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

NOTICE OF MOTION NO. 308 OF 2014
IN
SUIT NO. 30 OF 2014

Jatish Chandulal Mehta ..Applicant
(Org. Plaintiff)

<u>In the matter between :-</u>

Jatish Chandulal Mehta ..Plaintiff

versus

Shri Parshwanath Jain Vidyalalaya & Ors. ..Respondents

Mr. Gaurav Joshi, Counsel a/w. Mr. Chirag Modi a/w. Mr. Viral Shukla, Mrs. Priti Shukla, Mr. Darshan Ashar and Ms. Heena Jewani I/b. Shukla & Associates for the Plaintiff.

Mr. Gautam Ankad a/w. Mr. Purohit I/b. Ashok Purohit & Co. for the Defendant nos.1 to 38, 40 to 49.

Mr. G.S.Godbole a/w. Mr. Sandeep Parikh and Ms. Meena Shah I/b. Pandy & Co. for the Defendant Nos. 39, 50 to 53.

Mr. Sukanta Karmarkar AGP for the Defendant Nos.54 and 56.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 10th December, 2019.

P.C.

1. The Plaintiff who claims to be one of the trustees of the Defendant no.1 trust has filed this notice of motion for the following reliefs:

" *a) That pending the hearing and final disposal of the suit, Court Receiver, High Court, Bombay be appointed as Receiver in respect of the suit property described in Exhibit*

"B" to the affidavit in support of the plaint.

b) That pending the hearing and final disposal of the suit, Defendant No.1 to 50 be restrained by an order and injunction of this Hon'ble Court from in any manner alienating, encumbering, transferring, creating third party rights or changing tenancies or altering status quo in any manner whatsoever in respect of the suit property described in Exhibit 'B" to the affidavit in support of the plaint"

2. The Defendant no.1 is a registered Public Charitable Trust registered under the Rajasthan Public Trust Act, 1959 (hereinafter referred to as "the RPT Act"). The Defendant Nos.2 to 49 are the Managing/Working Committee members of the Defendant No.1-Trust. The Defendant No.50, which was formally known as M/s Keval Kiran Realties Pvt. Ltd. is a private limited company engaged in construction business and development of properties. Defendant Nos.39, 51 to 53 are the Directors of the Defendant No.50 -Company. The Defendant Nos.54 is a Commissioner and Defendant No.55 is an Assistant Commissioner , who are the statutory functionaries under the RPT Act.

3. The dispute in the present case is in respect of an immovable property admeasuring 848.67 sq. meters bearing Cadestral Survey No. 1/1446/F.P.No. 315 bearing TPS IV at Lower Parel Division, Varkana Bhavan, Bhavani Shankar Road, Dadar (West), Mumbai 28, owned by

the Defendant No.1-Trust. The said property shall be hereinafter referred to as "the suit property".

4. The suit property comprises of land plus two buildings, which have been occupied by about 60 tenants. By resolution dated 8th Oct., 2006, the General Body of the Defendant No.1 trust resolved to enter into an agreement with the Defendant No.50 for development of the suit property. It was resolved to jointly authorize Defendant Nos.2, 3, 6 and 10 to do all such acts, deeds, matters and things and to execute, sign, register all such papers, forms documents and agreements, etc. as may be necessary to give effect to the aforesaid resolution. Based on the said resolution Defendants Nos.2, 3, 6 and 10 executed a Development Agreement dated 27.9.2007 in favour of Defendant No. 50. On the same date, these Defendants executed a power of attorney in favour of the Defendant Nos.39 and 51 authorizing them to do all acts and execute deeds and documents in respect of the suit property.

5. The Plaintiff, who is one of the trustees, vide letter dated 5.4.2011, lodged his objections before the Defendant No.55 that such an agreement could not have been entered into without prior permission as required under Section 31(1) of the RPT Act. Upon hearing all the concerned parties, the Defendant No.55 by Order dated 16th February, 2012, dropped the proceedings holding that the development agreement

is not a conveyance or an instrument akin to sale, gift or lease. The Defendant No.55 also recorded the statement of the Defendant No.1 that prior sanction would be obtained before entering into a deed of conveyance.

6. By letter dated 20th June, 2012, Defendant no.1 sought sanction for sale of the suit property. The Defendant no.55 vide letter dated 09th July, 2012 called upon the Defendant no.1 to submit the Title Deed and Trust Deed and directed the Defendant no.1 not to transfer the suit property until the final order. Pursuant to the internal communication received from the Defendant no.54, Defendant no.55 vide letter dated 26th September, 2012 requested the Sub Registrar of Assurance, Mumbai not to register any documents on behalf of the Defendant no.1 unless sanction of the Charity Commissioner of the Devasthan was obtained. While the application was pending before the Defendant nos.54 and 55, the Defendant nos.39 and 51, purportedly acting on the Power of Attorney executed in their favour on behalf of the Defendant no.1, signed the Deed of Conveyance dated 15th September, 2012 in favour of the Defendant no.50.

7. The Defendant no.50 addressed a letter dated 4th October, 2012 to the Defendant no.55 contending that the sanction was deemed to have been granted under Section 31(3) of RPT Act. The Defendant no.50

alleged that the property ceases to be the trust property and requested the Defendant no.55 to take note of the above facts and rectify the records of the Defendant no.1 trust. On receipt of the said letter, the Defendant no.55, on instructions of the Defendant no.54 initiated proceedings (Case No.2 of 2012) against the Defendant no.1 under Section 38 and 41 of RPT Act for alienating the trust property without obtaining prior sanction. While the proceeding no.2 of 2012 were pending adjudication, the Plaintiff, who is one of the trustees, filed the suit questioning validity of the deed of conveyance. Pending the suit, the Plaintiff has sought interim reliefs as stated above.

8. The Plaintiff claims that the Defendant no.1 had not issued a public notice calling for offers /bids from the members of public before resolving to confer development rights on Defendant no.50. The Defendant no.1 had also not sought prior sanction under sec. 31(1) of the RPT Act before executing development agreement and entering into a deed of conveyance in favour of Defendant no.50. The Plaintiff has further averred that the resolution dated 8th October, 2006 did not authorize execution of power of attorney in favour of the Directors of Defendant no.50 and /or alienation of the suit property in favour of Defendant no.50. The grievance of the Plaintiff is that the Defendant no.1 has sold a valuable property by private arrangement for a meager amount, without complying with mandatory provisions under the RPT

Act. The transaction not only lacks transparency, but is also in contravention of the provisions of the RPT Act and hence null and void.

