



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ORIGINATING SUMMONS NO. 1 OF 2022

- | | |
|--|-----------------|
| 1. A. H. WADIA TRUST |) |
| A Public Chartiabale Trust, registered under, |) |
| the Bombay Public Trust Act, 1950, under |) |
| Registration No : PTR. No. E-470 (Bom) |) |
| Having its office at : |) |
| 70, Dr.VB. Gandhi Marg, Mumbai 400023 |) |
| |) |
| 2. JEHANGIR ADI WADIA |) |
| |) |
| 3. MUNCHERJI NUSSERWANJI MUNCHERJI |) |
| CAMA |) |
| |) |
| 4. ADIL JEHANGIR WADIA |) |
| |) |
| 5. SHEROO JEHANGIR WADIA |) |
| Plaintiffs No. 2 to 4, all Adults, of Mumbai, |) |
| Indian Inhabitants, being the present Trustees |) |
| of the Plaintiff No.1. A. H. Wadia Trustees |) |
| Having their office at : |) |
| 70, Dr. VB. Gandhi Marg, Mumbai 400 023. |)... PLAINTIFFS |

VS.

THE CHARITY COMMISSIONER	)
Office of the Charity Commissioner	)
Maharashtra State, Mumbai,	)
3 rd Floor, 83 Annie Besant Road	)
Worli, Mumbai 4000 018.	)...DEFENDANT

Mr.Pankaj Sawant Senior Advocate a/w Mr. Chaitanya Chavan, Mr. Manish Acharya, Mr. Amit Joshi i/b L R & Associates, Advocates for the Plaintiffs.

Mr. Mohit Jadhav, Additional Government Pleader for the State of Maharashtra.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 14th AUGUST 2024
PRONOUNCED ON : 9th OCTOBER 2024

JUDGMENT :

1. When the matter is called out, none is present for the parties. However, since this matter has been listed for pronouncement, the order is being pronounced.

2. By this Originating Summons, the Plaintiffs No. 2 to 5 as the trustees of the Plaintiff Trust seek the opinion of this Court on a question regarding management of the Plaintiffs' property and have *inter alia* raised the following questions:

a) Whether the Defendant can be directed to dispose of expeditiously the Plaintiff Trust's application under Section 36 of the Trust Act seeking sanction of Defendant for selling/alienating the Plaintiff Trust's land covered under the said notices and public notice in favour of the Purchaser on an as is where is basis ?

b) Whether the Trustees of the Plaintiff Trust are empowered to undertake any development activities on its land covered under the said notices and the public notice by executing Slum Rehabilitation Scheme in accordance with the Slum Act and the said notices ?

c) If yes, since the Plaintiff Trust lacks requisite experience, skills and competence in developing property by demolishing slums, constructing building and providing infrastructure can it collaborate with a partner/joint venture collaborator possessing necessary competence, skills and experience in the field of development and construction for executing Slum Rehabilitation Scheme on the Plaintiffs' lands covered under the said notices and the public notice in accordance with the Slum Act?

3. Plaintiff No.1 is a Public Trust (the "Plaintiff Trust") registered, under the provisions of the Maharashtra Public Trusts Act, 1950 (earlier known as the Bombay Public Trusts Act, 1950) (the "Public Trusts Act"). Plaintiffs No. 2 to 5 are the Trustees of Plaintiff Trust. It has been submitted that the Plaintiffs are the owners of vast lands (the 'Plaintiffs' lands') situate and lying in different places in Mumbai.

4. Mr. Sawant, learned Senior Counsel appearing for the Plaintiff Trust has submitted that the Plaintiff Trust is constituted pursuant to directions contained in the last Will and Testament (the "said Will") dated 9th May 1882 of one Ardeseer Hormarjee Wadia (the "said Testator") by which *inter alia* an obligation was cast on the Plaintiff

Trust to undertake charitable activities as enunciated thereunder for betterment of the weaker and needy strata of the society. That this Court granted probate of the said Will on 23rd February, 1883. It has been submitted that the said Will not only acts as an instrument of incorporation of the Plaintiff Trust but also determines the object and scope of the Plaintiff Trust such that all the policy decisions of the Plaintiff Trust are required to be in consonance with the clauses of the said Will determining the functioning and manner of administration and management thereof.

