Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4958 OF 2026

M/s Eiffel Hi Tech Through Abdul Bashir Khan And Anr ...Petitioners

Versus

State Of Maharashtra Through The Secretary Law And Judiciary Dept And Ors ...Respondents

Mr. Zaid Ansari, a/w Zeeshan Khan and Rayyan Shah, for the petitioner.
Mr. Y. D. Patil, AGP for the State.
Mr. Mayur Khandeparkar, thorugh VC, a/w Hrushi Narvekar, Smit Shukla, Siddharth Shah, and Vaibhavi Bhalrerao, i/b Trilegal, for Respondent No.4.
Mr. Atul Damle, Senior Advocate, a/w Alankar Kirpekar, Dushyant Krishnan, Susmit Phatale and Samanath Kale, i/b Susmit Phatale, for Respondent No.3.

CORAM: N. J. JAMADAR, J.
DATED: 21st APRIL, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.

2. The challenge in this petition is to an order passed by the learned Charity Commissioner on 23rd March, 2026, whereby while permitting the petitioners to intervene in a proceeding under Section 36 of the Maharashtra Public Trust Act, 1950 for granting sanction for the alienation of the property of respondent No.3 Trust, the learned Charity Commissioner has directed the petitioners to submit its offer alongwith a demand draft/pay order of 50% of the offer amount.

3. Mr. Ansari, the learned Counsel for the petitioners, submitted that the condition is onerous. In fact, the offer made by the petitioners is in the interest and benefit of the Trust as the petitioners are offering a constructed area of 21,937.61 sq. ft., the approximate value of which would be Rs.98,71,65,000/-. Therefore, the condition to pay the 50% of the offer amount upfront be dispensed with.

4. Mr. Damle, the learned Senior Advocate for the respondent Trust and Mr. Khandeparkar, the learned Counsel for respondent No.4, in whose favour the Trust has entered into MoU, have opposed prayers in the petition. It was submitted that the intervention application came to be filed when the application under Section 36 was closed for orders. In the application for intervention, no specific offer was made. It was only in the affidavit-in-rejoinder, the petitioners have given the offer that too of constructed portion of the developed property only.

5. Mr. Damle, the learned Senior Advocate for the Trust – respondent No.3 invited the attention of the Court to the tender document, especially clause ‘D’ thereof, which invited the offer in the form of “considerable amount to be paid to the issuer/the Executive Board of Methodist Church in addition to proposed share in the form of furnished constructed portion as mentioned in paragraph-C with any terms in Methodist Church in India project.” Therefore, the intervener cannot be permitted to force its terms on the Trust, submitted Mr. Damle.

6. Mr. Khandeparkar, the learned Counsel for respondent No.4, submitted that in pursuance of the MoU executed by and between the Trust and respondent No.4, the Respondent No.4 has significantly altered its position. Out of the monetary consideration of Rs.25 Crore, the Respondent No.4 has already parted with a consideration of Rs.11 Crore. The intervention application was filed only with a design to delay the disposed of the application for grant of sanction by the Charity Commissioner, submitted Mr. Khandeparkar.

7. The learned Charity Commissioner was of the view that the proposal of the petitioners – interveners was that of a joint development. The interveners cannot be permitted to deal with the Trust property on their own terms. Thus, the learned Charity Commissioner in view of the law laid down by this Court in the case of ***Shailesh Developers and another vs. Joint Charity***

Commissioner, Maharashtra[1] considered it appropriate to give an opportunity to the petitioners to submit a proposal for development of the Trust property, and to test the *bona fides* of the petitioners directed the petitioners to submit their offer alongwith the demand draft/pay order of 50% of the offer amount.

8. An application under Section 36 of the Maharashtra Public Trust Act is required to be determined by the Charity Commissioner in exercise his *parens patriae* jurisdiction. The decision of the Full Bench of this Court in the case of ***Shailesh Developers*** (supra) enunciates the powers of the Charity Commissioner in the matter of grant of sanction for the sale and alienation of the property of the Trust. The guiding factor is, the protection, interest and the benefit of the Trust. In the case of ***Cyrus Rustom Patel vs. The Charity Commissioner, Maharashtra State and ors.***[2]**,** the Supreme Court has further clarified the nature of the jurisdiction exercised by the Charity Commissioner, in the following terms:

> "26. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. "the interest, benefit, and protection" of the Trust. The expression that sanction may be accorded subject to such conditions as Charity Commissioner may think fit under

1 2007(3) Mh.L.J. 717.

2 (2018) 14 SCC 761.

> section 31(1)(b) and Section 36 (1)(c). The Charity Commissioner has to be objectively satisfied that property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account aforesaid triple classic requirements. It is also open to the Charity Commissioner, in exercise of power of Section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of Section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to sub-serve the interest, benefit, and protection of the Trust and its property."

9. In the case at hand, first and foremost, it is imperative to examine the nature of the offer made by the petitioners. The petitioners - interveners were expected to submit an offer with reference to the requirement of the Trust for which the expression of interest was invited by the Trust by publishing the tender document. If the Trust intended to develop the Trust property and obtain a part of the consideration in the monetary form and the balance in the form of constructed portion, the offeror cannot insist that it would only give consideration in the form of constructed portion. Such a proposal is essentially a counter offer.

10. The Trust cannot be made to wait, if it decides to monetise the property for the advancement of the object of Trust. Nor the Trust can be told to modulate its actions on the vicissitudes of the financial fortunes of the petitioners and the vagaries to which a development project is usually prone to.

11. It is not the case that the learned Charity Commissioner has directed the petitioner to deposit 50% of the value of the constructed portion which the petitioners have offered to give to the Trust, as was sought to be canvassed on behalf of the petitioners. A correct reading of the impugned order would indicate that the learned Charity Commissioner in paragraph 13 has made it abundantly clear that, the petitioners cannot insist on the joint redevelopment of the Trust property. Yet the Charity Commissioner has granted an opportunity to the petitioners to make an offer, and to judge the capacity of the petitioners and test its *bona fides,* the learned Charity Commissioner has directed the petitioners to deposit 50% of the offer amount, which the petitioners choose to make. It is for the petitioners to make the offer which the petitioners consider appropriate, in the given facts of the case, and deposit 50% amount of the said amount. Therefore, the submission that, the condition is extremely onerous cannot be countenanced.

12. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]