9. During the pendency of the suit the Defendant no.55, by order dated 17th October, 2013 dropped the proceedings No. 2 of 2012 holding that no final decision was taken on the application for sanction within the prescribed time and hence it could be construed that deemed permission was accorded under Section 31(3) of the Act. These subsequent events have been brought on record by way of an amendment. The Plaintiff has averred that the deeming provision under Section 31(3) could not have been validly invoked since the application for sanction was incomplete. The Plaintiff has further stated that the Deed of Conveyance was executed in contravention of directions by the Authority not to transfer the suit property till the final decision. It is averred that the decision dated 17th October, 2013 can at the most be construed as post facto sanction, which is not contemplated under the RPT Act. Furthermore, the Act does not confer jurisdiction on the authority to determine whether the sanction under Section 31(3) is deemed to have been accorded.

10. By Order dated 24th September, 2013 this Court had called upon the Defendants to file their affidavit in reply with further direction to the Defendant no.50 to maintain status quo in respect of the suit property.

Mr. Hemant P. Jain, the Director of Defendant no.50 has filed his affidavit in reply wherein he has alleged that the suit property was completely occupied by tenants. He contends that the expenses incurred by the Defendant no.1 in maintenance of the suit property exceeded the rent received from the tenants and that the suit property was of no use to the Defendant no.1. It was under these circumstances that the Defendant no.1- Trust passed a resolution to enter into a development agreement with the Defendant no.50. The Defendant no.50 claims that the Defendant no.1 through its authorized representatives entered into a development agreement and executed a POA in favour of the Defendant no. 39 and 51.

11. The Defendant no.50 further claims that Defendant no.1 through its authorized trustees had made an application to the Defendant no.55 in the prescribed Form No.9 for permission to sell the suit property to the Defendant no.50. In compliance with the letter dated 9th July, 2012, received from the Defendant no.55, the Defendant no.1 vide its letter dated 20th July, 2012 forwarded the title documents of the suit property and further informed that there were no restrictions in the trust deed on the sale of the suit property. The Defendant no.50 claims that on 1st August, 2012 the Defendant no.55, Jodhpur reported to the Charity Commissioner, Udaipur that the sale of the suit property would be in the interest of the Defendant no.1 trust and recommended grant of

permission to sell the suit property. On 30th August, 2012 the Defendant no.1 trust requested the Defendant no.55 to give his decision on the form no.9. The Defendant no.50 claims that the Defendant no.1 had furnished all the documents as required by the Defendant no.55, despite which no sanction was received within two months. The Defendant no.50 therefore claims that sanction is deemed to have been accorded in terms of Section 31(3) of the RPT Act. The Defendant no.50 alleges that it has not violated any order passed by the Defendant nos.54 and 55 and has denied having contravened the provisions of the RPT Act.

12. The Defendant no.1 -Trust and the trustees have supported the case of the Plaintiff. They have stated that except development rights no other rights were conferred upon Defendant no.50. These Defendants have further stated that as per the Development Agreement, construction was to be completed within a period of three years failing which the parties were at liberty to rescind the agreement and refund the money. It is stated that vide notice dated 5th March, 2012 the Defendant no.1 had rescinded, revoked and canceled the development agreement and had expressed willingness to refund the amount received under the said agreement. The Defendant no.1 had also stated that the trust property could not have been sold without prior sanction as contemplated under Section 31 (1) of the RPT Act.

13. These Defendants have further stated that execution of deed of conveyance was without their knowledge and consent. The said deed of conveyance was executed by misusing the power of attorney, which was executed only for development purpose. These Defendants have further stated that the Defendant no.50 has also not paid the entire consideration as stipulated in the development agreement and that the deed of conveyance is null and void.

14. The submissions of Shri Joshi, the learned Counsel for the Plaintiff can be summarized as under:-

(i) The Defendant no.1 has entered into a development agreement with Defendant no.50 without obtaining prior sanction of the Assistant Charity Commissioner (Defendant no.55);

(ii) The suit property is a valuable property located in a prime location. Prior to taking resolution or entering into Development Agreement, the Defendant no.1 had not issued a public advertisement inviting bids from other prospective developer ;

(iii) Resolution dated 8th October, 2006, was only to enter into a development agreement with Defendant no.50 and did not authorise sale of the suit property as recorded in recital 3 of the Development Agreement;

(iv) The Resolution did not authorise execution of power of attorney in favour of Defendant nos.39 and 51;

(v) Under the Development Agreement, the Defendant nos.2, 3, 6 and 10 were authorized to act on behalf of the Defendant no.1 to facilitate development of the suit property and not to execute a deed of conveyance as recorded in clause 15 of the Power of Attorney.

(vi) The Defendant no.39 was a trustee as well as a Director of Defendant no.50. The Power of Attorney has been executed in facour of Defendant no.39 despite conflict in interest. The power conferred on Defendant nos.39 and 51 is not in consonance with the Resolution.

(vii) As per the Development Agreement the suit property was agreed to be developed within a period of three years from the date of Commencement Certificate. The Development Agreement contemplated execution of conveyance post redevelopment in favour of the incorporated body association of buyers.

(viii) In terms of the development agreement, the deed of conveyance was to be executed after completion of the construction. The Defendant no.50 has not paid the entire consideration. The sale deed executed in favour of the Defendant no.50 is not in consonance with the terms of the development agreement.

(ix) The Defendant nos.39 and 51, have misused the Power of Attoney and transferred the property in favour of Defendant no.50 without completion of construction and payment of full consideration.

(x) The RPT Act does not contemplate post facto sanction. The Defendant no.1 trust has conveyed the suit property to the Defendant no.50 without obtaining prior sanction under Section 31(1) of the RPT Act, which renders the sale deed null and void.

(xi) The suit property is sold at a meager price without inviting bids and following proper procedure. The sale deed was executed despite orders from Defendant no.54 and 55 not to enter into any transaction until final order. The transaction lacks transparency and is not in the interest of the trust.

(xii) The application for sanction submitted by the Defendant no.1 trust was incomplete and this is evident from the fact that the Defendant no.54 had called upon the Defendant no.1 to furnish documents and restrained the Defendant no.1 from transferring the suit property pending final decision on the issue of sanction. Hence, the deeming provision under Section 31(3) is not attracted.