5. The said Testator through the said Will distributed various immovable assets and properties to his legal heirs in the manner provided therein and directed the Trust to be formed in accordance with the said Will in order to apply the income of the said Testator's residuary estate to charitable purposes and to undertake the following charitable activities:

- I. Establishment of dispensaries and sinking and building and repairing of wells
- II. Giving aid from time to time to the poor, deserving, needy sections of society by undertaking such works of charitable nature in such parts of town ad island of Bombay.

III. Utilize any sum or sums out of corpus of the residuary estate of the said Testator for aforementioned charitable purposes.

6. It has been submitted that the Plaintiff Trust in accordance with the said Will has been carrying out philanthropies for more than a century. That in accordance with the provisions of the said Will the Plaintiff Trust disburses a large portion of its income towards providing medical and educational aid to the weaker sections of society irrespective of caste, creed and locality. That, the Plaintiffs, in accordance with the objects of the Plaintiff Trust, provide financial assistance to needy individuals as also to institutions, which *inter alia*, include the Indian Cancer Society, Indian Red Cross Society, K.E.M. Hospital Pune, Bharatiya Vidya Bhavan, David Sassoon Library and Reading Room and the K.R. Cama Oriental Institute. The details of the Medical and Education Aid provided by the Plaintiff Trust in the last five years has been submitted as under:

Year	Total In Rupees Spent By the Plaintiff Trust On Charitable Activities
2011	Rs.3,37,49,964/-
2012	Rs.4,07,41,195/-
2013	Rs.5,93,99,906/-
2014	Rs.7,41,64,329/-
2015	Rs.12,12,66,425/-

7. Mr. Sawant, learned Senior Counsel would submit that as can be seen, in order to carry their duties as Trustees, the Plaintiffs herein have to spent large amounts of money / funds and in order to generate revenue for supporting its charitable activities, the Plaintiff Trust, to a certain extent depends on funds generated from sale of its lands. The Plaintiff Trust sells its lands that either are not generating any revenue to the Plaintiff Trust or are completely encroached upon since the process of eviction of such encroachers if adopted would require huge expenditure to be incurred on account of cost of legal proceedings and other consequential outgoings and would take years to achieve.

8. Further, it is submitted that the Plaintiff Trust lacks expertise in exploiting the development potential of these lands and generally opt to sell such lands in accordance with law, and to utilize the sale proceeds for the objects of the Plaintiff Trust. That, as per the policy of the Plaintiff Trust sale proceeds earned by selling the Plaintiff Trust's lands is invested in various investment schemes and a portion of interest earned thereon is expended for carrying out the Plaintiff Trust's charitable activities.

9. Mr.Sawant, learned Senior Counsel would submit that the need to approach this Court through the present Originating Summons arose when the Slum Rehabilitation Authority (SRA) issued various notices *inter alia* seeking to submit Slum Rehabilitation Scheme pertaining to the Plaintiffs' lands covered thereunder in time bound manner failing which the SRA would initiate the process of acquisition of the Plaintiffs' lands cited in the schedule of properties attached to the said notices.

10. Mr.Sawant has taken this Court through the various notices issued by SRA which are summarized as under:

(i) On 18th June 2015, the Plaintiff Trust received notice dated 16th June 2015 from SRA titled as 'Show Cause Notice', being the first of three such notices purporting to state *inter alia* as follows:

"...Accordingly in keeping with the aims and objects of the Government of Maharashtra to remove the slums from the Mumbai city and its suburban districts and to make the city slum free and in view of the provisions of Section 12 (10) and 13(1) of the Maharashtra Slum Areas (IC&R) Act, 1971 and considering the provisions of Appendix-IV of amended DCR 33(10). You are called upon to indicate whether you claim to have first preferential right for implementation of the Slum Rehabilitation Scheme on the subject property under amended DCR 33(10) as per Section 13(1) of Slum Act, and in case of claim to such a right, you are further called upon to submit documents to substantiate such claim and to submit the Slum Rehabilitation Scheme in respect of said lands under

the amended Regulation 33(10) of Development Control Regulations of Greater Mumbai, 1991 within 3 months from the date of receipt of this notice....

(emphasis supplied).

