

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2036 OF 2012

Venkatrao s/o Bapurao Tekale,
Aged: 59 years, Occ: Pensioner and
agriculturist, R/o. Dabhad,
Tal. Ardhapur, Dist. Nanded.

...Petitioner

versus

1. The Joint Charity Commissioner,
Aurangabad Division, Aurangabad.
2. Shri. Datt Sansthan Trust, Dabhad,
Through its Secretary,
Shri. Ramchandra s/o Kishanrao Dadajwar
(Dabhadkar), Age: 66 years,
Occ: Retired, R/o. Dabhad,
Tq. Ardhapur, Dist. Nanded.
3. Dr. Purushottam s/o Pannalal Kalantri,
Aged: 55 years, Occ: Medical Practitioner,
R/o. Borban Factory, Vazirabad,
Nanded.
4. Prabhu s/o Ramaji Shinde,
Age: 53 years, Occ: Business,
R/o. Vasant Nagar, Nanded,
Tq. & District Nanded.
5. Abhay s/o Ashokrao Khodke,
Age: 42 years, Occ: Business,
R/o. 5, Sharda Vihar Colony,
Amravati, Tq. & Dist. Amravati.
6. Harmeetsing @ Laddusing s/o
Harising Mahajan, Age: 66 years,
Occ: Business, R/o. Gurudwara
Gate No. 2, Nanded,
Tq. & Dist. Nanded.

...Respondents

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Mr. Gajanan G. Kadam, Advocate for petitioner.
Mr. D.R. Korde, A.G.P. for respondent No. 1.
Mr. B.D. Deshmukh, Advocate for respondent No.2.
Mr. Amol Gandhi, Advocate for respondent Nos.3,4 & 6.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH APRIL, 2015

ORAL ORDER :

This petition is by the person claiming to be a person interested in the trust questioning the legality and validity of the order dated 04/01/2012 passed by the Joint Charity Commissioner, Aurangabad Region, Aurangabad in Application No. 35 of 2008, whereby the said authority has approved sale of land admeasuring 6 acres 29 gunthas owned by respondent No.2 trust.

2. The facts, as are necessary for deciding the present petition, are as under :

Respondent No. 2 Shri. Datta Sansthan Trust, Dabhad, registered under the Bombay Public Trusts Act, 1950, bearing Registration No. A-2226 (Nanded) owns property admesuring 6 acres 29 gunthas located on Nanded Nagpur high way. It is not in dispute that part of the said land was encroached upon.

3. The trustees of the said trust approached the Joint Charity Commissioner, Aurangabad Region, Aurangabad in Inquiry

No. 12 of 2008 under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 (hereinafter shall be referred to 'the Act' for sake of brevity) for alienation of the above referred property. The said application was moved by the Secretary of the trust stating relevant facts. It was brought to the notice of the authority under the Act that temple in question was in dilapidated condition and in order to hold religious functions so as to achieve the object of the trust and to carry out constructions of a complex consisting of a Hall, Bhaktnivas and a Gymnasium, sale of land in question was very much necessary.

4. The Joint Charity Commissioner, Aurangabad Region, Aurangabad by an order 11/02/2009 has passed the following order.

“ Previous sanction under Section 36(1) (a) is accorded to sell the 6 Acre portion from the land Gat No. 280 in principle.

The applicant shall publish an advertisement calling fresh offers from public for sale of 6 Acre from the land Gat No. 280 as demarketed in the scaled map with the application Exh. 5 in two news papers which are widely circulated in an around Nanded.

The offers shall be receivable in the sealed envelopes under R.P.A.D. by this office as an additional condition.

The envelopes shall be opened ijn the open Court on 20-3-2009.

Further orders shall be passed in due course.”

5. By the above referred order dated 11/02/2009, the Joint Charity Commissioner has granted previous sanction under Section 36(1)(a) of the Act for sale of 6 acres portion from the land Gat No. 280.