(xiii) The Defendant No.39 who is one of the members of the Trust and also a Director of the Defendant no.50, has got the property conveyed in favour of the Defendant no.50 in contravention of provisions of the RPT Act.

(xiv) The issue involved in the suit, particularly challenge to the Deed of Conveyance, cannot be adjudicated under the provisions of the RPT Act. Hence the civil court has jurisdiction to decide the issue and grant interim relief.

15. In support of the above contentions the learned Counsel Shri Joshi

has relied upon the following judgments:-

(i) **CHMS Edu. Soc. vs. Jt. Charity Commissioner 2009(10 Mh.L.J. 762);**

(ii) Leeladhar vs. Bherubagh Jain Tirth 2009 SCC online;

(iii) Suresh Estate Pvt. Ltd. Vs. MCGM & Ors. (2007) 14 SCC 439;

(iv) GTL Infrastructure vs. Dhule Municipal Corporation 2011(6) Mh.L.J. 215;

(v) Ram Dwara Bachao Sangarsh Samiti v. State of Rajasthan 1994 SCC Online Raj 486;

(vi) Marsingh Das vs. Mat. Amar Kanwar S.B.Civil Appeal No. 127 of 1967;

(vii) Shailesh Developers and anr. vs. Jt. Charity Commissioner, Maharashtra -2007(3) Mh.L.J. 717

(viii) Siddhivinayak Constructions vs. Vikas – 2012 Mh.L.J. 913;

(ix) Cyrus Rustom Patel vs. Charity Commissioner, Maharashtra State (2018) 14 SCC 761;

16. Shri Godbole, the learned Counsel for the Defendant no.50 submits that :-

(i) The suit property was tenanted and the buildings are in dilapidated condition. The Defendant no.1 was not deriving any income from the suit property. Hence it was in the interest of the trust to develop the property. Accordingly, a resolution was taken to develop the suit property.

(ii) The Development Agreement as well as the Power of Attorney have been executed as per the resolution taken in the General Body Meeting held on 8th October, 2006.

(iii) The Defendant no.39 was a co-opted member. He had not attended any meeting and that he did not have any interest in the trust property.

(iv) The Defendant no.1 had applied for permission in prescribed format. No decision was taken within the prescribed time hence sanction was deemed to have been granted under Section 31(3) of the RPT Act.

(v) The issue regarding adequacy of consideration and the issue relating to the sale of trust property can be decided under the RPT Act, and hence jurisdiction of the Court is barred under Section 73 of the said Act.

(vi) The Defendant no.50 has invested large money in the property. Any interim order passed in the notice of motion will adversely affect the interest of the tenants as well as the interest of the trust and will cause irreparable damage and hardship to the Defendant no.50.

17. He has relied upon the decisions of the Apex Court in ***Church of North India vs Lavajibhai Ratanjibhai and Ors. (2005) 10 SCC 760*** and ***Vinodkumar M. Malavia and Ors. V/s. Maganlal Mangaldas Gameti, (2013) 15 SCC 394.***

18. The Defendant no.1 Trust has supported the Notice of Motion. The submissions of the learned counsel for the Defendant no.1-Trust are as under :-

(i) The resolution was only for redevelopment and that the deed of conveyance has been executed by misusing the power of attorney, which was executed only for the purpose of development.

(ii) The sale deed has been executed despite being informed that the Defendant no.1 was not interested in taking any steps in respect of the suit property since the application for sanction was pending before the appropriate authority.

(iii) The development agreement was already rescinded/ terminated, which fact was suppressed by the Defendant no.50. It is submitted that the Defendant no.50 has got the suit property conveyed in its favour on the basis of a false declaration.

19. I have considered the submissions advanced by the learned counsel for the respective parties and perused the affidavit in support of motion, affidavit in reply, affidavit-in-rejoinder, and the other material placed on record.

20. The primary objection is as regards the jurisdiction of the Court to entertain the suit and to grant interim relief in view of bar of Section 73 of the RPT Act. Before adverting to the facts of the case, it would be relevant to refer to the judgment of the Apex Court in ***Sahebgouda (Dead) by Lrs. & Ors. vs. Ogeppa & Ors. [(2003) 6 SCC 151].*** In the said case a suit was filed by a Pujari seeking declaration in respect of his right to perform puja and relief of permanent injunction to restrain the Defendant from interfering with his rights. The Defendant had

questioned the jurisdiction of the civil court in view of the bar under Section 80 of the Bombay Public Trusty Act, 1950, which is pari materia with Section 73 of RPT Act. While considering the issue of jurisdiction, the Apex Court has observed that under Section 9 of CPC, the Civil Court has jurisdiction to try all suits of a civil nature except suits of which cognizance is either expressly or impliedly barred. It is observed that a provision of law ousting the jurisdiction of a Civil Court must be strictly construed and exclusion of jurisdiction of the Civil Court should not be lightly to be inferred unless the party raising such issue is able to discharge the onus that such exclusion is either explicitly expressed or clearly implied. On the facts of the case, the Apex Court observed that reliefs claimed in the suit do not come under the ambit of Section 19 or 79 on which the Deputy or Asst. Commissioner has jurisdiction to hold enquiry and give decision. Therefore the bar of Section 80 of the Act would not be attracted.

21. In Church of North India (supra) the Apex Court has followed the following principles in ***Dhulabai vs. State of MP, AIR 1969 SC 78*** relating to the exclusion of jurisdiction of civil court.

> *" 40….*
> *(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude*

those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality or any provision is to be challenged, a suit is open. A writ or certorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its

constitutionality are for the decision of the authorities and a civil suit is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

22. The Apex Court has observed that a plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose averments disclosing cause of action and the relief sought for therein must be considered in their entirety. Upon analyzing the provisions of BPT Act, the Apex Court has held that the BPT Act is a special law. It confers jurisdiction on the Charity Commissioner and other Authorities named therein. The statute has been enacted by the State legislation in public interest to safeguard the properties vested in the Trust as also control and management thereof so that the Trust property may not be squandered or the object or purport for which a public trust is created may not be defeated by a person having control there over.

23. The Apex Court has held that the Civil Court will have no jurisdiction in relation to a matter whereover the statutory authorities have the requisite jurisdiction. On the other hand, if a question arises, which is outside the purview of the Act or in relation to a matter,

unconnected with the administration or possession of the trust property, the civil court may have jurisdiction. These principles have been reiterated in Vinod Kumar M. Malviya (supra).

