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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6569 OF 2016**

Darul Falah Educational & Welfare Trust	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Sagar Anant Joshi for the Petitioner.
Ms. Aparna Vhatkar, AGP for the Respondent Nos.1 and 2.
Mr. Rohit P. Sakhadeo a/w Mr. Rohidas Gawade for the Respondent No.3.
Mrs. S.V. Sonawane i/by Mr. Satish P. Muley for the Respondent Nos.5 to 7.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 6th APRIL, 2017

ORAL JUDGMENT (Per A.S.Oka, J.)

1 The parties were put to notice that the Petition will be taken up for final disposal. Rule. The learned AGP waives service for first and second respondents. The learned counsel appearing for third respondent waives service and the learned counsel appearing for the fifth to seventh respondents waives service.

2 The prayer in this Petition under Article 226 of the Constitution of India is for quashing and setting aside the order dated 10th March, 2016 passed by the Maharashtra State Minorities

Commission on an Appeal purportedly filed by the Respondent Nos.5 to 7. While passing the impugned order, the Chairperson of the Respondent No.4 – Maharashtra State Minorities Commission (for short “the Commission”) has purported to exercise the powers under Section 10 of the Maharashtra State Minorities Commission Act, 2004 (for short “the said Act of 2004”).

3 With a view to appreciate the controversy, few factual aspects will have to be considered. The Petitioner - Darul Falah Educational and Welfare Trust is a Public Charitable Trust registered under the Maharashtra Public Trusts Act, 1950. The Petitioner - Trust acquired certain lands more particularly described in paragraph 2 of the Petition under a Deed of Conveyance dated 16th July, 2014. On the basis of the said Deed of Conveyance, the name of the Petitioner - Trust through its Trustees was mutated in revenue records vide Mutation Entry No.2002 which was certified by the Circle Officer on 15th November, 2014. A copy of the said Conveyance Deed as well as the mutation entry is annexed to the Petition. The Respondent Nos.5 to 7 are shown as the vendors under the said Deed of Conveyance.

4 The Respondent Nos.5 to 7 purported to file an Appeal before the Commission styled as “RTS Appeal”. The title of the Appeal

shows that the Respondent Nos.5 to 7 purported to prefer the Appeal against the Mutation Entry No.2002 recorded as per the provisions of the Maharashtra Land Revenue Code, 1966. The first prayer in the said Appeal was for calling for the record of the said mutation entry. The second prayer was for setting aside the order of the Circle Officer of certifying the said mutation entry and of reinstating the names of the Respondent Nos.5 to 7 in the revenue record. It was alleged in the said Appeal that the mutation entry has been effected without notice to the said respondents. It was contended that though the registered sale deed is executed by Mr. Adil Ramzan Bhat and six others as the constituted attorneys of the Respondent Nos.5 to 7, no such power of attorney was executed by the Respondent Nos.5 to 7 in favour of the said persons authorising them to sell the property subject matter of this Petition. It is contended that though the petitioner – Trust had obtained permission of the Commission for purchasing the said property under the order dated 2nd September, 2014, the petitioner – Trust has not complied with the terms and conditions of the permission.

5 By the impugned order, the Chairperson of the Commission purported to issue directions. The first direction was that the Divisional Commissioner, Konkan Division shall hold an enquiry into the matter through the Additional Divisional Commissioner. No further steps shall

be taken on the basis of sale permission granted on 2nd September, 2014 and all illegal actions taken on the basis of the said permission should be set aside. The Commissioner of the Municipal Corporation of City of Thane was directed to carry out the measurement of the property subject matter of the Mutation Entry No.2002 and take action of demolition of the construction made by encroaching upon the said property. Immediate steps were ordered to be taken by the concerned officer for placing the Respondent No.5 in possession of the said land and it was directed that those who are guilty should be punished by the Revenue Department of the State Government. Perusal of the impugned order shows that the Chairperson of the Commission has purported to deliver a detailed judgment after recording the submissions of the Respondent Nos.5 to 7 and the Naib Tahsildar on behalf of the Collector. Even the Assistant Commissioner of the said Municipal Corporation was heard.

6 The submission of the learned counsel appearing for the petitioner is that no power has been conferred by the said Act of 2004 on the Chairperson of the Commission to make any such adjudication about illegality of a sale transaction. The submission is that there is no adjudicatory power conferred on the Chairperson and therefore, by recording findings, the Chairperson could not have issued several

directions which he has purported to issue. Hence, the impugned order is without jurisdiction.