By the said notice SRA further stated as follows:

“Please take note that if you fail to intimate the claim under Section 13(1) of Slum Act and/or to establish your ownership claim as contemplated U/Sect. 13(1) of Slum Act and/or to the submit the Slum Rehabilitation Scheme within 3 months, Slum Rehabilitation Authority will be compelled to initiate action under Maharashtra Slum Areas (I.C. & R.) Act 1971 for acquisition of the said lands for implementation of Slum Rehabilitation Scheme in the larger interest.”

(ii) The said first notice was accompanied by a Schedule of Properties which the SRA contended constituted that portion of the Plaintiffs' lands falling within the purview of the said first notice. It has been submitted that the contents of the said first notice suggests that the SRA intended to implement the Slum Rehabilitation Scheme under the provisions of Development Control Regulations, 1991 (hereinafter referred to as 'the DCR') in respect of all the Plaintiffs' lands described in the Schedule thereto, whether or not the same were encroached upon.

(iii) On 22nd June 2015, the Plaintiff Trust received notice dated 16th June 2015 from SRA. It is submitted that the said second notice was in terms identical with the first notice, and to the said notice was annexed a Schedule of Properties that included the survey numbers of around 500 plus plots of the Plaintiffs' lands, which allegedly fell under the scope of the second notice.

(iv) On 1st July 2015 the Plaintiffs received yet another notice dated 30th June 2015 *inter alia* stating and calling upon the Plaintiffs as follows:

“.....However to impetus the S.R. scheme and to make the Mumbai City slum free, you are hereby intimated that if any land in possession and in title of yours, has failed to find mention in the list of Survey number attached in the above referred letter, you may submit the claim of redevelopment U/s.13(1) and proposal for the same along with the following information.

- a) The CTS.No./Survey No./Final plot No. of lands along with the area encroached by Slum Dwellers.*
- b) The lands along with Survey No./C.T.S. No./ Final plot no. declared as slum or census slum.*
- c) The details of transaction if any, made by you in respect of encroached lands.*
- d) The lands on which slum rehabilitation scheme are implemented or in respect of which proposals are submitted with SRA either by you or any other person/firm/company etc.*
- e) The lands in respect of which the acquisition proceedings are pending.*

You are requested to submit the proposal for redevelopment, if any, with respect to lands mentioned above within three months from the date of receipt of letter. Please note that your failure to submit the required information shall be construed as absence of willingness to redevelop these areas as a preferential right under Section 13(1) of Slum Act and SRA will proceed further to take the decision in accordance with Law in respect of the lands which are encroached by Slum Dwellers.”

(v) By a letter dated 7th August 2015, the Plaintiffs *inter alia* sought, clarification on various issues from the SRA.

(vi) Thereafter on 7th October, 2015 the Plaintiffs also came across a public notice dated 5th October 2015 issued by the CEO of SRA notifying the land owners/landlords on whose lands the encroachments exist to submit a proposal of Rehabilitation Scheme to the SRA within a period of three months from the date of the said public notice failing which the SRA would initiate the action of acquisition of such lands and that once such acquisition is initiated, the owners of such lands will not possess any right to claim any interest in such lands.

11. It has been submitted without admitting that the said notices and the said public notice are valid and maintainable in law, that through the said notices and the public notice, the SRA has made it amply clear

that it is desirous of implementing the scheme for rehabilitating the slum dwellers on the Plaintiffs' lands covered under the said notices and public notice and that the Plaintiff Trust is exposed to the possibility of losing all its lands to SRA.

12. Mr.Sawant, learned Senior Counsel would submit that since nowhere in express terms the Trust permits the Plaintiff Trust to undertake any activity of development and/or construction and also that the Plaintiff Trust lacks requisite expertise in the field of construction and development of lands, the Plaintiff Trust will have to rope in an entity possessing requisite skills and experience in the field of development and construction. Therefore, unless the Plaintiff Trust ventures into the domain of development of land and construction in consortium with a competent entity, it stands on the brink of losing almost all of its lands to SRA as per the said notices and the public notice.

