

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4373 OF 2025

**Commission on Ecumenical Mission &
Relations of the Presbyterian Church
(USA)**, through it's Managing Trustee
Mr. Prem Masih, Age 49 years,
r/at Omega Building, 19, August
Kranti marg, Mumbai 400 007

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... Petitioner

V/s.

1. **The State of Maharashtra**,
represented through the Office
of the Government Pleader,
Appellate Side.
2. **The Joint Charity Commissioner,
Kolhapur**, represented through
the Office of the Government
Pleader, Appellate Side,
Bombay High Court.
3. **Sant Nirankari Mandal Trust**
A registered Public Charitable
Trist, Sant Nirankari Colony,
Delhi 110 009,
Branch Kolhapur, through it's
Power of Attorney Holder
Shri Trilokchand Morndmal N
Nirankari, R/at Bungalow No.3,
Nirankari Colony, Gandhinagar,
Taluka Carver, District Kolhapur
4. **Abhijit Ganpatrao Patil Andalkar**
Age 47 years,m Occu.:Business,
R/o. 45, City Post Office, New
Palace Compound,
Kolhapur 416 003

**5. Sourabh Patil Builders and
Develpers Pvt. Ltd.**, having its
registered office at 49/2, B/3,
Vaibhav Bungalow,
Near Mahalaxmi Housing Society,
Pune-Satara Road, Pune
through Director
Mr. Prakash Baburao Patil

... Respondents

Mr. Vishal Kanade with Mr. Tushar Jadhav, Mr. Aniesh
Jadhav i/by Ms.Swapnali Lindait for the petitioner.

Mr. N.C. Walimbe, Additional G.P with Mr. S.P. Kamble,
AGP for respondent Nos.1 and 2-State.

Mr. Shyam K. Singh for respondent Nos.3 to 5.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 2, 2025

PRONOUNCED ON : APRIL 7, 2025

JUDGMENT:

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner, a registered Public Trust, seeks to impugn the Judgment and Order dated 2nd January 2025 passed by the Learned Joint Charity Commissioner, Kolhapur Division, in Application No. 2 of 2019. By the impugned order, the Learned Joint Charity Commissioner was pleased to reject the application preferred by the petitioner-Trust, seeking extension of time to execute the sale deed pursuant to the permission earlier granted by order dated 6th February 2001 under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as “the said Act”). The said permission had been granted to the

petitioner-Trust to effectuate a sale transaction in favour of respondent No.5.

2. The facts giving rise to the filing of the present petition are briefly stated as under:

The petitioner is a Public Trust duly registered under the provisions of the said Act and is the owner of land bearing CTS No.259A admeasuring 24,290 square meters situated at 'E' Ward, Nagala Park, Kolhapur. The petitioner-Trust had approached the Charity Commissioner with an application seeking permission to sell the said Trust property, inter alia, on the ground that the property was lying idle, yielding no income for the Trust, and was being subjected to encroachments and unauthorized development in the nature of a slum. Considering the pressing need to safeguard the interests of the Trust and to realise value for the property, the petitioner had also published a public notice inviting offers, which came to be published in the daily newspaper 'Satyawadi' on 24th March 1989.

3. Pursuant to the said public advertisement, the office of the Charity Commissioner received offers from as many as nine prospective purchasers. Upon scrutiny of the said offers, the offer submitted by respondent No.5 was found to be the highest, quoting a rate of Rs.1,086/- per square meter. Thereupon, the Charity Commissioner, after satisfying himself as to the prudence and fairness of the proposed transaction, was pleased to grant permission for sale by an order dated 6th February 2001. The said order permitted the petitioner-Trust to sell the subject property for a total consideration of Rs.2,63,97,300/-, and it was further

directed that the said transaction shall be completed by executing a registered sale deed within a period of one year from the date of the said order, i.e., on or before 6th February 2002.

