

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6537 OF 2011

Hamid Mohammad Siddiq Khan	...Petitioner
<i>Versus</i>	
The State Of Maharashtra	
And Ors	...Respondents

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Mr.J.A. Udaipuri i/b. Udaipuri & Co., for the Petitioner.
Mr.S.D. Rayrikar, AGP for Respondents No.1 and 2.
Mr.G.S. Godbole, Senior Advocate a/w. Jyoti Sinha i/b.
Negandhi, Shah & Himayatullab, for Respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 03rd APRIL, 2017

P.C.

1. Heard Mr.J.A. Udaipuri, learned Counsel for the petitioner, Mr.S.D. Rayrikar, learned A.G.P. for respondents No.1 and 2 and Mr. G.S. Godbole, learned Senior Counsel for respondent No.4, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged :

(1) the judgment and order dated 16.11.2004 passed by the learned Charity Commissioner, Maharashtra State, Mumbai in Application No.J-4/206/2004. By that order, the learned Charity Commissioner granted permission to the trustees of

respondent No.3 Trust under Section 36(1)(a) read with Section 36(1)(c) of the Maharashtra Public Trusts Act (for short, 'Act') to sell property at Cadastral Survey No.243 of Tardeo Division admeasuring about 13,837.06 sq. mtrs. situate at J.B. Behram Marg, Byculla, Mumbai – 400 008 belonging to the Trust to respondent No.4 M/s. Neelkamal Realtors and Builders (P) Ltd. for Rs.1 Crore subject to lease hold rights of Soli J. Sorabjee.

(2) the order/letter dated 13.6.2006 addressed by the Chairman, Maharashtra State Board of Wakf (for short, 'Board') to the Chief Trustee of the third respondent and also fourth respondent.

(3) the judgment and order dated 23.4.2010 passed by the Charity Commissioner, Maharashtra State, Mumbai in Application No.2/2009 filed under under Section 36(2) of the Act for revocation of the sanction granted on 16.11.2004.

3. Mr. Godbole raised preliminary objection about maintainability of the petition. He submitted that order dated 23.4.2010 was challenged by the petitioner by instituting Writ Petition No.1420/2010 on the Original Side of this Court. By order dated 8.9.2010, Division Bench of this Court [Coram: D.K. Deshmukh & N.D. Deshpande,JJ.] permitted the petitioner to

withdraw the petition and clarified that withdrawal of the Petition will not come in the way of the petitioner challenging the order dated 13.6.2006 passed against him by the Board which is referred to in the order dated 23.4.2010 passed by the Charity Commissioner, if petitioner is otherwise entitled to challenge that order.

4. Mr. Godbole submitted that the petitioner herein along with Shahzad Jumman Khan instituted Writ Petition No.877/2013 on the Original Side of this Court *inter alia* praying for passing appropriate orders to unearth the illegality and irregularity done by respondent No.4 herein in conclusion with the BMC, MHADA and State Government thereby depriving the petitioner and other occupants of 250/275 industrial galas of their additional area (loft) and other benefits incidental thereto, among other prayers. He submitted that the petitioner who was the first petitioner therein did not press that Petition on the ground that he has already instituted the Suit. As far as the second petitioner is concerned, he was allowed to withdraw the Petition with liberty to file fresh petition. It is common ground between the parties that no fresh petition was instituted by the second petitioner.

5. Mr. Godbole submitted that by prayer clause (M) of the petition, the petitioner has sought interim relief restraining respondent No.4 from carrying out further construction upon C.S. No.243, Tardeo Division. By prayer clause (N), the petitioner has sought mandatory order for demolishing construction made on C.S. No.243, Tardeo Division. He submitted that on one hand the petition is filed praying these reliefs and on the other he has instituted Suit No.2950/2007 on the Original Side of this Court for specific performance. He submitted that the petitioner has executed an agreement giving consent for redevelopment and has got permanent alternate accommodation on ownership basis under Development Control Regulation 33(7). He, therefore, submitted that even on this ground the prayers made in the Petition cannot be granted.

6. After arguing the Petition for quite some time, Mr. Udaipuri, upon taking instructions from the petitioner who is present in Court, seeks permission to withdraw the Petition with liberty to file Petition seeking review of the order dated 8.9.2010 passed by this Court in Writ Petition No.1420/2010 instituted on the Original Side of this Court. Mr. Udaipuri has tendered photo-copy of Identity Card of the petitioner issued by the

Election Commission of India, which is taken on record and marked 'X' for identification. He further submits that the petitioner will pray for condoning the delay in filing Review Petition by excluding the time spent in prosecuting this Petition from 25.7.2011 till today. He states that the petitioner will file Review Petition within four weeks from today.

7. Mr. Godbole submitted that the petition was dismissed in default on three occasions. He submitted that the petitioner was not prosecuting this Petition bonafide and, therefore, cannot avail the benefit of Section 14 of the Limitation Act, 1963.

8. In view thereof, on the motion made by Mr. Udaipuri, Petition is allowed to be withdrawn with liberty as prayed for and is accordingly disposed of. Grant of liberty shall not be construed as an expression on merits either way. All contentions of the respondents, including maintainability of such Review Petition and that Review Petition is barred by limitation are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)