7 The learned counsel appearing for the Respondent Nos.5 to 7 relied upon Section 10-A of the said Act which is added by way of an amendment by the Maharashtra Act No.XXXI of 2005. She submitted that the Commission has been conferred with all the powers of a Civil Court under the Code of Civil Procedure, 1908 as specified therein. The said powers include a power to summon and enforce attendance of any person, a power to receive evidence on affidavit, a power to issue requisition for producing public record or documents and a power to issue commission for recording of evidence of witnesses and production of documents. Her submission is that the very fact that such powers of the Civil Court are conferred on the Commission, the Chairperson was entitled to make an adjudication on the issues raised by the Respondent Nos.5 to 7 about the illegality of the sale transaction. Inviting our attention to various clauses of Sub-Section (1) of Section 10 of the said Act of 2004, she submitted that in any event, the Commission was entitled to make recommendations and accordingly, the operative part of the impugned order be read as recommendations to the Divisional Commissioner, the District Collector, the Municipal Commissioner and other authorities. She, would, therefore, submit that no interference is

called for. The learned AGP has supported the impugned order. However, he also relied upon the affidavit filed by Tahsildar, Thane in which there is a justification for the actions of the Circle Officer.

8 We have given careful consideration to the submissions. A copy of the registered sale conveyance deed dated 16th July, 2014 shows that a registered conveyance was executed by the Respondent Nos.5 to 7 through their Constituted Attorneys. In the affidavit of Shri Kisan Kacharu Bhadane, Tahsildar, Thane he has stated that a permission under Section 63 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 was granted by the Sub-Divisional Officer on 2nd September, 2014. The Mutation Entry No.2002 which was effected on 17th October, 2014 on the basis of the aforesaid sale deed refers to the aforesaid permission. The Mutation entry was certified by the Circle Officer on 15th November, 2014.

9 As stated earlier, the Appeal preferred by the Respondent Nos.5 to 7 before the Commission purports to be an Appeal for setting aside the mutation entry No.2002.

10 Under the Maharashtra Land Revenue Code, 1966 (for short “the said Code”), remedies of two appeals and two revision

applications are provided to challenge a mutation entry. In fact, Exhibit – F to the Petition shows that the Respondent Nos.5 to 7 preferred an Appeal under Section 247 of the said Code against the mutation entry before the Sub-Divisional Officer, Thane.

11 Before we deal with the impugned order, it will be necessary to advert to the provisions of Section 10 of the said Act of 2004 which reads thus :-

“10. (1) The functions of the Commission shall be as follows :-

(a) to examine the working of various safeguards provided in the Constitution of India and in the laws passed by the State Legislature for the protection of minorities;

(b) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards;

(c) to monitor the working of the safeguards provided in the Constitution, laws enacted by the Parliament and the State Legislature, and policies and schemes of the State Government for minorities;

(d) to conduct studies, research and analysis on the questions of avoidance of discriminations against minorities;

(e) to make a factual assessment of the representation of minorities in the services of the Government, Government undertakings, Quasi-Government bodies, Municipal Corporations, Municipal

Councils, Zilla Parishads, Panchayat Samitis and Village Panchayats and in case, the representation is inadequate, to suggest ways and means to achieve the desired level;

(f) to make recommendations for ensuring, maintaining and promoting communal harmony in the State;

(g) to make periodical reports at prescribed intervals to the Government;

(h) to study any other matter which, in the opinion of the Commission, is important from the point of view of the welfare and development of minorities, and to make appropriate recommendations;

(i) to consider the grievances of the minorities and to suggest appropriate solution, from time to time;

(j) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities;

(k) to co-ordinate and supervise the implementation of the Prime Minister's 15 Points Programme for Welfare of Minorities:

Provided that, if any matter specified in sub-section (1) is undertaken by the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992, the State Commission shall cease to have jurisdiction in such matters.

(2) The Government shall cause the

recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of such recommendations.”