13. Mr.Sawant, learned Senior Sounsel would submit that although the Trustees have powers of sale and to convert into money all or any of the Trust's immovable properties, it is not provided in the Trust Deed that the said discretion to sell includes the power to develop the lands

for the benefit of the beneficiaries of the Trust. Mr.Sawant draws the attention of this court to internal page 18 of the said Trust Deed and in particular to the paragraph on powers of sale submitting however that the power to sell is a much wider power which would include the power to develop by itself or jointly. Mr.Sawant also draws the attention of this court to the powers of the Trustees on the same page in all respects with the fullest discretionary power with respect to the estate to apply the same for charitable purposes and therefore urges this court to consider the same to hold that the power of sale would also include the power of the trust to by itself or jointly develop its properties to carry out the purposes of the Trust.

14. In such circumstances the Plaintiffs have approached this Court through the present Originating Summons seeking an opinion, advise or direction on the issue as to whether the Plaintiff Trust can undertake development activities on its lands to execute Slum Rehabilitation Scheme by forming consortium with a developer possessing requisite skills, competence and experience in the field of development of lands and construction of buildings.

15. It has been submitted that the scope of the present Originating Summons is restricted only to adjudication of questions relating to administration and management of the Plaintiff's lands and nothing more and that the question relating to validity and maintainability of the aforementioned notices issued by SRA would not fall within the purview of the present Originating Summons, and that the Plaintiffs have already challenged the maintainability and validity of the aforementioned notice issued by SRA through a Writ petition (being Writ Petition No. 2763 of 2015) filed in this Court and which is pending hearing for admission and interim reliefs. That no statement, averment or contentions raised by the Plaintiffs in this Originating Summons shall be deemed to be treated as waiver of the Plaintiffs' rights to challenge and oppose the maintainability of the aforementioned notices issued by SRA.

16. Mr.Sawant fairly submits that in view of the written statement filed on behalf of the State highlighting the requirement of prior sanction of the Charity Commissioner under Section 36 of the Public Trusts Act to sell the immovable properties of the Plaintiff Trust, he has instructions not to press for question (a) as that decision would be

taken by the Plaintiff Trust at an appropriate time after this Court decides on questions (b) and (c).

17. Mr.Sawant submits that the said Will-Trust ought to be interpreted so as to allow the Plaintiff Trust to undertake development activities as being incidental to its main charitable activities. It is submitted that under the said Will except the immoveable properties that are specifically devised under the said Will, the Trustees of the Plaintiff Trust is given the full power to sell and convert the immovable assets of the said Testator's estate into money along with full discretionary power to sell by public auction or private contract together or in parcel subject to such terms and conditions as to any matter including time or mode of payment, title thereof, indemnity against or apportionment of encumbrances etc. In other words, the Plaintiff Trust along with its Trustees are entrusted with the fullest power to exploit the potential of the immovable properties of the Plaintiff Trust that were owned by the said Testator. Under Section 36A(2) of the said Trust Act, the Trustees are conferred with all powers to do things necessary for the achievement of the objects of the Trust. The said provision reads as follows:

“Section 36 (A) restrictions on, trustees: Powers and duties of and restrictions on, trustees :

(1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or Court may issue in respect thereof. and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

(4) No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee.

Provided that, in the case of trustee who makes a gift of debentures or any deposit in his business or industry the trustee shall not be deemed to have borrowed from the trust for his own use.”

18. It is submitted that the said Will was penned in the year 1882 when the problem of encroachment of lands by slum dwellers did not exist, at least to the extent as it exists today nor was the concept of development of land so very prevalent in the manner it is understood

now. Consequently, the said Testator had not appreciated the development potential of the said Testator's land, and need to develop the lands as then the City of Mumbai did not face the drawback of severe population explosion and the issue of space constraint. In light of this, obviously the said Testator had not foreseen or anticipated the aforementioned exigencies that it would be necessary to confer upon the Plaintiff Trust the authority to develop and sell the said lands to meet the expenses charitable of the Trust, if necessary.

19. That the Plaintiff Trust owns vast chunk of lands lying and situate within the territorial limits of Mumbai city and its suburban areas. The Plaintiffs' lands would generate maximum revenue to the Plaintiff Trust, which *inter alia* gives financial boost to its charitable activities. In light of the said notices and the public notice, it has become necessary for the Plaintiff Trust to manage its lands by developing the same in accordance with the Maharashtra Slum Areas (Improvement Clearance & Redevelopment) Act 1971 (the "Slum Act). However, as the said Will is silent on the aspect of authority of the Trustees of the Plaintiff Trust to develop its lands for rehabilitation of the slum dwellers, the opinion, advice and direction of this Court has been sought.

