

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3603 OF 2023

**ST. TERESA'S ENGLISH MEDIUM SCHOOL SOCIETY, JALGAON
THROUGH ITS EX OFFICIO SECRETARY
VERSUS
THE JOINT CHARITY COMMISSIONER, NASHIK**

Advocate for Petitioners : Mr. V.D. Hon, Sr. Advocate i/b
Mr. A.V. Hon
AGP for Respondent – State : Mr. R.B. Bagul

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17TH APRIL, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 27/01/2023, passed by the Joint Charity Commissioner, Nashik Region, Nashik, in Application No.26/2022, thereby rejecting application filed by petitioner under Section 36A(3) of the Maharashtra Public Trusts Act, 1950 (for short "the said Act").
2. Petitioner is a registered public trust running primary, secondary and higher secondary, unaided school since 1993. Petitioner (for short "Trust") has mother trust namely Carmelite Provincial House Trust, Ernakulum. As the space in the school was found to be insufficient and since there was no additional FSI available, petitioner wanted to take steps to construct and expand school building.
3. Petitioner applied to the respondent by filing Application

No.1002/2019, seeking permission to raise fund to purchase land by taking financial assistance of Rs.3 Crores from the mother Trust. Respondent by allowing application granted said permission. Accordingly, petitioner availed financial assistance of Rs.3 Crores from mother Trust and purchased land Gut Nos.369/1 and 370/2 for construction of school building. Petitioner repaid amount of Rs.2.5 Crores to the mother Trust. The balance amount of Rs.50 Lakhs is waived by the mother Trust by way of good gesture.

4. Petitioner obtained permission for construction of school building from Jalgaon Municipal Corporation. Since proposed building construction estimate is of Rs.14 Crores, the Trust decided to obtain loan of Rs.5 Crores from bank. Petitioner, therefore, by filing Application No.16/2022, under Section 36A(3) and Rule 24 of the said Act and Rules, requested for permission of the respondent to take loan of Rs.5 Crores from Federal Bank, Jalgaon, for construction of school building. Respondent partly allowed the application and permitted petitioner to obtain loan of Rs.2.5 Crores for construction of school building on certain conditions.

5. Petitioner availed loan of Rs.2.5 Crores and utilised it for construction of school building. The construction work is in progress and the said amount since was found insufficient, petitioner filed Application No.26/2022 under Section 36A(3) of the said Act,

seeking permission to obtain loan of Rs.5 Crores from Federal Bank, Jalgaon, contending that the said bank has consented to sanction loan of Rs.5 Crores to the petitioner on 21/09/2022. Respondent rejected the application holding that petitioner has opened term loan account with Federal Bank on 20/05/2022, for which no sanction order is obtained. Crores of rupees of loan is already obtained by the Trust and it is not repaid. It is, therefore, held that considering financial position of the Trust, its income and expenditure and the stage of construction, it would not be in the interest of Trust to borrow a huge amount of loan of Rs.5 Crores again from the bank, at this stage. Petitioner is aggrieved by this order.

6. Heard learned Senior Advocate for petitioner and learned Additional Government Pleader for State. Perused the writ petition memo, annexures thereto and the impugned order.

7. Admittedly, petitioner has undertaken construction of the school building which is partly completed. Total cost of construction is stated to be Rs.14 Crores. The bank after considering feasibility of proposal of the petitioner has sanctioned loan of Rs.5 Crores. Petitioner has undertaken to pay the remaining amount of project cost.

8. Photographs of the building construction show that the

construction activity is in progress. Respondent has observed in the impugned order that audit reports show that financial position of the Trust is very sound. It is further observed that recent audit report of the year 2021-2022 is not filed on record by the petitioner. Petitioner claims that the said report was filed before the respondent and the same is also filed in this petition, at page No.46.

9. Considering the conspectus of the present matter, it is clear that due to refusal of permission to avail loan, construction work undertaken by the petitioner would come to a standstill. Admittedly, the school building is being constructed and the said construction cannot be left incomplete. By no stretch of imagination the same can be held to be in the interest of Trust. On the other hand, the impugned order thereby refusing permission to avail loan, is against the interest of the Trust and students. Admittedly, respondent has observed in the impugned order that financial condition of the petitioner is sound. So also, the bank has sanctioned loan. In these facts, respondent has erred in refusing permission to the petitioner to avail loan.

10. The impugned order is vitiated on the ground of non-application of mind on the part of respondent, as while passing it relevant factors are ignored and by giving unacceptable reasons the impugned order is passed.

11. In the result, writ petition is allowed in terms of prayer clause 'B'. Impugned order dated 27/01/2023, passed by Joint Charity Commissioner, Nashik Region, Nashik, in Application No.26/2022, is quashed and set aside. Application No.26/2022 filed by the petitioner is hereby allowed. There shall be no order as to costs.

(NITIN B. SURYAWANSHI, J.)