4. It is the case of the petitioner that the sale deed could not be executed in favour of respondent No.5 within the stipulated period as directed in the order dated 6th February 2001, owing to various procedural and legal impediments, more particularly, the requirement to carry out due diligence and to investigate the title of the Trust over the subject property. It is submitted that considerable time was consumed in securing requisite approvals and clearances. In this regard, the Planning Authority vide communication dated 10th July 2007 granted approval for conversion of the said land for residential purposes. Subsequently, the Collector, Kolhapur, by his order dated 8th April 2010, was pleased to rectify the tenure of the property, classifying it as 'Class C' tenure land. The City Survey Officer thereafter recorded the said change by making appropriate entries in the revenue record on 8th March 2011, thereby converting the property from 'B' tenure to 'C' tenure land.

5. The petitioner has further brought on record that respondent No.5, despite the lapse of the statutory period for execution of the sale deed, proceeded to create third-party rights over a portion of the said Trust property, admeasuring approximately 5,278.81 square meters, in favour of Sant Nirankari Mandal Trust. It is submitted that subsequently, a Settlement Agreement came to be executed on 8th January 2019, wherein respondent No.3 (a private Trust) agreed, as a nominee of respondent No.5, to pay the

consideration for the land as determined by the Government to the petitioner-Trust. The said agreement also recorded that respondent No.5 would, in addition, pay a sum of Rs.17.50 crores to respondent No.3-Trust and also hand over 20,000 square meters of built-up area free of cost.

6. In the aforesaid backdrop, the petitioner-Trust preferred Miscellaneous Application No.2 of 2019 before the Learned Joint Charity Commissioner, inter alia, seeking extension of time to execute the sale deed in terms of the original permission granted vide Judgment and Order dated 6th February 2001. During the pendency of the said application, respondent Nos.3 to 5 moved applications seeking permission to intervene in the said proceedings. However, the Joint Charity Commissioner, by his decision, declined to entertain or accept the intervention applications filed by the said respondents. Thereafter, by an order dated 8th March 2019, the Learned Joint Charity Commissioner proceeded to reject Miscellaneous Application No.2 of 2019 preferred by the petitioner.

7. Being aggrieved thereby, the petitioner invoked the writ jurisdiction of this Court by filing Writ Petition No.103 of 2020 challenging the said rejection order. This Court, upon considering the material on record, was pleased to set aside the said order dated 8th March 2019 and remanded the matter to the Learned Joint Charity Commissioner for fresh consideration. The said remand was necessitated in view of the stand taken by respondent No.3 in the form of an affidavit, wherein it was unequivocally stated that respondent No.3 was willing to pay the price of the

land as fixed by the Government to the petitioner-Trust, as a nominee of respondent No.5, and further, that the amount proposed to be paid by respondent No.3 would be in addition to any amount payable by respondent No.5.

8. Upon remand, the Learned Joint Charity Commissioner, after re-hearing the matter, was pleased to pass the impugned order dated 2nd January 2025, once again rejecting Miscellaneous Application No.2 of 2019. The principal ground on which the application came to be rejected was that the parties had failed to comply with the terms and directions contained in the order dated 9th March 2021 passed by this Court in Writ Petition No.103 of 2020. It is in these circumstances that the petitioner is once again constrained to approach this Court under Article 226 of the Constitution of India, challenging the legality and propriety of the impugned order dated 2nd January 2025.

9. Mr. Kanade, the learned Advocate appearing on behalf of the petitioner, submitted that the direction issued by this Court while remanding the matter by order dated 9th March 2021 was specific and categorical, namely, that the observations made in paragraphs 3 and 4 of the affidavit filed by respondent No.3 were relevant and likely to have a bearing on the petitioner's application for extension of time. Therefore, it was incumbent upon the Learned Joint Charity Commissioner to duly consider those aspects while adjudicating upon Miscellaneous Application No.2 of 2019.

10. He submitted that the Joint Charity Commissioner, while passing the impugned order, has recorded that since 22nd March

2021 till the date of the impugned order, there had been no compliance by the parties. However, the said observation, it is submitted, is factually incorrect and betrays a complete non-application of mind. It was contended that no further action or compliance remained to be undertaken by the petitioner in view of the Settlement Agreement on record, which clearly records that respondent No.3 was willing to pay the Government-determined consideration to the petitioner-Trust as nominee of respondent No.5.

