

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 150 of 2022

(1) Santosh S/o Shankarrao Kokulwar,
Aged - 49 years,
Occupation – Medical Shop,
R/o – Mata Nagar, Ralegaon,
Taluka - Ralegaon, Dist - Yavatmal

(2) Ishwar Shikshan Prasarak Mandal
through its Secretary,
Shri Santosh Shankarrao Kokulwar

... Petitioners

... Versus ...

(1) Indian Institute of Youth Welfare,
Through its Secretary
Shri. Dr. Madhukar Shaymrao Wasnik,
R/o – 134, Shivaji Nagar Nagpur,
Dist - Nagpur.

(2) Trustee Shri. C. H. Khisty,
R/o – 138 New Colony, Opposite
Manglwari Park, near A. K.
Gandhi Showroom Nagpur,
Dist. - Nagpur

... Respondents

Mr. Kaustubh Deogade, Advocate for the petitioners
Mr. A. P. Thakare, Advocate for the respondents

CORAM : ROHIT B. DEO, J.

DATED : 5-4-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the
petition is finally heard.

2. The petitioners are occupying several buildings which admittedly are owned by the respondent 1 – trust.

3. The respondent 1 – trust has instituted Regular Civil Suit 54/2018 against the petitioners for possession and recovery of arrears of rent. The said civil suit is assigned to Civil Judge Junior Division, Ralegaon, presumably, since there is no Court of Small Causes at Ralegaon.

4. The petitioner then instituted Special Civil Suit 29/2019 against the public trust seeking specific performance of an agreement of sale allegedly executed by the trust whereunder the properties occupied by the petitioners as tenants, are agreed to be sold to the petitioners. The trust seriously dispute the sanctity of the agreement *inter alia* on the premise that the person who has executed agreement was not authorized to represent the trust much less to enter into an agreement for sale of the property.

5. It appears to be a common ground that the sale agreement is executed without obtaining the sanction of the authority under the Maharashtra Public Trusts Act (Act).

6. Learned counsel for the petitioners, Mr. Deogade would submit that the Secretary of the trust has since then applied for

sanction. The submission of Mr. Thakare is that the settled position of law is that the trust much less the Secretary could not have entered into an agreement without the previous sanction under Section 36 of the Act.

7. Be that as it may, the petitioners preferred an application under Section 24 of the Code of Civil Procedure seeking transfer of the suit filed by the trust at Ralegaon to the Court at Yavatmal where the suit by the petitioner for specific performance is pending. This application is rejected by the learned District Judge on the premise that the controversy and the issues arising are totally different and, therefore, there is no propriety in transferring the suit filed by the public trust at Ralegaon to the Yavatmal Court.

8. I see no error in the view taken by the learned District Judge. The suit filed by the public trust is apparently assigned to the Civil Court since there is no Small Causes Court functioning at Ralegaon. The trust is denying the agreement of sale. The nature of the controversy and the issues are absolutely distinct.

9. At the most, if according to the petitioners, there is any commonality, the suit of the petitioners which is subsequently instituted will have to be stayed.

10. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

JUDGE

wasnik