IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 884 OF 2025**

1. **Pradnya Niketan Education Society** ]
Survey No. 80/1/2/1. ]
Baner-Mahalunge Road, ]
Baner, Pune – 411 045 ]
through its Authorized Representative, ]
**Vilas Balaram Patil** ]
Age:- 62 years, Occupation:- Service ]
Residing at A3-1203, 12th floor, ]
Nandan Prospera, Laxman Nagar, ]
Baner, Pune – 411 045. ]

**2. Vilas Balaram Patil** ]
Age :- 62 years, Occupation :- Service ]
Residing at A3-1203, 12th floor, ]
Nandan Prospera, Laxman Nagar, ]
Baner, Pune – 411 045. ]

**3. Asmita Subarao Patil** ]
Age :- 37 years, Occupation – Service, ]
Residing at 12, Gulmohar, Rutuja Park ]
Society, Baner-Mhalung Road, ]
Baner, Pune – 411 045. ]

**4. Shweta Subarao Patil** ]
Age – 32 years, Occupation – Business ]
Residing at 12, Gulmohor, Rutuja Park ]
Society, Baner-Mhalung Road, ]
Baner, Pune – 411 045. ]

**5. Kanchan Subarao Patil** ]
Age – 64 years, Occupation – Business ]
Residing at 12, Gulmohor, Rutuja Park ]
Society, Baner-Mhalung Road, ]
Baner, Pune – 411 045. ]

**6. Subarao Balaram Patil** ]
Age – 67 years, Occupation – Service, ]
Residing at 12, Gulmohor, Rutuja Park ]
Society, Baner-Mhalung Road, ]
Baner, Pune – 411 045. ]

**7. Ankush Sheshrao Chavhan** ]
Age – 63 years, Occupation – Retired, ]

Residing at 1403, Building No. 49, ]
Seawoods Estate Phase-II, Palm Beach Road, ]
Nerul, Navi Mumbai – 400 706. ]

8. **Amar Annarao Patil** ]
Age – 62 years, Occupation – Service, ]
Residing at Flat No. 5, Harilila Apartments, ]
Balewadi Phata, Baner, Pune – 411 045. ] **...Appellants**

***Versus***

1. **Amar Vijay Jadhav,** ]
Age: 61 years, R/at: Flat No. 1502, ]
Building No. 56, NRI Complex, ]
Seawoods Estate, Phase 2, ]
Sector 54, 56 and 58, ]
Nerul, Palm Beach Road, ]
Navi Mumbai – 400706. ]

2. **Venkatrao Vishwanatrao Gaikwad** ]
Age : 77 years, Occ: Retired ]
R/at: 05/24, Mandakinee Apartment, ]
Prabhat Road, Lane No. 14, ]
Erandwane, Pune – 411 004. ]

3. **Sunil Annarao Patil** ]
Age: 57 years, Occ: Business ]
R/at: Chincholi Jahagir ]
PO: Chincholi Jahagar, ]
Dist: Osmanabad, Maharashtra – 413606. ]

4. **Mrs. Surekha Shinde** ]
Adult, Occupation – Homemaker, ]
Flat No. 19, Arihant Apartments, ]
Mahalunge, Pune – 411 045. ]

5. **Sushil Chandrakant Garje** ]
Age : 56 years, Occupation – Service ]
R/at: 1101 and 1102, Building No. 50 ]
Seawood Estate Phase-II, ]
Palm Beach Road, Nerul – 400 706. ]

6. **Sanjay Dattatray Yenpure** ]
Age : 60 years, Occupation – Service, ]
Add: 98/2, Bhupali Apartments, ]
Prabhat Road, Erandwane, Pune – 411 004. ]

7. **Mayuresh Govind Bodke** ]
Age : 34 years, Occupation – Business ]

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|---|---|---|
| | Add: 22/504, Chandan Co-Op. Housing Society, Vasant Vihar, Thane (West) – 400 610. | ] |
| **8.** | **Popatrao Dada Malikner** Age : 60 years, Occupation – Service Add – 17/B-22, Haji Ali, Govt. Colony, Mumbai – 400034. | ] |
| **9.** | **Dattatray Rajaram Yevale** Age : 60 years, Occupation : Service Add: Jagat Vidya Co-Op. Housing Society, A-103, BKC Road, Behind Guru Nanak Hospital, Bandra – East, Mumbai – 400 051. | ] |
| **10.** | **Thane Bharat Sahakari Bank Ltd.,** Having registered office at Shataraka, Baji Prabhu Deshpande Marg, Naupada, Thane – 400 602. | ] **...Respondents.** |

