevelopment of the property, the rights of those 94 occupants or tenants would be fully protected. The first submission of the learned AGP has thus, no merits in view of the conditions imposed by the Jt. Charity Commissioner dated 24th April, 2015, and in view of the similar statement made by the learned Senior Counsel for the petitioners.

10 Insofar the application for seeking permission to sell 81 units vide application dated 31st May, 2016, is concerned, a perusal of the impugned orders passed by the learned Jt. Charity Commissioner indicates that this aspect of the matter is overlooked by the learned Jt. Charity Commissioner and the said application is rejected simplisitor on the ground that earlier order dated 24th May, 2015, is passed by the learned Jt. Charity Commissioner after considering all the documents and averments made in the application made by the petitioners.

11 A perusal of the order dated 24th April, 2015, passed by the learned Jt. Charity Commissioner clearly indicates that in paragraph no.15 of the said order, it is observed by the learned Jt. Charity Commissioner that it is justified to grant permission as sought by the trust because the financial condition of the trust will become sound after redevelopment of building. The trust will receive sufficient amount by selling flats. In my view, after making such observations about the financial condition of the petitioners, the learned Jt. Charity Commissioner ought to have granted permission to the petitioners to sell 81 units before completion of the construction of the entire building so as to enable the petitioners to use the proceeds out of sell of those 81

units for construction of 229 units out of which 94 occupants/tenants would be accommodated by the petitioner in the redeveloped building. In view of these facts, for these reasons recorded above, I am not inclined to accept the submissions made by the learned AGP that the matter may be remanded back to the learned Jt. Charity Commissioner for reconsideration of the application dated 31st May, 2016. In my view, no purpose would be served by remitting the matter.

12 I, therefore, pass the following order:

:: ORDER ::

- (i) The order dated 17th September, 2016, passed by the learned Jt. Charity Commissioner-II below Exhibit - 1, is set aside;
- (ii) The order dated 24th April, 2015, passed by the learned Jt. Charity Commissioner below Exhibit - 33, is partly modified;
- (iii) The condition no.2(b) of the dated 24th April, 2015, order passed by the Jt. Charity

Commissioner, Maharashtra State, Mumbai is substituted by the following condition:

“(a) Petitioner is permitted to sell 81 units as described in application dated 31st May, 2016, and more particularly, in the certificate issued by the Licensed Surveyor dated 8th June, 2016, annexed to the said application dated 31st May, 2016, during the course of construction of the building in question. The petitioners will have to protect the interest of 94 occupants/tenants in the redeveloped building.”

- (iv) Rest of the order passed by the learned Jt. Charity Commissioner, Maharashtra State, Mumbai on 24th April, 2015, is not altered;
- (v) Rule is made absolute in the aforesaid terms;
- (vi) There shall be no order as to costs;
- (vii) An authenticated copy of this order shall be forwarded to the learned Jt. Charity Commissioner, for perusal and record.

(viii) Parties to act on an authenticated copy of this
order duly signed by Shirestedar of this Court;

(R.D. DHANUKA, J.)