24. Reverting to the facts of the present case, the Defendant no.1 has claimed that the suit is barred under Section 73 of the RPT Act, which reads thus:

> "***Sec.73. Bar of Jurisdiction****:*
> *Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or in respect of which the decision or order of such officer or authority has been made final and conclusive".*

25. A plain reading of this provision indicates that Section 73 of the RPT Act would come into force only when the questions raised in the suit can be decided or dealt with by the authority under the Act, or when a decision or order of the authority under the Act is final and conclusive. In the instant case, the Plaintiff has questioned the validity of the sale deed executed in favour of the Defendant no.50 on the ground that the same is in contravention of Section 31(1) of the RPT Act. Hence the issue is whether the question raised in the suit can be decided or dealt with by the Authority under the Act. In this regard, it would be appropriate to consider the provisions of Section 38, 39 and 40 of the RPT Act, 1959 which read thus:

Sec.38. Application for directions.

1. If the Assistant Commissioner, on the application of any person having interest in a public trust or otherwise, is satisfied after making such inquiry as he thinks necessary that-

(a) the original object of the public trust has failed.

(b) the trust property is not being properly managed or administered or

(c) the direction of the Court is necessary for the administration of the public trust.

he may, after giving the working trustee an opportunity of being heard, direct such working trustee or any other trustee or person having interest in the trust to apply to the court for directions, within such time not exceeding thirty days as may be specified by the Assistant Commissioner.

2. If the working trustee or any other trustee or person having interest in the trust so directed fails to make an application as required, or if there is no trustee of the public trust, or if, for any other person, the Assistant Commissioner considers it expedient to do so, he shall himself make an application to the court.

Sec. 39- Application to Commissioner against refusal to apply under Sec.38.

1. Where the Assistant Commissioner rejects and application under Sub-Section (1) of Section 38 or fails or refuses to make an application to the Court himself under *sub-Section (2) of that Section, the Commissioner may, on an application made to him within ninety days of such rejection, failure or refusal or upon the facts otherwise coming to his knowledge and after giving the working trustee a reasonable opportunity of being heard, set aside the Order of the Assistant Commissioner, if any, and require him to apply to the court himself for directions.*

2. Subject to the orders of the Commissioner under sub-Section (i) all orders passed by the Assistant Commissioner under Section38 shall be final.

Sec.40- Powers of the Court on application under Sec. 38 or Sec. 39.

1. *On receipt of an application made under or in pursuance of section 38 or Section 39 the court shall make or cause to be made such inquiry into the case as it deems necessary and pass such orders thereon as it may consider appropriate.*

2. While exercising the powers under sub-section (1) the court shall, besides other powers, have power to make an order for -

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original object has failed shall be spent, having due regard to the object for which the trust was created;

(f) issuing such other directions as the nature of the case may

require.

3. Any order passed by the court under sub-section (2) shall be deemed to be a decree of such court and an appeal shall lie there from to the High Court.

26. A bare reading of Section 38 reveals that it does not cover the question relating to the sale of the trust property. Under Section 38 the Assistant Commissioner can issue directions to apply to the District Court only in respect of those questions which are enumerated in clause (a), (b) and (c) of sub-Section (1) of Section 38. While exercising powers under Section 40 the District Court can make orders as stipulated in clauses (a) to (f) of sub-Section (2) of Section 40. It is thus evident that the powers conferred on the District Court under Section 40 are limited and qualitatively different from plenary jurisdiction to entertain a suit. The District Judge exercising powers under Section 40 cannot go into the question of the validity of the sale and order cancellation of the sale deed.

27. Similar question was raised in Liladhar (supra), wherein a Single Judge of Rajasthan High Court has held that provisions of Section 38, 39 and 40 of the Act operate in different field and are independent from Section 31 of the Act which requires previous sanction to be obtained by public trust for certain transfers. It was held that under Section 40(2) the District Court has no jurisdiction to adjudicate on the validity or

otherwise of the sale deed or set aside the registered sale deed. It was held that if according to the applicant, the sale is hit by Section 31 of the Act, the remedy lies in filing civil suit for cancellation of such sale deed and not the application under Section 40 of the RPT Act. Considering the above, in my prima facie view, the authority under the Act is not competent to decide or deal with the questions raised in the suit. Hence, prima facie the bar of Section 73 would not be attracted to the facts of the case.

28. The next and crucial question for consideration is whether the Plaintiff has prima facie proved that the sale transaction is not valid for want of sanction under Section 31(1) of the RPT Act and whether the transaction lacks transparency.

29. It is not in dispute that the suit property is owned by Defendant no.1, a public trust registered under the provisions of the RPT Act. The material on record indicates that in the Annual General Body Meeting held on 8th October, 2006, a resolution was passed to enter into a development agreement with Defendant no.50 for development of the suit property in accordance with development agreement, a draft copy of which was tabled before the General Body for perusal. It was further resolved to jointly authorize Defendant nos. 2, 3, 6 and 10 to do all such acts, sign and execute deeds, documents and agreements etc on behalf of

the Defendant no.1, as may be necessary, to give effect to the resolution. Pursuant to the afore stated resolution the Defendant Nos.2, 3, 6 and 10 entered into a development agreement with the Defendant No. 50 to develop the suit property.

30. It is not in dispute that the Defendant no.1 had not obtained sanction of the Assistant Charity Commissioner before entering into a development agreement with Defendant no. 50. The Plaintiff, who is one of the trusties had filed his objections before the Defendant no. 1 trust as well as the Defendant no.55 that the development agreement was entered into without prior sanction and was for a meager amount. The Defendant no.1 and 50 contested the proceedings before the Defendant no.55 mainly on the ground that the development agreement does not come within the sweep of Section 31 of the RPT Act. By order dated 16th February, 2012 the Defendant no.55 dropped the proceedings holding that the previous sanction can be obtained before concluding the transfer as envisaged under Section 31 (1) of the RPT Act. The order further records that the Defendant no.6 had agreed to obtain such previous sanction and in view of the said statement, the Defendant no.55 observed that all the other issues would be considered after filing of the application under Section 31(2) of the RPT Act.