*Mr. Aspi Chinoy, Senior Advocate a/w Mr. Kamlesh Ghumre, Ms. Sonali Jadhav for Appellants.*
*Mr. Ashutosh Kulkarni i/b Mr. Akshay Kulkarni for Respondent Nos. 1 to 4.*
*Mr. Charles D'souza, Mr. Nikhil Rajani, Mr. Dhruva Gaikwad, Mr. Ajay Deshmane i/b M/s. V. Deshpande and Co. for Respondent No. 10.*

**Coram : Sharmila U. Deshmukh, J.**

**Date : 29th April, 2025.**

**Judgment :**

**1.** The present Appeal has been preferred against the order dated 12th March, 2025 passed by the Joint Charity Commissioner rejecting the prayer for modification of the order dated 17th February, 2025 passed in Application No. 009 of 2025 filed under Section 41E of the Maharashtra Public Trusts Act, 1950 [for short, ***"Trusts Act"***].

**2.** Application No. 009 of 2025 was filed by four Applicants who are

Respondent Nos. 1 to 4 herein against the Appellant-Education Society before the Joint Charity Commissioner under Section 41E of Trusts Act seeking an order of injunction against the present Appellants from entering into transaction with Respondent-Bank for purchasing the property comprising of auditorium (4500 sq. ft.), basement parking admeasuring 18,500 sq. ft. and terrace top admeasuring 9983 sq. ft. situated at Survey No. 80 (Hissa No. 1/1 and 2/2) Baner, Pune under Securitisation and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 Act [for short, ***"SARFAESI Act"***] at sum of Rs. 9.54 crores.

**3.** The Applicants came with a case that Applicant No. 1 is the founder life member of the Trust. The Applicant No. 2 is one of the current trustees of the Trust and Applicant Nos. 3 and 4 are beneficiaries of the Trust being guardian and parents of students of the Trust. It was contended that the school property was purchased by the Trust from one M/s. Vidya Vardhini Developers Private Limited [for short, ***"VVDPL"***] which was building with basement, ground and four floors. Out of the said property, VVDPL retained with itself the auditorium, basement and terrace top and sold rest of the property to the Trust. Since the Trust required the portions of the property retained by vendor, in 2015, Registered Lease Deed of ten years was executed on 3$^{th}$ March, 2015 between the Vendor and the Respondent

Trust. It was contended that VVDPL had taken loan from M/s. Thane Bharat Sahakari Bank while developing the subject property. For the purpose of recovery, upon default, the Bank tried to sell the area of the auditorium, basement and terrace top on two occasions and was unable to sell the property even at the base price of Rs. 8 crore. The Bank was approached by the Trust to buy the property at very high price. It was contended that there is an ulterior motive and element of fraud to put the Trust at loss in the transaction. To support the contention, the Respondents relied upon Valuation Report dated 1st August, 2023 obtained by the Trust from the registered valuer in which the subject property was valued at Rs. 2.70 crore. The Valuation Report obtained by Bank dated 26th December, 2024 valued the property at Rs. 8 crore. Alleging that the Trust will be put at loss, the relief of injunction was sought on the basis of discrepancy in the valuation.

**4.** The Joint Charity Commissioner passed an *ex parte* order of injunction on 17th February, 2025 below Exhibit-5. It noted that on two occasions, the value of property was shown at Rs. 8,50,00,000/- and Rs. 8,00,00,000/- respectively whereas actual market value is Rs. 2,70,00,000/-. It held that the Trust is going to enter into transaction with the Bank which is in excess of market value of the property which will result in loss to the Trust and as the Trust is in occupation of the property, no loss will be caused to it if it is restrained and passed the order of temporary injunction from entering into any transaction with the Bank.