11. In addition, it was pointed out that respondent No.5 had already agreed, as part of the said arrangement, to pay an amount of Rs.17.50 crores to respondent No.3-Trust and to provide 20,000 square meters of built-up area free of cost. These material facts, it was urged, were placed on record and brought to the attention of the Joint Charity Commissioner. Despite the same, the impugned order came to be passed in complete disregard of the binding observations and directions issued by this Court in its earlier order dated 9th March 2021. It was further submitted that the petitioner is willing to comply with any condition that may be imposed by the Joint Charity Commissioner and that there exists no impediment in law or on facts to grant the extension as sought in the original Miscellaneous Application.

12. I have given my thoughtful consideration to the submissions advanced by the learned Advocate appearing on behalf of the petitioner and have carefully perused the record of the case.

13. At the outset, it is necessary to advert to the settled legal position in respect of Section 36 of the Maharashtra Public Trusts Act, 1950. Section 36 of the said Act empowers the trustees of a Public Trust to seek permission from the Charity Commissioner for alienation of any immovable property belonging to the Trust, whether by way of sale, exchange, gift, or lease, subject to satisfaction of the statutory requirement that such alienation is in the “interest, benefit, or protection” of the Trust. It is trite that the authority exercising jurisdiction under Section 36 must ensure that the proposed transaction is demonstrably in the interest of the Trust and its beneficiaries, and is not otherwise prejudicial to the object of the Trust. The paramount consideration remains the welfare of the Trust, which, in the context of alienation of immovable property, translates into securing the highest possible return, or ensuring optimal utility of the Trust property.

14. In this regard, the law laid down by the Hon’ble Supreme Court in *Chenchu Rami Reddy and Another v. Government of Andhra Pradesh*, reported in (1986) 3 SCC 391, is a binding and authoritative precedent. The Apex Court, while expressing concern over alienation of Trust properties by private negotiations, held in no uncertain terms that properties belonging to public, religious, or charitable Trusts must be jealously protected. The rationale being that such properties are held for the benefit of a large section of the public, and any transfer or alienation must be subjected to the highest standards of transparency and scrutiny. The Hon’ble Supreme Court observed that the approving authorities under such statutes must exercise alertness and

vigilance, keeping in view the realities of the present-day world, including the possibility of clandestine or underhand dealings. It was further held that a public auction, rather than private negotiation, is the preferable mode to ensure transparency and fairness, and that persons desirous of purchasing Trust property by private negotiations can always participate in the public auction.

15. A similar view was reiterated by the Hon'ble Supreme Court in the case of *Mehrwan Homi Irani v. Charity Commissioner, Bombay & Others*, reported in (2001) 5 SCC 305. In the said decision, the Court underscored the obligation of the Charity Commissioner to explore and secure the best possible price for Trust properties while granting permission under Section 36. The Charity Commissioner was directed to re-advertise the property and invite offers afresh with suitable conditions, so that the ultimate transaction could subserve the larger interest and benefit of the Trust. The underlying principle is that permission under Section 36 is not a mere procedural formality but a substantive safeguard to protect Trust property from undervaluation or exploitation.

16. A coordinate Bench of this Court, in *Anna Dhuraji Patil v. State of Maharashtra and Others*, reported in (2009) 2 Mh.L.J. 621, had occasion to consider a case analogous to the one at hand, where extension of time was sought by the purchaser for execution of sale deed pursuant to a permission granted under Section 36. In that case, there was an inordinate delay of six years from the date of the original permission. The Joint Charity Commissioner declined the request for extension of time, taking note of the

significant lapse of time and the consequential appreciation in the market value of the property. The Charity Commissioner observed that permitting the sale at the old rate, without re-evaluation or inviting fresh bids, would be detrimental to the interest of the Trust. Accordingly, the extension was refused.