31. Having regard to the nature of transaction, the question is whether

previous sanction of the Defendant no.55 was necessary under section 31(1) the RPT Act. As stated earlier, the Defendant no. 1 is a public charitable trust registered under the provisions of the RPT Act. It is no more res integra that the property owned by a trust is at par with a public property. The trustees who hold the trust property for the benefit of beneficiaries cannot alienate the trust property in the same manner as private property. In ***Chenchu Rami Reddy v/s. State of Andhra Pradesh (AIR 1986 SC 1158)*** the Apex Court has observed that the property of religious and charitable endowments or institutions must be zealously protected because large segment of the community has beneficial interest therein.

32. It is to be noted that the RPT Act, which is a self-contained Code, contains detail provisions to safeguard the interest and the properties of the Trust. Section 31 is one of such provisions, which regulates transfer of trust property and imposes fetters on the powers of the trustees to transfer the trust property without sanction of the Commissioner. Section 31 provides that :-

> " ***Sec. 31 - Previous sanction to be obtained for certain transfers :-***
>
> ***1.*** *Subject to the directions in the instrument of trust or any directions given under this Act or any other law by any court:*
>
> *(a) no sale, exchange or gift of any immovable property or of movable property exceeding five thousand rupees in value, and*

(b) no lease, for a period exceeding five years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building.

belonging to a public trust shall be valid without the previous sanction of the Assistant Commissioner.

2. An application for the sanction of the Assistant Commissioner, under sub-section(1) shall be made in the prescribed manner and form.

3. Where, on the application duly made for sanction in respect of any transaction specified in sub-section(1), the Assistant Commissioner does not, within two months of the receipt thereof, pass final orders, it shall be presumed that he has accorded sanction in respect of that transaction, provided that the application described the transaction, with sufficient accuracy.

4. The Assistant Commissioner shall not refuse to accord sanction in respect of any transaction specified in sub-section (1) unless such transaction is, in this opinion, likely to be prejudicial to the interests of the public trust, and no order refusing to accord sanction shall be passed unless the working trustee of such public trust has had a reasonable opportunity of being heard. ”

33**.** A plain reading of this Section would indicate that subject to the directions in the instrument of trust, it is obligatory to apply for sanction in the prescribed form and manner and absence of prior sanction of the Assistant Commissioner would render such transfer invalid. Sub-Section (3) of Section 31 raises a presumption that sanction is deemed to have been accorded in respect of the said transaction when the Assistant Commissioner does not pass final order within two months from the date of receipt of the application made under sub-Section (2) of Section 31. Sub-Section 4 contemplates that the Asstt. Commissioner shall not refuse to accord sanction unless the transaction, in his opinion is likely to be prejudicial to the interest of the public trust. It further mandates that no order of refusal of sanction shall be passed unless the working trustee of such trust has had a reasonable opportunity of being heard.

34. It is thus evident that jurisdiction to grant or refuse sanction under Section 31 of the RPT Act exclusively vests with Assistant Commissioner. This statutory power cannot be exercised mechanically or as a mere formality and certainly cannot be equated with a rubber seal to be affixed only at the time of registration for validation of the transaction. Grant or refusal of sanction is a quasi-judicial function, which has to be discharged judicially, keeping in mind the interest and benefit of the trust, trustees, and its beneficiaries.

35. Furthermore, the Authority exercising such powers cannot go only by the nomenclature of the document but has to consider the purport, tenor, and substance of the document to determine its true nature and ensure that no attempts are made to circumvent the rigors of the Act or to avoid compliance of Section 31 of RPT Act. As a protector and guardian custodian of the trust property, the Assistant Commissioner is required to scrutinize the genuineness and authenticity of the proposal/transaction

and ensure that the property is not being alienated in a clandestine, arbitrary, irresponsible or suspicious manner that is detrimental to the interest of the trust. In fact the authority is under a statutory obligation to protect and safeguard the trust property. Thus the statutory mandate is that the Assistant Commissioner exercising power under Section 31 of RPT Act has to record his satisfaction that the sale or alienation of trust property is in interest, benefit or protection of the trust and having regard to the market value of the property, the consideration offered is just, reasonable and a best offer.

36. In Cyrus Rustom Patel (supra) the Apex Court while considering the scope of powers of the Charity Commissioner under Section 36 of the BPT Act has held that the power to grant sanction has to be exercised taking into consideration three classic requirements i.e. the interest, benefit and protection of the trust. The Apex Court has reiterated the principles that sale of trust property, which is like public property, if at all necessary, is not permissible by way of private negotiations; could be done only in exceptional circumstances, for reasons to be recorded. It has been held that the concept of auction of the property was primarily for the benefit of the trust and that disposal of the trust property should normally be done by public auction, with full application of mind by the competent Authority.

37. In Sailesh Developers (supra) the full Bench of this Court while considering the provisions under Section 36 of BPT Act, has held that the Charity Commissioner has jurisdiction to decide whether it is in the interest of the trust that the property of trust be sold or transferred. Once the Charity Commissioner is satisfied that the property is required to be transferred or sold in the interest of the trust, the Charity Commissioner cannot remain a silent spectator when he finds that the transaction proposed by the trustees is not in the interest of the trust or its beneficiaries. Considering the scheme of the Act, the Full Bench of this Court has observed that legislature never intended that trustees could transfer or sell the trust property as if it was their personal property. It is the duty of the Charity Commissioner to ensure that the property should be alienated in such a manner that the maximum benefits are accrued to the trust. It is held that the Charity Commissioner while considering an application under Section 36(1) of the BPT Act, in a given case can opt for public auction, or can invite bids.

38. In Siddhivinayak Construction (supra) a single Judge of this Court has held that unless and until the Charity Commissioner is satisfied on two crucial aspects, namely (i) the need for alienation, and (ii) the adequacy of price for alienation; the Charity Commissioner cannot grant sanction. It has been held that the Charity Commissioner is expected to act as a guardian of charities and as such guardian, the Charity

Commissioner is expected to take into the consideration all the relevant factors which are germane to an enquiry regarding the adequacy of consideration and the benefit of the trust. In that context, the enquiry by the Charity Commissioner is a quasi judicial enquiry and before granting sanction, the Charity Commissioner has to bear in mind the interest, benefits and protection of the trust. It has been reiterated that the trust property is not the personal property of the trustees, and as a custodian of public trust, the Charity Commissioner is enjoined to ensure that the trust property is not alienated unless the alienation is in the interest of the trust and nothing less than the full market price of the property is received by the trust. The learned Single Judge has also held that the procedure followed by the trustees should be transparent and the normal procedure to be adopted is by public auction.

