

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9092 OF 2021

F.N. Social, Educational Medical Charities
Trust, Thr. Its Trustees Mr. Lazarus S. Chinnappa
& Anr.

... Petitioners

Vs.

Pune Municipal Corporation, Thr. Its Commissioner
& Anr.

... Respondents

Mr. Sangram Chinnappa a/w Mr. Kartikeya Bahadur for the Petitioners.
Mr. Vishwanath Patil for the Respondent No.1-PMC.
Mr. Saket Mone with Mr. Abhishek Salian i/by Vidhii Partners for the
Respondent No.2.

**CORAM : A.A. SAYED &
 ABHAY AHUJA, JJ.**

DATE : 17TH DECEMBER 2021

P.C. :

1. This Petition is filed seeking the following relief :-
 - “b. *That this Hon’ble Court may be pleased to issue an appropriate a Writ of certiorari or a Writ in the nature of certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, quash and set aside the building plans and commencement certificates sanctioned by the Respondent No.1 Corporation in favour of respondent No.2 herein being Exhibit Q colly hereto.”*

2. Learned Counsel for the Petitioners has invited our attention to the letter dated 31st December, 2020 (Exhibit 'L', Page 155 to the Petition), addressed to the Commissioner of the Respondent No.1-Pune Municipal Corporation. He has also pointed out the judgment dated 10th August, 2018 of the Supreme Court in Civil Appeal No.10854 of 2016 and connected matters, filed by the Respondent No.2-Developer herein [reported in (2018) 18 SCC 257] and the further order dated 27th January, 2020 of the Supreme Court (tendered across the bar). It is contended that despite the order of the Supreme Court, the building permission has been wrongly issued to the Respondent No.2-Developer by the Respondent No.1-Pune Municipal Corporation.

3. It is submitted that even though an order passed by the Joint Charity Commissioner, Pune dated 4th October, 2017, restraining the Respondent No.2-Developer from carrying out construction on the subject land, which belongs to the Petitioner Trust, the Respondent No.2-Developer is still continuing the construction.

4. Learned Counsel for the Respondent No.2-Developer submitted that against the restraint order dated 4th October, 2017 of the

Joint Charity Commissioner, the Petitioner No.2-Developer has filed Civil Appeal bearing No.131 of 2020 before the District Court, Pune which refused to vacate the interim order of the Joint Charity Commissioner. It is further pointed out that vide order dated 17th December, 2020 passed by learned Single Judge of this Court in Writ Petition (Stamp) No.97753 of 2020 filed against the order of the District Court, directions were issued to the District Court to hear the Civil Appeal No.131 of 2020 expeditiously and preferably within a period of four months. We are informed that the said Civil Appeal is still pending and has so far not been disposed of.

5. Learned Counsel for the Respondent No.2-Developer has also pointed out that the Petitioners have already made an Application before the Joint Charity Commissioner alleging breach of order passed by the Joint Charity Commissioner, wherein directions were issued by the Joint Charity Commissioner for an inquiry and accordingly a Panchanama has been drawn and the matter is now before the Joint Charity Commissioner as regards the claim of the Petitioner-Trust that despite the order of the Joint Charity Commissioner, the Respondent No.2-Developer is carrying on the construction work. According to the learned Counsel for the Respondent No.2-Developer, no work of construction was carried out after

the interim order of the Joint Charity Commissioner, which contention is disputed by learned Counsel for the Petitioners.

6. Having heard learned Counsel for the Petitioners, learned Counsel for the Respondent No.1-Pune Municipal Corporation and learned Counsel for the Respondent No.2-Developer, in our view, the following order would meet the ends of justice :-

ORDER

(i) We record the statement of the learned Counsel for the Respondent No.2-Developer, on instructions, that the Respondent No.2-Developer shall not carry out any construction work in the subject property, unless the order dated 4th October, 2017 of the Joint Charity Commissioner is vacated and/or set aside. We accept the statement of learned Counsel for the Respondent No.2-Developer as an undertaking of the Respondent No.2-Developer to this Court.

(ii) We direct the Commissioner of the Respondent No.1-Pune Municipal Corporation to take a decision on

the letter dated 31st December, 2020 of the Petitioner-Trust through their Advocate (Exhibit 'L', Page 155 to the Petition), which shall be treated as a representation, expeditiously, and in any event within twelve weeks from today. The Petitioners are also permitted to file an additional representation within ten days from today. The Respondent No.1-Pune Municipal Corporation shall grant an opportunity to the Respondent No.2-Developer to reply/respond to the letters/representations of the Petitioners.

(iii) The Writ Petition to stand disposed of in the aforesaid terms.

(ABHAY AHUJA, J.)

(A.A. SAYED, J.)

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