20. It is submitted that, therefore, in order to ensure and protect the continuation of the Plaintiff Trust it is necessary to interpret the said Will and consequently allow the Plaintiff Trust to undertake development and construction activities by collaborating with an efficient and competent partner having requisite skills and experience in the field of development and construction. The Plaintiff submits that such a move will benefit the Plaintiff Trust by enhancing its earnings from its lands and consequently by bolstering its source of finance for carrying out charitable activities.

21. Mr.Sawant, learned Senior Counsel, submits that therefore, the Plaintiffs have approached this Court through the present Originating Summons seeking an opinion, advice and direction to the effect that the Plaintiff Trust should be permitted to undertake the activities of development of its lands and construction thereon in consortium with a competent partner possessing requisite experience, skills and capabilities.

22. It cannot be disputed that the present proceedings pertain to determination of the question relating to the administration of the Plaintiff Trust after the Plaintiffs received the first notice calling upon

the Plaintiff Trust *inter alia* to submit the Slum Rehabilitation Scheme in connection with the Plaintiffs lands covered thereunder. That the said notices posed serious threat to the existence of the Plaintiff Trust and that the said Will does not provide any express authorization to the Trustees of the Plaintiff Trust to undertake any development activity on the Plaintiff Trust's lands.

23. It has been submitted that there is no complicated question of facts involved in the present Originating Summons and hence, the Plaintiffs are applying to this Court under Section 56A of the Trust Act for summary disposal of the questions raised.

24. On 20th February 2024, when the matter was called out, the following order was passed:

“1. This Suit has been filed as an Originating Summons under Rule 238 of the Bombay High Court (Original Sides) Rules, 1980, seeking determination of a question arising in the administration of the Plaintiff no.1 – Trust which has been created pursuant to a Will dated 9th May 1882 of Mr.Ardaseer Hormarjee which was probated on 23rd February 1883.

2. Mr.Sawant, learned Senior Counsel for the Plaintiffs would submit that the Will has created a Trust with respect to all the properties of the Testator and has granted the fullest discretionary power to the Trustees with respect to the estate or the proceeds to apply the same for charitable purposes.

Learned Senior Counsel would submit that the Will directs the Trustees for all or any of the purposes of the Will in their discretion to sell and convert into money all or any of the immovable estate for the purposes of the Trust. That once a larger power to sell has been granted to the Trustees, the power to enter into joint development agreements in respect of the immovable estate would naturally be included in such a power. Learned Senior Counsel would submit that, however, since the specific power to jointly develop the immovable estate is not there, this Suit has been filed by way of an Originating Summons seeking clarification of this Court under Rule 238 of the Bombay High Court (Original Side) Rules, 1980.

3. On a query from the Court if the registered Trust Deed is annexed to the Suit filed by way of an Originating Summons, this Court is informed that the Originating Summons can be amended to include the same. Let the Originating Summons be amended by 5th March 2024.

4. Mr.Jadhav, learned Additional Government Pleader is present for the State and represents the Charity Commissioner's Office and submits that a copy of the Originating Summons also be served upon him.

5. Let a copy of the amended Originating Summons be served upon the learned Additional Government Pleader by 7th March 2024 and let a Written Statement be filed by the Charity Commissioner's Office, with a copy to the other side.

6. At the joint request of the learned Counsel, list on 26th March 2024. High on Board."

25. Thereafter, on 26th March 2024, the following order was passed:

"1. Pursuant to the order dated 20th February 2024, today the matter has been listed high on board at the joint request of the learned Counsel for the parties. However, when the

matter is called out, Mr.Joshi, learned Counsel appearing for the Plaintiff would submit that pursuant to the said order of this Court, an application for certified copies of the documents has been filed with the office of the Charity Commissioner, Mumbai, however, the certified copies of the said documents are still awaited and some time be granted.

2. Mr.Jadhav, learned Additional Government Pleader present in the Court and submits that he would also look into the status of the issuance of certified copies of the said documents.