17. In the said case, a contention was raised that an application for extension of time is not an application for fresh permission to sell, and therefore the Charity Commissioner had no jurisdiction to vary the original terms or to reopen the consideration amount. However, this Court, relying on the judgment of the Full Bench in *Shailesh Developers v. The Joint Charity Commissioner*, reported in (2007) 3 Mh.L.J. 713, held that while the necessity of sale or transfer under Section 36 may have been established earlier, it is always open to the Charity Commissioner to ensure that the best possible offer is accepted in the changed circumstances, particularly where there is delay in completion of sale. The Court emphasized that time-bound completion of sale is essential to avoid prejudice to the Trust, especially in view of the ever-increasing market value of immovable properties. It was further held that time, though not always the essence of a contract for sale of immovable property, assumes critical importance where such a stipulation is imposed by the Charity Commissioner in exercise of statutory power. It was further observed that if the Charity Commissioner imposes a time-bound condition for completion of sale, the same must be strictly adhered to by the parties, failing which the entire object of obtaining prior permission under Section 36 is defeated. If the sale is not completed within the stipulated

time, and property prices have appreciated substantially in the meanwhile, permitting completion of sale at the originally approved price would not be in the interest of the Trust. In such circumstances, the Charity Commissioner is justified, and indeed obligated, to revisit the transaction, and may invite fresh offers, re-advertise, or even revise the price, depending on the facts of each case.

18. In the backdrop of the legal position enunciated by the Hon'ble Supreme Court in *Chenchu Rami Reddy (supra)* and the observations of the coordinate Bench of this Court in *Anna Dhuraji Patil (supra)*, the claim of the petitioner-Trust for extension of time is liable to be examined with circumspection. It is undisputed that the original permission to sell the Trust property was granted in the year 2001, pursuant to which the sale transaction was to be completed within one year. However, the petitioner now seeks to revive that transaction almost two decades later, on the basis of a private settlement arrived at inter se the petitioner, respondent No.3, and respondent No.5. The said private arrangement envisages that respondent No.3 shall pay the price of the land as fixed by the Government, in the capacity of nominee of respondent No.5, and that an additional amount of Rs.17.50 crores shall be paid by respondent No.5 to the petitioner-Trust, along with an obligation to deliver 20,000 square feet of built-up area free of cost. However, as observed by the Hon'ble Supreme Court in *Chenchu Rami Reddy (supra)*, properties belonging to public or charitable Trusts partake the character of public property, and their alienation must be governed by the principles of transparency,

fairness, and maximisation of benefit to the Trust. The Apex Court has emphatically held that disposal of public property should ordinarily be conducted by way of public auction after fixing a reserve price commensurate with the prevailing market value, and that private negotiations must be resorted to only in rare and exceptional circumstances, and only for cogent and recorded reasons. The Supreme Court has further cautioned that authorities exercising statutory power in such matters must not adopt a perfunctory or superficial approach, and must remain vigilant to the risk of clandestine arrangements or private understandings which may not be visible to the public eye. The process must therefore not only be fair but must also appear to be fair in the eyes of the public, so as to instill confidence in the institutional integrity of the mechanism envisaged under Section 36 of the Maharashtra Public Trusts Act.

19. As regards the contention of the learned Advocate for the petitioner that the Joint Charity Commissioner was bound to allow the application for extension of time in light of the directions issued by this Court in its order dated 9th March 2021 in Writ Petition No.103 of 2020, I find no merit in the same. A careful perusal of the said order reveals that this Court did not issue any positive direction to grant the extension. Rather, the Court merely observed that the affidavit filed by respondent No.3, particularly paragraphs 3 and 4 thereof, may have a bearing on the adjudication of the application for extension of time, and accordingly remanded the matter to the Joint Charity Commissioner for fresh consideration. Therefore, it was entirely

within the domain of the Joint Charity Commissioner, upon independent application of mind, to assess whether the arrangement proposed by respondent Nos.3 and 5 was in fact in the best interest of the Trust. It is well settled that even upon remand, the Charity Commissioner retains the discretion to accept or reject the proposed transaction, provided the decision is founded upon sound reasoning and is in consonance with the object and mandate of Section 36 of the Act. The authority is under a statutory duty to protect the Trust's interest and ensure that any alienation of Trust property is undertaken in a manner that secures maximum value and benefit to the beneficiaries.