**5.** Subsequently, after the notice was served, the Appellant Nos. 1 to 6 as well as the Bank appeared before the Joint Charity Commissioner seeking modification of the order. The Joint Charity Commissioner noted that from the documents filed by Appellants during the hearing, an Annual General Meeting was called by Trust on 21st March, 2025 to discuss the proposed purchase of the basement, auditorium and terrace and does not reflect that there is any resolution to purchase the property and even if private treaty has been entered into, it is without any resolution. The Joint Charity Commissioner held that the apprehension of present Appellant that the property will go away from their hands if they do not pay the balance consideration till 16th March, 2025, does not appear to be valid as there is no resolution passed by the members to purchase the said property. It held that if the Appellants are not restrained, further amount of the Trust will also be in danger and refused to modify the order.

**6.** During the hearing before Joint Charity Commissioner, it was pointed out that Respondent-Bank had issued a letter dated 25th February, 2025 calling upon the present Appellant Nos. 1 to 6 to make payment of balance consideration till 16th March, 2025 failing which the private treaty with the Trust will be cancelled.

**7.** Mr. Chinoy, learned Senior Advocate appearing for the Appellants would submit that the Applicants before the Joint Charity Commissioner were the Directors and Shareholders of M/s. Vidya Vardhini Developers Private Limited. He would further submit that in 2019, the Applicant No. 1 and one Shinde and Patil had resigned as Trustees and in 2024, Applicant No. 1 before the Charity Commissioner had preferred Appeal against the order accepting the Change Report. He would submit that the Sale Deed excluded the area of basement, auditorium and terrace which was integral part of the building. He would further point out that the admitted position is that VVDPL had obtained a Term loan facility of Rs. 8 crores from the Ghatkopar (East) Branch and had created a registered mortgage on 11th March, 2015. He would submit that for the period from 1st January, 2015 to 6th June, 2020, pursuant to the Lease Deed executed between VVDPL and the Trust, lease rent of Rs. 8,94,36,729/- was paid. He submits that since there was default in repaying the loan amount, proceeding under SARFAESI Act was initiated by the Bank in which before the Debt Recovery Tribunal, the Trust as well as the Bank arrived at Consent Terms in which it was agreed to pay sum of Rs. 9,54,41,565/- for purchase of subject property, i.e. the excluded portions of the school building. He would further point out that by communication dated 27th

January, 2025, VVDPL by its letter conveyed to Respondent No. 10 Bank that it has 'no objection' to the property being sold for Rs. 9.71 crore on the basis that it would stand relieved from all its obligations under the loan. He would further submit that Government valuation for stamp duty purposes, was determined at Rs. 10,40,37,511/-. He would submit that on 8th February, 2025, VVDPL addressed a communication to the Bank alleging that the said portions of the building were worth Rs. 24 crore and could not be sold to Rs. 9 crore. He submits that subsequently, Applicant No. 1 who was also the shareholder and Director in VVDPL alleged that the property has been sold in excess to the market value of the property and that it will cause loss to the Trust and has obtained an order of injunction. He submits that the Trust has filed Special Civil Suit against VVDPL against the purported exclusion of the portions of Building from the Sale Deed as well as impugning the Mortgage Deed. He would submit that by reason of restraint order, the Appellants were unable to deposit the amount as called upon by the Bank and the Bank has entered into the private sale in respect of these portions with son of Respondent No. 2 who is one of the Trustees of the Trust for sum of Rs. 9.57 crore. He submits that the present orders would bind the Trust who would be unable to proceed further to challenge the said sale by Bank or proceed with pending Special Civil Suit.

**8.** *Per contra,* Mr. Kulkarni, learned counsel appearing for Respondents would submit that Respondent Nos. 1 and 2 have no connection with VVDPL and are not even the shareholders or directors of the said company. He submits that the Valuation Report of the Trust has valued the property at Rs. 2.70 crore and therefore, the offer to purchase the said property at Rs. 9.54 crore would cause loss to the Trust, which was brought to the notice of Joint Charity Commissioner. He would further submit that it is not disputed that the property was earlier sought to be sold for Rs. 8 crore and Rs. 8.50 crore at which point of time, the Trust did not take any steps to purchase the said property. He would further submit that the property which is valued at Rs. 2.70 crore is now sought to be purchased at Rs. 9.54 crore and therefore, the Joint Charity Commissioner has arrived at finding that if the transaction is not restrained, it will cause loss to the Trust. He would further submit that as subsequently, the property has now been sold to third party, the Application has become infructuous. He would further submit that the present Appeal has been preferred against the ad-interim order and final adjudication of Exhibit-5 Application is still pending and all the issues can be considered before the Joint Charity Commissioner.