12 On plain reading of Section 10, it is crystal clear that there is no power conferred on the Respondent No.4 (the Commission) to adjudicate upon any dispute or a *lis* and to pass any executable order much less to make an adjudication on legality and validity of a sale transaction. Under clause (i), the Commission gets power to consider the grievances of the minorities and to suggest appropriate solution, from time to time. The power under clause (j) of Sub-Section (1) is conferred to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities. As far as the power to make recommendations is concerned, it is only in clauses (b) and (f) of Sub-Section (1) of Section 10. Clause (a) of Sub-Section (1) confers power to examine the working of various safeguards provided in the Constitution of India and in the laws passed by the State Legislature for the protection of minorities. Clause (b) confers power to make recommendations with a view to ensure effective implementation and enforcement of all the safeguards. Clause (f) confers power to make recommendations for

ensuring, maintaining and promoting communal harmony in the State. Sub-Section (2) provides that the recommendations of the Commission shall be laid before each House of Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations.

13 Now, coming to the impugned order, after considering the submissions, the Chairperson of the Commission has purported to record findings. He has recorded that the role played by the Circle Officer is suspicious. Secondly, the Chairperson has observed that while registering the sale deed, the power of attorney holders have given false statement before the Government Officers and have fabricated the documents. It is observed that even the petitioner – Trust has participated in the entire process and therefore, an enquiry is called for through Economic Offences Wing. In clause 5 of the conclusion, the Chairperson has raised a question whether the petitioner being a Public Charitable Trust has obtained permission of the Charity Commissioner for acquiring the said property and that this aspect has not been inquired into by the Sub-Registrar of Assurances and the Sub-Divisional Officer. Perhaps, the Chairperson was completely unaware of the provisions of Section 36 of the Maharashtra Public Trusts Act, 1950 which requires Trustees to obtain prior permission of the Charity

Commissioner before selling a Trust property. No such permission was contemplated for acquiring a property by a Public Charitable Trust. However, the Chairperson has observed that large amount is spent by the petitioner – Trust on purchase of the property such as stamp duty and the amount deposited with Tahsildar. He has expressed suspicion about the petitioner – Trust possessing such a large amount. He went to the extent of observing that the Trustees of the petitioner have acted contrary to the Trust and, therefore, they are liable to be suspended. He has observed that illegal construction has been carried out on the property in question. He has directed demolition of the construction carried out on the subject property and has directed that an action be taken for immediately placing the Respondent Nos.5 to 7 in possession of the subject property.

14 From the tenor of the impugned order, it appears that the Commission has issued aforesaid drastic directions which will nullify the registered conveyance deed. We have already reproduced the directions issued under the impugned order. As stated earlier, the power to make recommendations is confined to clauses (b) and (f) of Sub-Section (1) of Section 10. Both clauses are not at all applicable in the present case.

15 Thus, the Chairperson of the Commission has purported to exercise the powers while passing the impugned order which were not vested in him.

16 The learned counsel appearing for the Respondent Nos.5 to 7 has relied upon Section 10-A which reads thus :-

“10-A. Powers of Commission.- The Commission shall, while performing any of its function under sub-section (1) of section 10, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (V of 1908), and, in particular, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or document or copy of such record of document from any office; and
- (e) issuing commissions for the examination of witnesses and documents.”

17 Merely because certain powers of the Civil Court under the Code of Civil Procedure, 1908 are conferred on the Commission, it does not mean that the Commission gets power to adjudicate as if it is a Civil

Court. Certain powers are conferred on the Commission under Section 10. Powers under Section 10-A are to be utilised for exercising the powers under Section 10. That is the only significance of the Section 10-A of the said Act.

18 There is one more important aspect of the matter. Provisions of the said Act of 2004 are applicable to the minorities as defined in clause (d) of Section 2. Going by the admitted facts, even the Trustees of the petitioner belong to minorities as defined under the said Act. Even the constituted attorneys whose names appear on the sale deed fall in the category of minorities. In that sense, what was raised by the Respondent Nos.5 to 7 was a dispute between the members of the same community who fall in the category of minorities under clause (d) of Section 2. This is one more reason for interfering with the impugned order.

19 The impugned order is unsustainable. The impugned order cannot be read as recommendations of the Commission.

20 Accordingly, the Petition must succeed and we pass the following order :-

ORDER

- (i) The impugned order dated 10th March, 2016 is hereby set aside;
- (ii) The Complaint filed by Respondent Nos.5 to 7 stands dismissed;
- (iii) We make it clear that we have made no adjudication on the issue of legality and validity of the Conveyance Deed dated 16th July, 2014 as well as all steps taken on the basis of the said conveyance including mutation entry No.2002. If the Respondent Nos.5 to 7 have any grievance about the same, it is for them to adopt the appropriate remedy in accordance with law;
- (iv) Rule is made absolute on above terms.

(A.K. MENON, J)

(A.S. OKA, J)