

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5109 OF 2023**

Yerala Projects Society Sangli
through It's Trustee and Secretary
Mr. Narayan V. Deshpande

...Petitioner

Versus

Joint Charity Commissioner,
Kolhapur Division, Kolhapur

...Respondent

Mr. Drupad Patil a/w. Mr. Rushikesh Patil for the Petitioner.
Mr. P.G. Sawant, AGP for the Respondent.

CORAM : N. R. BORKAR, J.
DATE : 07.05.2024

ORDER:-

1. This petition takes exception to the order dated 10 October 2022 passed by learned Joint Charity Commissioner, Kolhapur Division, Kolhapur in Application No. 01 of 2020. By the order impugned, learned Joint Charity Commissioner rejected the application filed by the petitioner under Section 36 of the Maharashtra Public Trusts Act, 1950 (for short 'the Act').

2. The petitioner is a Public Trust registered under the Maharashtra Public Trusts Act (for short "the Act"). The petitioner trust is the owner of land bearing City Survey No. 13582 and City Survey No.13583 admeasuring 331.05 sq.meters situated at Vishrambag, Sangli, Tal- Miraj, Dist.Sangli and building thereon, comprising of basement and three floors.

3. On 2.5.2017, the petitioner trust executed lease in respect of ground and first floor in favour of one Chandukaka

Saraf and Sons Private Limited (for short 'Chandukaka Saraf Pvt. Ltd.) for three years. According to the petitioner for the execution of the said lease, permission of the Charity Commissioner was not required in view of Section 36(1)(b) of the Act as the lease was for three years. The petitioner thereafter vide resolution dated 20 August 2017, decided to let out the ground and first floor for the period of 20 years. On 27.12.2017 they had, thus, issued public notice inviting bids to that effect in local daily Marathi newspapers viz. Aaple Jag and Dainik Lalkar.

4. According to the petitioner trust pursuant to the said notice, they received three bids. It is stated that said bids were opened and the bid of M/s. Chandukaka Saraf was found to be highest bid. It is stated that the petitioner trust thus by resolution dated 26 March 2017 decided to let out the ground and first floor to M/s.Chandukaka Saraf.

5. The petitioner, thereafter, on 10.2.2018 filed an application before the Joint Charity Commissioner seeking permission to let out ground and first floor to M/s. Chandukaka Saraf. According to the petitioner, after filing of the said application, the report was called from Charity Inspector. It is stated that during pendency of proceeding the term of lease dated 2 May 2017 got expired. It is stated that since the application was pending, they executed fresh lease deed dated 11 January 2021 in favour of M/s. Chandukaka Saraf for another period of three years.

6. The learned Joint Charity Commissioner rejected the application by the order impugned.

7. I have heard the learned Counsel for the petitioner and learned AGP for the respondent.

8. Learned Counsel for the petitioner submits that the learned Jt. Charity Commissioner erred in rejecting the application on the premise that the application was for seeking *ex post facto* permission. It is submitted that the learned Jt. Charity Commissioner failed to appreciate the fact that no permission was required for execution of lease for the period of three years and before execution of lease for 20 years the application was made. It is submitted that considering the overall facts and circumstances, the order passed by the Jt. Charity Commissioner needs to be set aside and the application filed by the petitioner under Section 36 of the Act needs to be allowed.

9. On the other hand, learned AGP submits that learned Jt. Charity Commissioner has rightly rejected the application. It is submitted that the notice inviting bids were published in local Marathi newspapers having no wide circulation. It is submitted that no interference is called for in the impugned order.

10. Admittedly, lease deed dated 2.5.2017 and 11.1.2021 were executed for three years.

11. Section 36(b) of the Act reads thus:

“36(b) - No lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of Non-Agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner.”

12. It is apparent from the above section that, no permission was required to execute a lease for the period of three years. In the facts and circumstances, the learned Joint Charity Commissioner was not justified in rejecting the application on the ground that, it was filed for seeking *ex post facto* permission.

13. As regards merits, it appears that the report of Charity Inspector was called for. The report does not appear to be adverse as there is no finding to that effect in the impugned order. Apart from it, the petitioner trust along with additional affidavit has filed the valuation report dated 23 June 2023 of Government Registered Valuer. The said Valuer has calculated the net monthly rent of the premises in question at the rate of Rs.88,850/- whereas bid of M/s. Chandukaka Saraf Pvt. Ltd. is for Rs.1,00,000/- per month with increase at the rate of 8% after every three years. Considering the overall facts and circumstances, learned Jt. Charity Commissioner was not justified in rejecting the application filed by the petitioner. Hence, the following order is passed.

ORDER

A] Civil Writ Petition is allowed.

B] The impugned order dated 10 October 2022 passed by the respondent/Joint Charity Commissioner, Kolhapur Division, Kolhapur in Application No.01 of 2020 is quashed and set aside.

C] The Application No.01 of 2020 filed by the petitioner under Section 36 of the Maharashtra Public Trusts Act is allowed.

(N.R. BORKAR, J.)