

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1647 OF 2018

Apollo Industrial Premises Co-operative
Society Ltd. ... Petitioner
Versus
Bombay Xaverian Corporation
Pvt. Ltd.
And Others ... Respondents

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Mr. Jehangir Jejeebhoy a/w Mr. Dhanashree Gaikawari I/b Bilawala & Co.
for the Petitioner.

Mr. M. Fernandes I/b Vaish Associates for Respondent No.1.

Mr. V.A. Almeida for Respondent No.6.

Mr. Amit Shastri, AGP for Respondent No.7.

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CORAM : S.C. GUPTE, J.

DATE : 15 APRIL 2019

P. C. :

. This petition challenges an order passed by the Charity Commissioner, Maharashtra State, Mumbai, under Section 36(2) of the Maharashtra Public Trusts Act, 1950 ("Act").

2 The controversy concerns transfer of property as between the first Respondent-trust and Respondent No.6-transferee. The Petitioner claims rights in the property under an agreement for lease executed by the trustees of the Respondent-trust in favour of its predecessor-in-title. It is the case of the Petitioner that under the agreement for lease, its predecessor had an option to purchase the revisionary rights of the trust for

a stated sum within ten years from the date of its execution. Admittedly, the option was not exercised within the stipulated period. It is the Petitioner's case that after it stepped into the shoes of its predecessor, sometime in the year 1998, the Petitioner sought to exercise this purchase option; since, however, the Petitioner was not within the originally stipulated period for exercising of the option, the trustees offered to accept the Petitioner's option to purchase the revisionary rights for an enhanced sum. The Petitioner claims to have paid a part of this sum. All this happened in the year 1998. In pursuance of this agreement, it is claimed by the Petitioner, an agreement for intended transfer was executed between the Petitioner and the Respondent-trust in the year 2001. In pursuance of this agreement, an application was made by the Respondent-trust to the Charity Commissioner under Section 36(1) of the Act on 2 July 2001. It appears, thereafter disputes arose between the parties and as a result, the purported lease was terminated in the year 2001. The Petitioner herein appears to have filed a suit in the City Civil Court at Mumbai, challenging the termination and seeking *inter alia* enforcement of its purchase option. It is not in dispute that no interim relief has been granted to the Petitioner in that suit as of date.

3 In the backdrop of these facts, the original permission under Section 36(1) of the Act was granted by the Charity Commissioner to the Respondent-trust to sell the property to Respondent No.6 herein. This order was passed by the Charity Commissioner as far back as on 9 December 2011. In pursuance of this order, even a conveyance was executed and pursuant to it the property changed hands; it is Respondent No.6, who is now the owner of the property. The conveyance deed was

executed on 12 May 2013. It is only after the conveyance of the suit property that the Petitioner filed its application under Section 36(2) of the Act for revocation of the Charity Commissioner's permission under Section 36(1) for sale in favour of Respondent No.6. By the impugned order, this application was rejected.

4 The impugned order, in the premises, cannot be faulted. The property has changed hands and no longer answers its description as a trust property. As our Division Bench held in the case of **Stella A. Machado Vs. A.H. Wadia Charity Trust**¹, there is nothing for the Charity Commissioner to exercise his jurisdiction under Section 36(2), after the property changes hands after a transfer executed in pursuance of the permission under Section 36(1). Besides, the Petitioner has no case to agitate in pursuance of either its leasehold interest or its purchase option. It clearly has no *locus* to object to the transfer of the property in favour of Respondent No.6. Its agreement was terminated and the purchase option, if any, under the agreement was not honoured by the Respondent-trust for a long time as stated above. The Petitioner proceeded to even file a suit in the City Civil Court at Mumbai, seeking suitable protective reliefs. There is no ad-interim relief in favour of the Petitioner in that suit. In the premises, the Petitioner cannot be heard to challenge either the permission of the Charity Commissioner under Section 36(1) of the Act or sale of the property by Respondent No.1-trust in favour of Respondent No.6 in pursuance thereof or Charity Commissioner's refusal to revoke his sanction.

1 2006(1) Bom.C.R. 133

5 There is, accordingly, no merit in the writ petition. The petition is dismissed.

(S.C. GUPTE, J.)