5. Pursuant thereto, the process of sale of the said land was initiated under the supervision of the Joint Charity Commissioner and Application No. 35 of 2008 came to be registered for grant of approval to the final sale. From the decision of the said application, it appears that the Joint Charity Commissioner, pursuant to the Resolution of the trust dated 31/03/2008, the order under Section 36(1)(a) of the Act dated 11/02/2009, the project report in the matter of development of temple and its complex, the invitation of offers for sale of the land, objections thereto, has granted approval to the sale of land by his order dated 04/01/2012. Feeling aggrieved thereby, present writ petition.

6. Mr. Kadam, learned Counsel for the petitioner would urge that out of total trustees, only two trustees have decided to sell the land in question namely Ramchandra Kishanrao Dadajwar and Gendaji Ramji Tekale. He would urge that said two trustees have played fraud on the trust and authorities below in the matter of

processing sale of land, particularly having regard to requirement of Section 36 of the Act. He would further urge that there was no legal necessity for sale of land, as object of the trust should have been achieved either by letting or leasing out the said property. He has also suggested that the temple in question would have been developed by collecting donations from the villagers. According to him, the land ought not to have been permitted to have been sold, as income from the land itself is required to be diverted for the purpose of development of temple and for achieving the object of the trust and once the land in question is sold, there hardly remains anything with the trust to draw income from the management of the temple.

7. He would further urge that the land in question being meant for Devasthan purpose, policy of Government is to put embargo on the sale of such land and has sought to place reliance upon the policy of the Government. In addition to above, he would further urge that procedure of sale of the land in question was hijacked by prospective purchasers and above referred two trustees have not maintained transparency in the sale in question was maintained. In addition to above, he has alleged *malafides* against the above referred two trustees, as according to him, few of resolutions are either fabricated or manipulated by the said trustees to secure permission. In the light of above, he would urge that permission

granted by the Joint Charity Commissioner i.e. respondent No. 1 to the petition, in favour of respondent Nos. 3 to 6 is liable to be upset by quashing the order impugned in the present petition.

8. Mr. Gandhi, learned Counsel for respondent Nos. 3,4 and 6 who appears to have purchasers of the property, would urge that the land in question was already purchased by the said respondents after following due procedure as contemplated under Section 36 of the Act. He would further urge that after initial permission under Section 36(1)(a) of the Act in the year 2009, the same was followed with complete procedure so as to maintain transparency for sale of the land, such as approval of project report qua use of the funds after receipt of considerations from the sale of land in question by respondent No.1, invitation of tenders/offers from the prospective purchasers, the publication of advertisement for sale of the land in two widely circulated newspapers, etc. He would urge that there is concluded contract in favour of respondents as title already stood transferred/vested in the respondents and as such, has sought to place reliance upon the sale deeds at Exhibit-R-2 to the reply filed by him. He would further urge that this Court, with an intention to test *bonafides* of the present petitioner, by an order dated 06/03/2012, has called upon the present petitioner to bring any purchaser for the property in question at value higher than with which

respondents have purchased the property. According to him, failure on the part of the petitioner to comply with the said order demonstrates his *malafides*. He submits that the petition is filed with intention to twist arms of subsequent purchasers.

9. Learned A.G.P., who appears for respondent No.1, supported the order. He would urge that procedure under Section 36 of the Act is very much followed and appropriate transparency in the matter was maintained. As such, the respondents have prayed for dismissal of the petition.

10. Upon considerations of submissions made by learned Counsel for the petitioner, reply filed thereto and upon analyzing the submissions of the respective parties, it is required to be observed that pursuant to resolution passed by the trust on 31/03/2008, the Joint Charity Commissioner, Aurangabad Region, Aurangabad in Inquiry No. 12 of 2008 has passed the order granting previous sanction under section 36 of the Act for sale of the property in question. The said permission is based on unanimous resolution passed by the trust for sale of land on 31/03/2008. At the relevant time, the Joint Charity Commissioner has also taken into account the entries in the public trust register, 7/12 extract of the land in question, cost of the proposed construction/development and has proceeded to

pass an order, particularly having regard to the law laid down by this Court in the matter of ***Sailesh Developers vs. Jt. Charity Commissioner, Maharashtra*** reported in ***2007(3) Mh.L.J. 717***. While granting previous permission, the Joint Charity Commissioner has observed that publication of an advertisement be made inviting fresh offers from public for sale of land in question in two newspaper which are widely circulated around Nanded area.