**9.** I have considered the submissions and perused the record.

**10.** The sole basis for passing of the *ex parte* order of injunction dated 17th February, 2025 is the valuation of the subject property as the Trusts' valuer had valued the same at Rs. 2,70,00,000/- and the Bank had on two occasions offered to sell the property at Rs. 8,50,00,000/- and Rs. 8,00,00,000 in which the Trust did not participate.The facts are mostly undisputed except as regards the connection of present Respondent Nos. 1 and 2 with VVDPL. Even accepting that the Respondent No 1 and 2 were unconnected with VVDPL, what assumes significance is that the owner of the subject property raised an objection that the subject property worth Rs 24 crores is sought to be sold to the Appellants at Rs 9.5 crores.

**11.** The school building was purchased by the Appellants from VVDPL which retained the auditorium, basement and terrace with themselves. Subsequently, the subject property was leased by VVDPL to the Appellants for period of about ten years and lease rent of Rs. 8,94,36,729/- has been paid, which demonstrates that the subject property was integral part of the school building. Upon acquiring ownership rights in the subject property, the entire building would come in the hands of the Trust and would eliminate the payment of lease rent.

**12.** The finding of Joint Charity Commissioner that the Trust property i.e. the Trust funds are being wasted is based on solitary ground of market value of the subject property. The basis for the finding is that the Trust's valuer had valued the subject property at Rs 2.70 Crores whereas the Trust had entered into an agreement with the bank for Rs 9.54 Crores. As rightly pointed out by Mr. Chinoy, the market value of Rs. 2.70 Crores has been arrived at by the Trust's Valuer by taking the valuation of basement and terrace as 'NIL' considering the same as school amenities. The Valuation Report was therefore, restricted only to the valuation of auditorium. It also cannot be lost sight that the subject property was mortgaged to the Bank for loan of about Rs 8 Crores and it is known fact that the value of the collateral security is higher than the loan amount. On earlier occasions the Bank had fixed the reserved price in the range of Rs. 8,00,00,000/- to Rs. 8,50,00,000/-. It is therefore a clear indicator that valuation of the subject property at Rs 2.70 Crores was way below the market price of the subject property.

**13.** The question is whether the valuation of the subject property should be sole consideration in facts such as involved in the present case. In my view, what is also required to be taken into consideration is the importance of the subject property for the proper functioning of the school. In the reply Affidavit before the Joint Charity Commissioner, the Appellants have set out in detail the litigation which was being pursued by the Appellants before the Debt Recovery Tribunal, the Civil Court and the High Court to ensure that the subject property is not alienated in favour of third party. The diligent pursuance by the Trust is indicator of the fact that the subject property is integral to the functioning of the school. The utilisation of the trust funds for the purpose of acquiring an asset which is of utmost importance to the functioning of the school cannot be held to be waste of trust funds solely based on the market valuation. It is contended by learned counsel appearing for the Bank that the Bank has taken the possession of subject property and permitted the Trust to occupy the same as it was found that it was integral for the functioning of the school.

**14.** The Joint Charity Commissioner while passing the *ex parte* restraint order has held that as Trust is already in occupation of the said property, no loss will be caused to the Trust if it is restrained. The said finding overlooks the fact that upon the sale of said property to a third party, the Trust will be bound to vacate the Trust property which will cause loss to the Trust. That apart, the Joint Charity Commissioner has not considered the Trust's Valuer's report in detail,which would have made it clear that the same is restricted only to the auditorium's valuation. At the stage of passing ex-parte injunction, the Joint Charity Commissioner would have considered the prima facie case, however, even after the application for modification is filed, necessary factors were not considered by the Joint Charity Commissioner. In the reply

Affidavit of the Appellants, it was brought out that consent terms were entered into with the Bank by entering into a private treaty for purchase of property at Rs 9.54 crores as provided under the SARFAESI Act and Rules to ensure that no adverse orders were passed by the Debt Recovery Tribunal. The valuation for stamp duty purposes was determined at Rs 10,40,37,511/- which lends colour of legitimacy to the purchase of the property at Rs 9.54 crores.

