

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 22491 OF 2016**

Shri Siddheshwar Mahadev Mandir)
Trust, Shirgaon, Taluka Walva, District)
Sangli P. T. R. No.A-713-Sangli through its)
Authorized Trustee Shri Pandurang)
Ramchandra Patil, Age 82 years, Occ:)
Agriculture residing at Shirgaon, Taluka)
Walva, District Sangli) ..Petitioner

Vs.

Joint Charity Commissioner,)
Kolhapur Region, Kolhapur) ..Respondent

Mr. Chetan Patil for the Petitioner
Mr. S. D. Rayrikar AGP for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 8th FEBRUARY, 2017

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties
made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 25-5-2016 passed by the Learned Joint Charity Commissioner, Kolhapur Division, Kolhapur, by the said order, the application filed by the Petitioner under Section 36 of the Maharashtra Public Trust Act 1950 (for short the said Act) for sale of its property being land bearing Gat No.247/1/1/ admeasuring 40 Ares out of total land admeasuring 52 Ares. The said application was made

on 13-4-2011. The Learned Joint Charity Commissioner, Kolhapur rejected the said application by order dated 21-12-2012 inter alia on the ground that the proper procedure of inviting tenders was not followed by the Petitioner and that the Petitioner had not produced the original documents. There were also certain observations made as regards the need of the Petitioner to sell the land in question.

3 The Petitioner did not challenge the said order dated 21-12-2012, however filed a fresh application under Section 36 for sale of the said land. The Petitioner in the instant application pointed out the legal necessity to sell the land so as to generate funds for the renovation of the Lord Siddheshwar temple which it manages. It was also the case of the Petitioner that the said land fetches a meager income to the Petitioner and therefore it was not worth while to keep the said land when the temple is requiring renovation for which the Petitioner did not have the funds. The Learned Joint Charity Commissioner has rejected the instant application filed by the Petitioner on the ground that the earlier application was rejected not only for technical reasons but also on merits. The Learned Joint Charity Commissioner has further observed that if the tenant is willing then the Petitioner can better utilise the agricultural land which is fertile and generate income out of it. As indicated above, it is the order dated 25-5-2016 passed by the Learned Joint Charity Commissioner which is taken exception to by way of the above Petition.

4 Heard the Learned Counsel for the parties.

5 It was the submission of Mr. Patil the Learned Counsel appearing on behalf of the Petitioner that the earlier application filed by the Petitioner was rejected by the Learned Joint Charity Commissioner by order dated 21-12-2012 for technical reasons as the Learned Joint Charity Commissioner found that the process of inviting tenders was not properly followed by the Petitioner as also the original documents were not filed. It was the submission of the Learned Counsel that the Learned Joint Charity Commissioner ought to have addressed the issue as to whether the permission was required to be granted to the Petitioner by taking into consideration whether there was a legal necessity for the Petitioner which is a trust to sell the property in question. The Learned Counsel would submit that the Learned Joint Charity Commissioner has also erred in observing that the Petitioner can generate income from the land having regard to the fact that there is a sitting tenant on the said land from whom the Petitioner is getting a mere rent of Rs.455 per year.

6 Per contra, the Learned AGP would support the impugned order. The Learned AGP would contend that having regard to the submissions made by Mr. Patil, especially having regard to the fact that there is a sitting tenant on the land and that since the Petitioner is now in a position to comply with the requisition made by the Learned Joint Charity Commissioner of producing the

original documents, the matter can be looked at again by the Learned Joint Charity Commissioner.

7 Having heard the learned Counsel for the parties I have considered the rival contentions. As indicated above, the issue arises as to whether the application filed by the Petitioner under Section 36 of the said Act ought to have been granted by the Learned Joint Charity Commissioner. As indicated above, the application seems to have been rejected in the earlier round on the technical ground that the original documents were not filed and that the proper procedure of inviting tenders was not followed by the Petitioner. The Petitioner thereafter once again filed a fresh application by taking corrective steps, however the instant application has been rejected on the ground that the first application has been rejected by the Learned Joint Charity Commissioner and the same would therefore act as Resjudicata and secondly on the ground that the Petitioner can put the land to better use. The said observations seem to have been made by the Learned Joint Charity Commissioner oblivious of the fact that it is not within the realm of possibility that a landlord would get a tenant to consent to the cultivation of the land jointly. In view of the fact that earlier application was rejected for a technical reason, the principles of Resjudicata would not be applicable in so far as the present application is concerned. The fact that the Petitioner is earning a sum of Rs.455/- per year from the said tenant as and by way of rent, cannot be lost

sight of. The Petitioner wants to utilise the funds that would be generated out of the sale of the land for renovation of the temple of Lord Siddheshwar. It is from the aforesaid perspective that the application was required to be adjudicated upon by the Learned Joint Charity Commissioner, that having not been done so, the impugned order dated 25-5-2016 is required to be quashed and set aside and is accordingly quashed and set aside. The matter is relegated back to the Learned Joint Charity Commissioner for a denovo consideration of the said application filed by the Petitioner. On remand, the Learned Joint Charity Commissioner would decide the said application having regard to the observations made in the instant order. The Petitioner to appear before the Learned Joint Charity Commissioner on 15-2-2017. The Learned Joint Charity Commissioner may thereafter fix the schedule as per convenience. On remand the application to be decided latest by 30-4-2017. The contentions of the Petitioner are kept open for being urged before the Learned Joint Charity Commissioner.

8 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]