11. Pursuant thereto, it appears from the order impugned that the Joint Charity Commissioner initially called valuation report of the land under sale and it was informed to him that valuation of the land in question was Rs. 19,36,800/-. After receipt of the said valuation, the Joint Charity Commissioner has called upon audited accounts of the trust, resolution passed in the meeting and upon inspection thereto, noticed grant of earlier permission. It is also noticed by the Joint Charity Commissioner that after publishing an advertisement in two newspaper, the offers were invited from public at large for purchase of the land in question.

12. After the said process was set into motion, it appears that few of the villagers like present petitioner has raised an objection to the sale of the land, as according to him, sale was not necessary, as renovation of the temple could be done by raising funds through

public donations. It was also sought to be canvassed before the Joint Charity Commissioner at that time that no *Gramsabha* was held for taking decision in question and also for election of the trustees.

13. After considering all the objections, it was noticed by the Joint Charity Commissioner that higher offer that was received for land in question was Rs.10,50,000/- per acre.

14. Subsequent to the receipt of the said offer, the Joint Charity Commissioner has proceeded to take up the said proceedings for its approval and during hearing, has called upon the parties concerned as to whether they are ready and willing to increase their offer.

15. The prospective purchasers who are before this Court i.e. respondent Nos. 3 to 6 have increased their offer to Rs.46,90,000/- per acre i.e. almost four times more than the offer that was made earlier.

16. Having regard to the said offer, which the Joint Charity Commissioner was found to be appropriate, has proceeded to grant approval for sale of the land in pursuant to which already sale deed is executed and title stood vested in respondent Nos. 3 to 6.

17. The contentions of the petitioner, in the light of above referred facts if analyzed, it is required to be noted that either the petitioner at no point of time, even while responding to query made by this Court, has not offered or shown his readiness and willingness to give any donation for the purpose of renovation of the temple. It is also required to be noted that this Court having given a chance to the petitioner to bring buyer by an order dated 06/03/2012 is not complied with till date. As such, in my opinion, the petitioner who has filed present petition at this stage i.e. after grant of previous sanction on 11/11/2009 and after grant of approval in 2012 is nothing but abuse of process. It is also required to be noted that the conduct of the petitioner appears to be *malafide* as he has made several allelgations, particularly reckless and *malafide* against the trustees who are not impleaded before this Court. As such, the said trustees in this proceedings have hardly any chance to deal with the allegations made against them.

18. It is claimed by Mr. Kadam, learned Counsel for the petitioner that advertisement in relation to sale of land in question was not published in two newspapers, much less newspaper having wide circulation. If above referred contentions are to be accepted, least that is expected of the petitioner was to mention the newspaper in which advertisement in question is published and to come out with

details of its circulation in and around area of Nanded. Perusal of the petition reflects that but for making baseless statement that newspaper in which advertisement was published was not having wide circulation. No material is placed on record to demonstrate the same issue.

19. So far as star point that is sought to be raised by the petitioner in the present petition as regards necessity of the sale is concerned, as observed herein above the Joint Charity Commissioner was alive to the fact that as regards the claim that is sought to be put forth by the petitioner i.e. renovation of temple by raising public donations. The Joint Charity Commissioner in the order has already observed that though villagers have raised objection, however not a single villager has come forward with any donation or responsibility of the development of the temple in question for which sale of the land was necessitated.

20. In view of above, in my opinion, the present petition, which also involves substantial disputed question of fact, is moved with *malafide* intention, is liable to be dismissed. As such, the writ petition is dismissed with costs, which is quantified of Rs.1500/- (Rs. One thousand five hundred only).

[N.W. SAMBRE, J.]