

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.2384 of 2019
M/s Sai Builders Vs. Joint Charity Commissioner, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. F.T. Mirza, Advocate for petitioner
Mrs. Mrunal Naik, AGP for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 11, 2019

By the present petition, the petitioner has challenged order dated 09/11/2017, passed by the respondent No.1 - Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act, 1950, proceeding on the basis that when the respondent No.2 Trust had issued an advertisement asking the bids for sale of property belonging to the Trust, the said Trust was not an owner of the same having only occupancy Class-II rights and not rights of occupant Class-I. The respondent No.1 proceeded on the basis that in this situation, permission contemplated under Section 36 of the said Act could not be granted and after producing material to show that the Trust was holding rights of occupant Class-I, further action regarding inviting of bids was required to be undertaken.

2. The petitioner had filed an application for

recall of the said order, which stood dismissed by order dated 12/09/2018 by respondent No.1.

3. The learned counsel for the petitioner submitted that the impugned order passed by respondent No.1, was under a misconception that the property in question did not belong to respondent No.2 - Trust. It was pointed out that the said property was clearly mentioned in Schedule-I and it was owned by respondent No.2 - Trust. It was further submitted that even if it was to be said that the respondent No.2 - Trust had rights of occupant Class-II, it would not make any difference to the proceedings under Section 36 of the said Act. The attention of this Court was invited to Sections 29 and 29-A of the Maharashtra Land Revenue Code, 1966 to demonstrate that the approach adopted by respondent No.1 - Authorities was erroneous.

4. The learned AGP appeared for the respondent No.1 and submitted that it was not disputed that the property was shown in Schedule I as belonging to respondent No.2 - Trust and further that it would not make any real difference whether the property was held by the Trust as occupant class I or class II and also that in any case under Section 29-A of the said Act introduced w.e.f. 21/04/2018, conversion of class II land to class I was permitted on payment of conversion premium.

5. The learned counsel for the respondent No.2 further informs this Court that during pendency of this petition, the land had been actually converted from occupancy class II to occupant class I.

6. The aforesaid submissions made on behalf of rival parties and perusal of Sections 29 and 29-A of the said Act would show that the basis on which the respondent no.1 Authority proceeded was erroneous. In any case, the subsequent event of conversion of the occupancy rights of the Trust has a bearing on the present case, demonstrating that the impugned order passed by respondent - Authority is rendered unsustainable.

7. In view of above, the writ petition is allowed and the impugned order is quashed and set aside.

8. The respondent no.1 is directed to proceed and decide the application filed under the provisions of the said Act, in any case, within a period of three months from today.

JUDGE