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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1413 OF 2025

Dawat E-Islmai-Hind … Petitioner

V/s.

The Joint Charity Commissioner, Greater Mumbai Region, Mumbai … Respondent

Dr. Uday Warunjikar with Arvind Dhanraj Aswani for the petitioner.

Mr. S. D. Rayrikar, AGP for the State-respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2025

P.C.:

1. The present Writ Petition under Article 226 of the Constitution of India calls into question the legality and correctness of an order dated 22 August 2024 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, in Application No.130 of 2023. The aforesaid application came to be instituted by the petitioner under Section 36 of the Maharashtra Public Trusts Act, 1950 (hereinafter, "the Act"), seeking leave to sell the property bearing Plot No.18, Survey No.57 admeasuring 05.3R (approximately 5700 square feet). The petitioner contends that the said property, being part of the trust's assets, was to be sold in the best interest of the trust and that all procedural and substantive requirements mandated by the statute were duly complied with while seeking permission.

2. In terms of the impugned order, the learned Joint Charity Commissioner declined the permission essentially on the ground that the notarized gift deed dated 17 September 2014 contains a recital prohibiting any manner of alienation, including by way of lease, sub-lease, rent, mortgage, sale, or assignment. By relying upon this restrictive clause, the Joint Charity Commissioner concluded that the trust, having derived its title through the said gift deed, was disqualified from alienating the property in question. The learned Joint Charity Commissioner was of the opinion that the stipulations in the gift deed—prohibiting any form of parting with possession—operated as a bar to the exercise of jurisdiction under Section 36 of the Act.

3. Having heard learned counsel for the parties and perused the material on record, I am of the considered view that the impugned order is not sustainable in light of the settled legal position under Section 10 of the Transfer of Property Act, 1882 (hereinafter, "the T.P. Act"). Section 10 of the T.P. Act provides, in substance, that where property is transferred subject to a condition or limitation restricting the transferee's absolute power of alienation, such condition is void to the extent it restrains subsequent transfers. The Supreme Court, in its authoritative pronouncement in *Sridhar & Anr. vs. N. Revanna & Ors., (2020) 11 SCC 211,* has affirmatively held that once a person voluntarily gifts his property, the donee (or beneficiary of the gift) acquires an absolute title therein. Any stipulation in the deed seeking to restrain such absolute vesting, or limiting the donee's right to dispose of the property, is void and unenforceable. In the present factual matrix, the clause in the gift deed purporting to circumscribe or deny the trust's right to alienate the property is, therefore, rendered nugatory by operation of law. Since the Joint Charity Commissioner's decision predominantly hinges on this restrictive clause, the impugned order dated 22 August 2024 cannot be sustained.

4. In view of the aforesaid discussion and the settled position of law, it would be appropriate to quash and set aside the impugned order, and remit the proceedings to the learned Joint Charity Commissioner, Greater Mumbai Region, for fresh adjudication. The Joint Charity Commissioner is directed to consider the application under Section 36 of the Act afresh, on its own merits and in accordance with law, without being influenced by the earlier observations with respect to the restrictive clause in the gift deed. The Joint Charity Commissioner shall endeavour to conclude these proceedings within a period of four months from the date on which the petitioner appears before him.

5. The petitioner is directed to remain present before the learned Joint Charity Commissioner, Greater Mumbai Region, on **10 March 2025 at 10:30 a.m.** for further proceedings. The Joint Charity Commissioner shall afford a fair opportunity of hearing to all concerned parties, including the petitioner and other interested stakeholders, before arriving at a fresh determination on the application.

6. In the light of the directions issued hereinabove, the Writ Petition stands disposed of. There shall be no order as to costs. All rights and contentions of the parties are kept open for adjudication by the Joint Charity Commissioner in accordance with law.

7. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)