20. In the present case, it is material to note that the Charity Commissioner, while granting permission under Section 36(1)(a) of the Act, had imposed a specific time-bound condition for completion of the sale transaction, directing that the sale deed be executed within a period of one year from the date of the order, i.e., on or before 6th February 2002. The said stipulation was an integral part of the statutory permission, and cannot be treated as a mere formality or directory in nature. The imposition of such a timeline is not without purpose; rather, it serves a vital function of protecting the interest of the Trust by ensuring that the transaction is completed promptly and without undue delay, thereby safeguarding the Trust from potential undervaluation of its assets in a fluctuating real estate market.

21. It is a matter of common knowledge, and also judicially recognised, that the value of immovable property generally appreciates with the passage of time. In the present case, the

petitioner seeks to revive the transaction almost twenty-five years after the initial permission was granted, during which period there has been a substantial and undeniable escalation in the market value of the subject property. To permit completion of the sale at the price fixed in the year 2001, without any re-evaluation or invitation for fresh offers, would be manifestly detrimental to the interest of the Trust and would amount to defeating the very object and spirit of Section 36.

22. The Trust property cannot be alienated in a manner that results in financial loss to the trust, and that delay in execution of transactions may warrant re-evaluation in light of prevailing market rates. In that context, it needs to be noted that charity commissioner is custodian of trust's interest and cannot permit stale or outdated transactions that no longer serve the purpose of maximizing trust's benefit.

23. In *Anna Dhuraji Patil (Supra)*, a coordinate Bench of this Court refused to allow extension of time after a substantial lapse of six years, observing that market conditions had changed and it would not be in the interest of the Trust to proceed with the original transaction. It was held that the Charity Commissioner must be vigilant to reassess whether the original transaction continues to remain beneficial to the Trust, especially when the sale is not completed within the timeframe stipulated in the permission order.

24. Applying the ratio of the aforesaid decisions to the facts of the present case, it becomes apparent that the failure of the

petitioner to complete the sale within the stipulated time, and the subsequent delay of nearly 24 years, militates against the statutory scheme. The property prices in Kolhapur, like in most urban centres, are likely to have appreciated manifold since the year 2001, and it would be wholly inappropriate to permit the sale to be executed today at a price privately agreed by parties, thereby depriving the Trust and its beneficiaries of the actual market value to which they are justly entitled. In such a situation, the Charity Commissioner is not only justified but is in fact obligated to revisit the transaction and take such measures as are warranted to protect the interest of the Trust, including inviting fresh offers by public advertisement, revising the upset price on the basis of current market valuation, or declining the request for extension altogether. To do otherwise would amount to permitting private parties to benefit from inaction or delay at the expense of a public Trust, which the law does not permit.

25. In my view, the best interest of the Trust would be served not by granting a belated extension for a transaction based on outdated valuation, but by permitting the petitioner-Trust to file a fresh application under Section 36 of the Maharashtra Public Trusts Act, 1950, seeking permission to sell the property afresh. Such an application, if made, shall be considered by the Joint Charity Commissioner in accordance with law, by adopting the procedure of inviting public offers through publication of a notice in the Marathi daily *Pudhari*, which, it is submitted, enjoys the widest circulation in the concerned locality. The Charity Commissioner shall also be at liberty to fix an upset price or

reserve price based on a proper and objective assessment of the prevailing market value, by consulting government valuation data, collector's guidelines, or valuation reports from competent authorities.

26. In light of the foregoing discussion and upon holistic consideration of the material on record, I am of the firm view that the Joint Charity Commissioner was justified in rejecting the petitioner's application for extension of time. No infirmity or jurisdictional error can be attributed to the impugned order dated 2nd January 2025, which is in consonance with the settled principles of law. However, liberty is reserved in favour of the petitioner-Trust to initiate fresh proceedings seeking permission to sell the subject property by filing a fresh application under Section 36 of the Act. If such application is filed, the Joint Charity Commissioner shall decide the same expeditiously and in any event, within a period of four months from the date of its filing, after following the due process as delineated hereinabove.

27. In view of the above discussion, the writ petition is devoid of merit and is accordingly dismissed. However, the same shall stand disposed of with liberty to the petitioner to adopt an appropriate remedy as indicated hereinabove. There shall be no order as to costs.

(AMIT BORKAR, J.)