3. At the joint request of the learned Counsel, list on 2nd May, 2024.

4. Let copies of the papers and proceedings be furnished to the learned Additional Government Pleader.”

26. On 10th June 2024, the following order was passed :

“1. Mr.Mohit Jadhav, learned Additional Government Pleader, appears for the State and seeks some more time to file reply in the matter submitting that the reply is being finalized. Mr.Pankaj Sawant, learned Senior Counsel for the Plaintiffs has no objection, if some time is granted.

2. Accordingly, at the request of the learned AGP, list on 24th June 2024.

3. Let the reply be filed by the next date with a copy to the other side.”

27. On 14th August 2024, this matter has been heard and closed for orders.

28. The learned Government Pleader has filed written statement dated 18th June 2024 on behalf of the Defendant. The written statement basically revolves around the grant of permission by the Charity Commissioner under Section 36 of the Public Trusts Act which may not be relevant in view of the submission by Mr.Sawant, learned Senior Counsel appearing for the Plaintiff that he has instructions not to press for prayer clause (a) with respect to the permission under Section 36 of the Public Trusts Act.

29. I have heard Mr. Pankaj Sawant, learned Senior Counsel for the Plaintiffs as well as Mr. Mohit Jadhav, learned AGP for the State and with their able assistance, I have considered the matter.

30. Under Rule 238 of the Bombay High Court (Original Side) Rules it is provided as to who may apply for the issue of originating summons and in respect of what matters. It has *inter alia* been provided that the Trustees under any deed or instrument of trust or any person claiming to be interested as beneficiary under the trusts may apply for the issue of an originating summons before the Judge in Chambers for such relief of the nature or a kind as the circumstances of the case may require for the determination of questions or matters including the determination

of any question arising in the administration of the estate or trust. Rule 238 of the Bombay High Court OS rules is usefully quoted as under:

“238. Who may apply for issue of originating summons and in respect of what matters

The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir or legal representative, or as beneficiary under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply for the issue of an Originating Summons returnable before the Judge in Chambers for such relief of the nature or kind following as may by summons be specified and circumstances of the case may require the determination, without an administration of the estate or trust, of any of the following questions or matters:-

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or legal representative or beneficiary;*
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, legal representatives, beneficiaries or others;*
- (c) the furnishing of any particular accounts by the executors, administrators or trustees and the vouching (when necessary) of such accounts.*
- (d) the payment into Court of any moneys in the hands of the executors, administrators or trustees;*
- (e) directing the executors, administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators or trustees;*
- (f) the approval of any sale, purchase, compromise or other transaction;*

(g) the determination of any question arising in the administration of the estate or trust.

(emphasis supplied)

31. The Originating Summons, as noted above, has been taken out by the Trustees of the Plaintiff No. 1 Trust for determination of a question arising in the administration of the estate of the Trust as to whether the Trustees of the Plaintiff Trust are empowered to undertake any development activities on its lands and since the Plaintiff Trust lacks requisite experience, skills and competence in developing property by demolishing slums, constructing building and providing infrastructure can it collaborate with a partner/joint venture collaborator possessing necessary competence, skills and experience in the field of development and construction on the Plaintiffs' lands.

32. A perusal of internal page 18 of the provisions regarding the Plaintiff Trust suggests that the Trustees have been invested in all respects with the fullest discretionary power in and about the application of the estate of the proceeds of the conversion thereof to charitable purposes. The direction to the Trustees for the purposes of the Trust is to sell and convert into money all or any of the immovable estate as the Trustees may think proper with full discretionary power to

sell by public auction or private contract as they may think fit. The relevant portions are usefully extracted as under:

“I desire that my said Trustees and Trustee shall have in all respects the fullest discretionary power in and about the application of my said residuary estate or the proceeds of the conversion thereof to such charitable purposes as aforesaid.

.....

.....