39. In C.H.M.S Education Society (supra) the petitioner trust registered under the BPT Act had resolved to develop the property and assigned development rights and a development agreement was entered into. Subsequently an application was made for sanction under 36 of the BPT Act. The said application was treated as an application for ex post facto sanction. Upon hearing the parties, the Charity Commissioner dismissed the application for want of powers to grant ex post facto sanction. Assailing the said order, it was urged before a single judge of this court that the agreement for development was not within the sweep of section

36 of the BPT Act 1950. The lease was to be created after the terms of development agreement were fulfilled and hence it was well within the rights of the trustees to apply for sanction before execution of long term agreement of lease. While holding that the said submissions were misplaced this court has observed that the property had already been developed, construction completed in toto and funds are spent by the developer. Third party rights are already created and no other person could compete. The fate of the property was already sealed. Under these circumstances, it was held that the application was not for prior sanction. The condition to execute lease deed was held to be a part of composite transaction and one of the conditions of the development agreement. It was further held that the Act contemplates previous sanction and the Charity Commissioner had no jurisdiction to accord post facto sanction. Referring to the judgment of the Apex Court in ***Ram & Shyam Co. vs. State of Haryana and ors. [(1985) 3 SCC 267]***, it was held that while the owner of private property may have a number of consideration which may permit him to dispose of his property for a song, there should be nothing hanky panky in disposal of trust property. Disposal of the trust property must be at the best price so that larger revenue comes in the coffers of the State.

40. In the instant case, the Defendant no.1 trust has executed a development agreement in favour of Defendant no. 50. Recital 3 of the

development agreement states that by resolution dated 8th October, 2006, the owner (i.e. the Defendant no.1 trust) has been authorized to enter into a transaction of sale or grant development rights in respect of the suit property. Under the said Development agreement, the Defendant no.1 has allowed the Defendant no.50 to develop the suit property by exploiting full existing and future potential. In consideration thereof, the Defendant no.50 has agreed to pay to the Defendant no.1 a sum of Rs.2,01,00,000/- and in addition a constructed premises of 450 sq.ft. carpet area in the proposed construction. The Defendant no.50 was authorized to engage architects, structural engineers, contractors, submit plans, obtain sanctions etc., and develop the suit property entirely at its own costs. Clause 6 of the agreement authorizes the Defendant no.50 Developer to enter into any transaction or make any commitment in respect of the development of the said property or any part therein without any reference to the owners but subject to the payment of consideration stated above. Under clause 7 of the agreement the Defendant no.50 is authorized to borrow amounts in the name of the developers against the property from any person or institution as the case may be and for that purpose the owner is required to execute such documents as may be required. Clause 8 further states that the developers are entitled to obtain necessary sanction and permission from the concerned authorities and demolish existing building and construct and complete the construction work viz. flats, offices, garages, shops, stilt parking etc. This clause authorizes the developer to sell the newly constructed premises to third party and receive consideration thereof and to do all acts and deed required for complete and proper development of the suit property. In terms of clauses 16 and 17 of the agreement, the construction was to be completed within a period of three years from the date of obtaining the commencement certificate. After completion of the building, the owners i.e. the Defendant no.1 trust was to execute a proper deed of conveyance and other necessary documents in favour of the Defendant no.50, a co-operative housing society or any other body. Clause 20 of the agreement states that the developers shall be entitled to allot on ownership basis the premises in the building or structures to be constructed on the suit property or any part thereof to prospective purchasers. This clause further authorizes the developer to enter into agreements or letters of allotment or such other documents for sale of flats, shops, garages etc in the said property. Under this clause the developers are also entitled to retain with them all the money received from the persons to whom the premises are sold or allotted and to appropriate the same in such manner the developers may deem fit. In terms of clause 18, simultaneously upon execution the development agreement, the developers were to be put in possession of the suit property for the purpose of development. The Development agreement further stipulates that the Defendant no.1 trust shall execute a Power of Attorney in favour of Defendant No.50 and that it would not be open to the Defendant No.1 trust to terminate the said Power of Attorney at any point of time during the subsistence of the agreement.

41. The development agreement, which has been duly registered, records that the Defendant no.1 had been authorized to enter into a development agreement as well as sale transaction in respect of the suit property. The aforestated terms and conditions and the relevant clauses of the said agreement indicate that the Defendant no.50 was also authorized to sell flats, garages, shops etc to third parties in its own name, to receive and retain the sale consideration received from the third parties and to pass on valid title to the prospective purchasers. As an integral and composite part of the agreement, the Defendant No.1 had agreed to execute a sale deed in favour of the Defendant no.50 or the society after completion of the construction.

42. The total consideration payable to the Defendant no.1 was already quantified. A sum of Rs.2,01,00,000/- being the sale price was already paid to the Defendant no. 1 trust and the developer was already put in possession of the suit property. The Defendant no. 50 also claims that it has already invested money in developing the property. All these facts prima facie indicate that the transaction was already finalized and sealed creating a dominion of the developer over the suit property to the exclusion of others, though a final deed of sale was agreed to be

executed and registered at a later date. Under these circumstances, in my prima facie view, it was obligatory to obtain sanction of the Defendant no.55 prior to execution of the development agreement.

43. Coming to the question of transparency, undisputedly no public notice was published in any newspaper inviting bids or offers from proposed builders/developers in respect of development of the suit property. The resolution notes that in a meeting held on 8th October, 2006, it was resolved to confer development rights on Defendant no.50 in accordance with the draft development agreement. The fact that the draft development agreement was already prepared and placed before the Committee on 8th October, 2006 indicates that the person on whom the development rights were to be conferred and the terms and conditions, including the quantum of consideration were pre-determined.

44. There is no material on record to prima facie indicate that prior to such decision, the Defendant no.1 had appointed any expert to ascertain the condition of the building or necessity of development and further to determine the market rate of the suit property. There is also no material on record to indicate that the Defendant no.1 had invited offers from third parties. The trustees have not assigned any reasons for fixing the price of a property located in a prime location by private negotiations and not by public auction. No reasons are forthcoming for not taking

any steps to ensure the best deal or offer and maximum benefit to the trust Thus, prima facie it appears that the Defendant no.1 had held private negotiations with Defendant no.50 even prior to the general body meeting and had accepted the offer of the Defendant no.50 without ascertaining whether the consideration offered by the Defendant no.50 was the best offer. The above facts and circumstance prima facie indicate that the transaction lacked transparency and was not in the interest of the trust.

