

Bhogale

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

WRIT PETITION NO. 3333 OF 2019

Seth Ranchhoddas Chhatrabhuj Kutchi
Lohana Balashram Trust
VS.

.. Petitioner

State of Maharashtra & anr.

.. Respondents

Mr. Mayur Khandeparkar a/w Mr. Maulik K. Tanna for the
Petitioner.
Mr. Manish Upadhye, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : JANUARY 12, 2021

P.C.:-

Heard learned counsel Shri Khandeparkar appearing for the
Petitioner and learned AGP appearing for the Respondent.

2. Shri Khandeparkar invited my attention to the impugned
order passed by the learned Joint Charity Commissioner.
Shri Khandeparkar submitted that the building in respect of
which the tenants have formed an association the purchase price
of which was revised to the tune of Rs.40 lakhs and it was
accepted by the trustees in their meeting dated 29.04.2011.
Shri Khandeparkar submitted that it was not possible for the Trust
to adopt any other mode of alienation. To support his submission
he has invited my attention to the averments made in the

Petition. During the course of hearing Shri Khandeparkar urged thus :-

“There are as many as 20 tenants occupying suit building standing on the said land admeasuring about 135.45 sq.m. in terms of Regulation 33(7) of DCR 1991 and Regulation 33 (7A) of DCPR 2034, FSI of 2.5 on the gross plot area or the FSI required for rehabilitation of existing tenants plus incentive FSI as specified in Appendix-III thereto (i.e. total 3 FSI) whichever is more is available on said plot which means that a construction of only approx. 406.35 sq. mtrs. may be permissible. In Redevelopment, each tenant is entitled to a minimum of 300 sq.ft. of area. Having regard to the size of plot and other norms applicable concerning compulsory open space, there is hardly scope for redevelopment by generating free-sale so as to recover cost of construction.”

3. He therefore submitted that having regard to the size of plot and other norms applicable concerning compulsory open space, there is hardly scope for redevelopment by generating free-sale so as to recover cost of construction.

4. Learned AGP for the Respondent on the other hand pointed out that all this material which Mr. Khandeparkar now argued was not before the Joint Charity Commissioner when the impugned order came to be passed. Shri Khandeparkar fairly submitted that these aspects could not be placed for consideration before the Charity Commissioner and it is for the first time that all this is

brought on record. He would urge that in the interest of the Trust and considering the precarious financial position of the Trust, the Petitioner be granted an opportunity to file an additional affidavit bringing on record these aspects.

5. Only with a view to give an opportunity to the Petitioner in the interest of the Trust, taking an over all view of the matter and considering the submission of learned counsel for the Petitioner that having regard to the size of the plot and other norms applicable concerning compulsory open space, there is hardly scope for redevelopment by generating free-sale so as to recover cost of construction, it would be in the interest of justice if the application is heard afresh by the Joint Charity Commissioner. Hence the following order :-

ORDER

- (i) The impugned order passed by the Joint Charity Commissioner-I dated 20.06.2018 is quashed and set aside.
- (ii) The application be heard on its own merits afresh without being influenced by the observations made in the impugned order or in this order as expeditiously as possible and preferably within a period of 16 weeks from today.

(iii) The Petitioner to appear before the Joint Charity Commissioner on 02.02.2021 on which date the Petitioner undertakes to file an additional affidavit bringing on record the details in support of the application.

6. The Writ Petition is disposed of.

7. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)