I direct my said Trustees and Trustee for all or any of the purposes of this my Will in their or his or her discretion to sell and convert into money all or any of my immoveable estate to grant or reserve such easements in upon over or under any portion of the same as my said Trustees and Trustee may think proper with full discretionary power to sell by public auction or private contract together or in parcels subject to such terms and conditions as to the evidence or commencement of the title or the time or mode of payment of the purchase money or indemnity against or apportionment of encumbrances or as to any other matters relating to the said sale as they or he or the may think fit. Also to fix reserved biddings and buy in property advertized for sale and vacate or vary contract for sale and to resell as aforesaid without liability to answer for any consequential loss and generally to effect the sale and conversion of my said estate on such terms and in such manner as my said Trustees or Trustee shall deem most advantageous. Also full discretionary power during the suspense of the sale conversion or getting in of my said estate to manage and order all the affairs thereof such as regards the letting building occupation cultivation repairs insurance against fire receipt for rents indulgences and allowances to tenants and all other matters whatsoever thereto appertaining also full discretionary power to employ receivers bailiffs accountants agents and others in and about the affairs of my said estate with such salaries and remunerations as my said

Trustees end Trustee shall think reasonable. Provided always and I hereby direct that the power of sale and conversion hereinbefore lastly given to my said Trustees and Trustee shall be limited to such parts of my immoveable estate as shall not be specifically devised by my said will or any Codicil or Codicils thereto.”

(emphasis supplied)

33. As can be seen, the Trustees have full discretion and power to sell the Trust property which would however be subject to the provisions of Section 36 of the Public Trusts Act. In my view, the power to sell is a much wider power which would include the power to develop singly or jointly subject to the provisions of the Public Trusts Act and applicable law and regulations including the Slums Act. Moreover, under Section 36A(2) of the said Trusts Act, the Trustees are conferred with all powers to do things necessary for the achievement of the objects of the Trust. Also true that the said Will creating the Plaintiff Trust was penned in the year 1882 when the problem of encroachment of lands by slum dwellers did not exist, at least to the extent as it exists today nor was the concept of development of land so very prevalent in the manner it is understood now. Consequently, the said Testator would not have appreciated the development potential of the said Testator's land, and need to develop the lands as then the City of Mumbai did not face the drawback of severe population explosion

and the issue of space constraint. In light of this, obviously the said Testator had not foreseen or anticipated the aforementioned exigencies that it would be necessary to confer upon the Plaintiff Trust the authority to develop and sell the said lands to meet the expenses charitable of the Trust, if necessary. It is not in dispute that the Plaintiff Trust disburses a large portion of its income towards providing medical and educational aid to the weaker sections of society irrespective of caste, creed and locality. That, the Plaintiffs, in accordance with the objects of the Plaintiff Trust, provide financial assistance to needy individuals as also to institutions, which *inter alia*, include the Indian Cancer Society, Indian Red Cross Society, K.E.M. Hospital Pune, Bharatiya Vidya Bhavan, David Sassoon Library and Reading Room and the K.R. Cama Oriental Institute. The details of the Medical and Education Aid provided by the Plaintiff Trust.

34. Also considering the scale at which Plaintiff Trust carries on charitable activities for the purposes set out earlier, the Plaintiff Trust would need to continue to generate funds. The Plaintiffs' lands would generate revenue to the Plaintiff Trust, which would *inter alia* give financial boost to its charitable activities. Apart from the fact that clearing of encroachments on the Plaintiff Trust's lands would

entail considerable expense and also that if the SRA acquires the lands pursuant to the notices, the compensation would be meagre, thereby depriving the benefit to the charitable purposes in which the Plaintiff Trust is engaged in and therefore in order to achieve the charitable objects of the Trust it may become necessary for the Plaintiff Trust to develop the lands, either singly or also jointly if the Plaintiff Trust lacks experience and expertise in exploiting the development potential of the lands, so that the proceeds thereof can be used for the charitable objects noted above.

35. Accordingly, I hold that subject to the other provisions of the Trust Deed and subject to the provisions of Section 36 of the Public Trusts Act and subject to the other applicable laws and regulations including the Slum Act, the Trustees of the Plaintiff Trust are as a consequence of power to sell, empowered to undertake development activities on its lands, singly or jointly.

36. Ergo, exercising my powers as a Chamber Judge under Order 238 of the Bombay High Court (Original Side) Rules, 1980 and in particular Rule 238(g) for determination of a question arising in the administration of the Plaintiff Trust, considering the above discussion,

and being of the opinion that the matter is fit to be dealt with on an Originating Summons, the questions (b) and (c) as raised are answered in the affirmative.

37. The Originating Summons is accordingly decreed as above.
Decree to be drawn up accordingly. No order as to costs.

(ABHAY AHUJA, J.)

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by ARTI VILAS
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Date:
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