**15.** The Joint Charity Commissioner while rejecting the modification application has held that there is no resolution to purchase the property without noticing the various litigation which was pursued by the Appellants in order to acquire ownership rights of the subject property. The allegation was not that the transaction was not backed by resolution but that of wastage of trust property. The Joint Charity Commissioner did not place any importance on the fact that part consideration was already paid and the Bank had issued an ultimatum calling upon the Appellants to pay the balance amount till 15th March, 2025 failing which the private treaty with the Trust will be cancelled. No consideration was given to the importance of the subject property to the functioning of the school.

**16.** There is no allegation that the Trustees have unduly benefitted from the transaction with the Bank and the valuation by the Trust's valuer is the sole factor considered by the Joint Charity Commissioner.

The valuation of Rs 2.70 crores cannot be accepted for the following reasons:

(a) VVDPL valued the subject property at Rs 24 crores.

(b) The subject property was offered as collateral security for lease rent discounting loan of Rs 8 crores.

(c) The valuation for stamp duty purpose was Rs. 10,40,37,511/-.

**17.** The Joint Charity Commissioner has adopted one dimensional approach by taking into consideration only purported market value based on market valuation which is also a superficial observation without detailed investigation into Valuation Report of Rs. 2.70 crore. In event, the Valuation Report would have been considered in detail, the Joint Charity Commissioner would have noticed that the Valuation Report of Rs. 2.70 crore has been arrived at by taking into consideration, the basement and terrace as 'NIL'.

**18.** Though it is sought to be contended that Application has been rendered infructuous by reason of the fact that subject property has been sold to third party by Bank, the restraint order would preclude the Appellants from proceeding further to secure the subject properties. The order of Joint Charity Commissioner being unsustainable should not be permitted to remain in force. The order of the Joint Charity Commissioner which *prima facie* holds that the purchase consideration of Rs 9.54 crores is excessive and the trust funds are being wasted would bind the Appellants in all proceedings. Hence, I do not find any substance in the submission raised that order which is impugned in the present Appeal is an ad-interim order and Exhibit-5 Application is still pending.

**19.** The order of 17th February, 2025 was sought to be modified by Appellants specifically pointing out to the Joint Charity Commissioner that the balance amount has to be paid by 15th March, 2025, i.e. after the *ex parte* order was passed on 17th February, 2025 or else the private treaty will be cancelled. Despite the crucial fact being pointed out to the Joint Charity Commissioner, the Joint Charity Commissioner did not modify the said order and the properties have now been sold by Bank to the third party.

**20.** The most disturbing aspect is that the property has been sold by the Bank to the son of Respondent No. 2, who was one of the Applicants to Section 41E Application before the Joint Charity Commissioner, alleging that the market value of the property is Rs. 2.70 crore and purchase of said property at Rs. 9.54 crore is excessive. The Respondent No. 2's son has purchased the said property from the Bank at Rs 9.57 crores which has been affirmed by learned Advocate for Respondent No. 10-Bank.

**21.** When the totality of the facts and circumstances are taken into consideration, it is very clear that the intention of the Applicants was to stall the purchase of the said property by the Trust so as to privately benefit the son of Respondent No. 2 and continue to have a leverage over the Trust *qua* the subject property which forms integral portions of the school building. The reply affidavit also sets out the complaints filed by the Appellant Trust against the Applicant No 1 and the allegations in the application appears to be counterblast to those proceedings. *Mala fide* intention is writ large on the part of Respondents, who are the Applicants before the Joint Charity Commissioner. Considering the subsequent development, it is no longer open for Respondents to now say that Exhibit-5 Application is still pending and can be decided by Joint Charity Commissioner.

**22.** The purchase of subject property by Respondent No. 2's son at Rs. 9.57 crore changes the complexion of the entire matter and it could no longer be said that the Trust was purchasing the property for an excessive price of Rs. 9.54 crore and amounts to wastage of the trust funds. As the order is clearly unsustainable, the same cannot be permitted to continue.

**23.** In light of above, the First Appeal is allowed. The orders dated 17th February, 2025 and 12th March, 2025 are hereby quashed and set aside.

**[Sharmila U. Deshmukh, J.]**

**24.** At this stage, the request is made for the stay of this order. In light of the fact, that the Respondent No. 2's son has purchased the property, I am not inclined to stay the order. The request of stay stands rejected.

**[Sharmila U. Deshmukh, J.]**