45. It is on record that pursuant to the order dated 16th February, 2012 passed by the Defendant no.55, the Defendant no.1 by letter dated 28th June, 2012 sought sanction under Section 31(1) of the RPT Act for sale of the suit property. By letter dated 20th June, 2012, Defendant no.55 called upon the Defendant no.1 to disclose whether there was any authorization in the trust deed as regards transfer of the immovable property and to furnish copy of the trust deed. The Defendant no.55 further directed the Defendant no.1 not to transfer the suit property in any manner until a final order was passed.

46. The records further reveal that vide letter dt. 3rd September, 2012 the Defendant no 54 had called upon the Defendant no.55 to submit certain documents listed therein, as to place the proposal of sanction before the committee formed by the State Government, by order dated 8th

July, 2012. The Defendant no.54 had further directed the Defendant no.55 to inform the Office of the Registrar of the area where the property of the trust is situated not to register any document/deed in respect of the said property without obtaining prior permission of the department. Pursuant to the said communication, the Defendant no.55 by letter dated 26th September, 2012 requested the Sub Registrar of Assurances, Mumbai not to register any document on behalf of the first Defendant unless the sanction of the Charity Commissioner was obtained.

47. While the issue of sanction was pending before the Defendant nos.54 and 55, the Defendant nos. 39 and 51 signed a Deed of Conveyance dated 15th December, 2010 on behalf of the Defendant no.1 and conveyed the suit property in favour of Defendant no.50 for the same consideration that was mentioned in the Development Agreement. It is pertinent to note that the Resolution dated 8th October, 2006 did not contemplate sale of the suit property as it has been recorded in the development agreement and the sale deed. It is also to be noted that the Defendant nos. 39 and 51 have executed the said sale deed purporting to act on the POA dated 27th September, 2007, though the resolution did not authorize Defendant nos. 2, 3, 6 and 10 to delegate powers on the directors of the Defendant no.50. The said resolution was restricted only to awarding developmental rights in favour of Defendant no.50 and authorizing the Defendants nos.2, 3, 6 and 10 to do all such acts, sign

documents, papers, forms, execute agreements etc on behalf of the Defendant no.1 to facilitate due performance of obligations under the development agreement. Despite which, a clause was incorporated in the development agreement requiring the owner/Defendant no.1 to execute an irrevocable power of attorney in favour of the developers/Defendant no.50.

48. The Plaintiff has alleged that the Defendant no.39 was a trustee of Defendant no.1 and the Director of Defendant no.50 and that he was instrumental in finalizing the transaction. The Plaintiff has produced the list of the invited members for a tenure of 5 years, which shows the name of the Defendant no.39. The Defendant No.39 has disputed that he is a trustee of the Defendant no.1 trust and has further stated that he has not attended any meeting. At this stage, it is not necessary to go into this disputed fact as the records even otherwise indicate that there was conflict of interest. It is to be noted that the Defendant Nos.2, 3, 6 and 10 have abdicated their duties of protecting the interest of the Defendant no.1 trust and conferred absolute powers on Defendant nos.39 and 51, who are the Directors of Defendant No.50, to act on behalf of Defendant no.1 or to execute a sale deed on behalf of Defendant no.1. Despite there being conflict of interest, the Defendant nos. 2, 3, 6 and 10 have given unbridled powers to the Defendant nos.39 and 51 to deal with the suit property in the manner they deemed fit. By delegating such powers,

the Defendant nos.2, 3, 6 and 10 have compromised the interest of the trust and has in fact promoted the interest of the Defendant no.50-Developer. In my prima facie view, such authorization is not only beyond the scope of the resolution but the same was detrimental to the interest of the trust.

49. It is also pertinent to note that vide legal notice dated 30th August, 2012 issued on behalf of the Defendant no.1, the Defendant no. 50 was informed that since appropriate proceedings for sanction were initiated before the Devasthan Department at Jodhpur and the matter was sub-judice, the Defendant no.1 was not inclined to take any steps in respect of the suit property. The Defendant nos.39 and 51, the Directors of Defendant no.50, have conveyed the suit property to Defendant no.50 in undue haste, despite clear instruction from the Defendant no.1 and clear directions from the Defendant no.55 not to transfer the suit property pending final order. Despsite being aware of the instructions given by the Defendant no.1 and order passed by the Defendant no.55, at the time of registration of the conveyance, a declaration was filed that the deed of conveyance was submitted for registration on the basis of general Power of Attorney, which has not been canceled. Furthermore, no clause was incorporated in the sale deed as regards sanction or deemed sanction under the RPT Act. The conduct of the Defendant Nos.39, 51 and 50 does not appear to be fair and honest and lacks good faith.

50. As per the Development Agreement, the consideration determined was Rs. 2,01,00,000/- and premises of 450 sq.ft in a building proposed to be constructed in the suit property. The sale deed was to be executed in favour of the Defendant no. 50, Co-operative Housing Society or any other body after completion of the construction, which was to be completed within three years from the date of the Commencement Certificate. Though the Defendant No.50 has paid the consideration of Rs.2,01,00,000/-, there is no material on record to indicate that the Defendant No.1 has been put in possession of premises admeasuring 450 sq.ft. The records prima facie indicate that under the garb of the power of attorney executed in their favour, the Defendant nos.39 and 51 have executed a sale deed in favour of Defendant no.50 even before completion of construction and without payment of full consideration . The Defendant nos.39 and 51 have executed the sale deed in contravention of the terms of the development agreement and detrimental to the interest of the Defendant no.1 trust. The reason appears to be obvious. The Defendant nos.39 and 51 who on paper were to represent the Defendant no.1 Trust, had their loyalties with Defendant no. 50 of which they were the Directors. Accordingly, they have promoted the interest of Defendant no.50 rather than protecting the interest of Defendant no.1 trust.

51. The sale deed has been executed without obtaining prior sanction of the Assistant Commissioner under Section 31(1) of the RPT Act. The Defendant no.50 has raised a plea of deemed sanction and has also relied upon the order dated 17th October, 2013 in proceeding no. 2 of 2012. By the said order, the Defendant no.55 had dropped the proceedings under Section 38 of the RPT Act holding that no final decision was taken within the stipulated time, it could be construed that the deemed permission had been accorded under Section 31(3) of the RPT Act. The facts of the case would indicate that the Defendant no. 1 had not enclosed the Trust Deed along with the application for sanction. The Defendant no. 55 had already addressed a letter to the Defendant no. 1 calling for the Trust Deed and to furnish other requisite information. Though the Defendant no.1 had informed the Defendant No.55 that the title deed as well as the trust deed did not restrict sale of the trust property, it had not submitted the trust deed as required by the Defendant No.55. Since the sanction under Section 31(1) was subject to the directions in the instrument of trust, the Defendant No.55 could not have granted or refused sanction without ascertaining the terms and conditions in the Trust Deed.

52. Furthermore, the proposal submitted by the Defendant no. 1 was already forwarded to the Defendant No.54, who had called upon the Defendant No.55 to forward documents listed therein so as to enable him

to place the proposal before the committee formed by the State Government to take appropriate decision. Instructions were also given to the Defendant No.55 to inform the Sub-Registrar not to register any document in respect of the suit property without sanction of the Department.

53. The records thus reveal that the application was not submitted with requisite document. The request for sanction was under active consideration of the competent authority under the RPT Act. These facts are not reflected in the order dated 17th October, 2013. Prima facie, the Defendant no.55 was not competent to declare that there was deemed sanction within the meaning of Section 31(3) of the RPT Act, when the application itself was not complete and the matter was pending consideration before the higher authority. Reliance is placed on the decisions of the Apex Court in Suresh Estate Pvt. Ltd. and GTL Infrastructure Ltd. (supra).

54. The Defendant no.55 was well aware that directions were already issued to the Defendant no.1 not to transfer the land pending final decision. It was also within his knowledge that the matter relating to sanction was pending before the Commissioner, and that directions were already given to call for certain documents and directions were issued to instruct the Sub-Registrar not to register any transaction in respect of the

suit property. Despite this, the Defendant no.55 has sought to validate the sale mechanically by taking recourse to Section 31(3) of the RPT Act. While doing so, the Defendant no.55 did not ascertain the genuineness of the transaction. He preferred to over look whether there was transparency in the transaction. He did not ensure that the transaction was beneficial to the trust and did not consider the adequacy of consideration, particularly considering the fact that the offer made by the intervener was much higher than that of Defendant no.50. He did not take into consideration the relevant factors germane to an inquiry regarding the sale of the trust property. The records thus prima facie reveal that the Defendant no. 55 did not exercise his functions and duties as guardian of the charitable trust and protector of the trust property.

55. The records prima facie indicate that the trust property which is located in a prima location has been alienated for a meager amount, jettisoning all mandatory requirements under the Act. The manner in which the entire transaction was carried out gives a strong prima facie indication that the trustees of the Defendant No.1-Trust were in connivance with Defendant no.50 right from the inception. The trustees as well as the statutory authority under the RPT Act have prima facie failed to safeguard the interest of the trust and have in fact sought to jeopardize the interest of the Trust. Under the circumstances and having regard to the overall view of the matter, it is just and convenient to

appoint a Court Receiver, High Court of Bombay as receiver of the suit property with all powers under Order 40, Rule 1 of CPC.

56. The Defendant No. 50 has resisted appointment of Court Receiver on the ground that they have already paid the sale consideration of Rs.2,01,00,000/- to the Defendant No.1and have made huge investment in developing the property. There is no material on record to indicate that the Defendant no.50 has started the construction work and/or taken any steps to develop the property and/or have invested huge amount as alleged. Moreover, the learned Counsel representing the Defendant no.1 has made a statement that the Defendant no.1 is ready to refund the amount of Rs.2,01,00,000/- to the Defendant no.50. Considering the fact that the sale deed executed in favour of the Defendant no.50 is prima facie invalid, the Defendant no.50 cannot seek to continue in possession on the plea of hardship or equity. This flows from the well-settled principle that one who seeks equity must do equity.

57. It is stated that the buildings are in dilapidated condition and can endanger the life and property of the tenants. Hence, even at the interim stage, it would be necessary to protect the interest of the trust and safeguard the lives of the tenants, which is a matter of paramount importance. It is therefore imperative to confer powers or to give liberty to the Court Receiver to alienate the suit property in public auction,

subject to satisfaction that the suit property needs urgent development / alienation. Such alienation can be in the same manner as in Siddhivinayak (supra) with minor modification considering the fact that the office of the Defendant No.55 is at Jodhpur. The Defendant no.50 can have no grievance as he can also participate in the public auction and/or offer bids in respect of the suit property.

58. In view of above prima facie findings, which are restricted only for disposal of the present Notice of Motion, I pass the following order :-

(i) Notice of Motion is allowed in terms of prayer clauses (a) and (b).

(ii) Pending the hearing and final disposal of the suit, Court Receiver, High Court of Bombay is appointed as Receiver in respect of the suit property described in para 7 of the plaint.

(iii) The Defendant No.50 shall deliver possession of the suit property to the Court Receiver.

(iv) The Defendant No.1 shall be appointed as an Agent of the Court Receiver without payment of security or royalty.

(v) The Court Receiver shall call for a report from a reputed expert valuer regarding the condition of the buildings and the market value of the suit property.

(vi) Subject to the satisfaction that the suit property requires urgent development, the Receiver shall fix the reserve price and publish advertisement in reputed news papers inviting bids from the developers for re-development or sale of the suit property.

(vii) The bids received by the Receiver in sealed envelopes shall be opened in presence of the Managing Committee.

(viii) The Receiver shall send notices to all the bidders to take part in bidding before the Receiver so as to enable the individual bidders to improve upon the bids.

(ix) The Receiver shall choose the highest bidder and the Defendant no.1 thereafter shall file an application in proper format as required under Section 31(2) of the RPT Act before the Assistant Commissioner for sanction for alienation of the suit property.

. The Notice of Motion stands disposed of in above terms.

At this stage, the learned Counsel for the Defendant nos.39, 50 to 53 seeks stay of operation of the order. In the interest of justice the operation of the Order is stayed for a period of two months.

Prasanna P. Salgaonkar

Digitally signed by Prasanna P. Salgaonkar
Date: 2019.12.18 17:47:34 +0530

(ANUJA PRABHUDESSAI, J.)