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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7584 OF 2015

MAHATMA JYOTIBA PHULE SHIKSHAN SANTHA, PARBHANI
VERSUS
STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Petitioner : Mr.Mundhe Subhash V.
AGP for Respondent No.1: Smt.Y.M.Kshirsagar.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th July, 2015

Per Court:

1 The Petitioner prays for deleting Respondent No.2 in the light of her objection application Exhibit-13 in Application No.5/2013 having been rejected by the Joint Charity Commissioner by the order dated 22.04.2014.

2 Leave to delete Respondent No.2 is granted at the risk of the Petitioner. Deletion be carried out forthwith.

3 The Petitioner is a Trust which has moved an application under Section 36(1)(a) of the Maharashtra Public Trusts Act seeking permission from the Joint Charity Commissioner, Aurangabad to dispose

of a portion of the immovable property owned by the Petitioner Trust. The reasons on account of which the portion of immovable property is required to be disposed have been set out in Application No.5/2013 preferred by the Petitioner. By the impugned order dated 28.01.2015, the application has been rejected.

4 Shri Mundhe, learned Advocate for the Petitioner/Trust, submits that the competent authority while rejecting the application of the Petitioner by the impugned order, has exercised the jurisdiction not vested in it by law. He points out that the application has been rejected primarily for the following four reasons:-

(a) Audit Report of 2012-2013 is not filed before the authority.

(b) Change Report No.579/2011 which was subject matter of enquiry before the Assistant Charity Commissioner and which has been accepted, is branded as being illegally accepted.

(c) The existing old building does not have a NA permission for erecting construction which presently stands on the said piece of land.

(d) Rs.16 lac are available in the account of the Petitioner/Trust.

5 Shri Mundhe submits that the audit report, though not required, can be placed before the said authority. The Petitioner has no

reason to hold back the said report from the Joint Charity Commissioner.

6 He further submits that the change report accepted by the Assistant Charity Commissioner has not been challenged by any member or trustee or any person connected with the Trust before any court or authority. The conclusion of the Assistant Charity Commissioner while accepting the change report of 2011 has, therefore, attained finality. It was beyond the scope of the Joint Charity Commissioner to go into the said aspect and brand the conclusion of the Assistant Charity Commissioner as being an illegal acceptance of the change report.

7 It is nobody's case that a NA permission is required, inasmuch as, that would not fall within the domain of the Joint Charity Commissioner since the construction is a matter between the Petitioner/ Trust and the appropriate Authority. Shri Mundhe further submits that Rs.16 lac available with the Petitioner Trust are not sufficient to construct a new building and hence, there is a genuine necessity to dispose of a portion of the immovable property so as to enable the Petitioner Trust to construct a new building.

8 Shri Mundhe has then pointed out the communication dated 07.10.2014 addressed by the Competent Authority/ Divisional Deputy

Commissioner, Social Welfare Department, Aurangabad vide which the undertaking given by the Petitioner that it would construct a new building for physically challenged persons and provide amenities, has been accepted. The Petitioner is, therefore, required to carry out the construction as per the orders of the Competent Authority.

9 Shri Mundhe places reliance upon the judgment of the Division Bench of this Court in the matter of *Suburban Education Society, Mumbai v/s Charity Commissioner of Maharashtra State and others* reported in **2004(2) Mh.L.J. 792**. He, therefore, submits that the Joint Charity Commissioner deserves to be directed to permit the Petitioner/ Trust to sell the portion of the immovable property by allowing it's application.

10 The learned AGP appearing on behalf of the State submits that the impugned order has been correctly passed. The Joint Charity Commissioner has considered the interest of the Trust. No fault can be found in the said order and hence, the petition be dismissed.

11 I have considered the submissions of Shri Mundhe and the learned AGP. The scope of powers of the Joint Charity Commissioner in dealing with the applications under Section 36(1)(a) of the Maharashtra

Public Trusts Act is restricted. The Authority has to consider, whether, there is a genuine reason for the Trust seeking permission to sell a portion of it's immovable property. It also has to see, whether, any loss is likely to be caused to the Trust.

12 The Division Bench of this Court in the Suburban Education Society (supra) has considered a similar challenge and has decided the controversy by observing from paragraphs 11 to 16 as follows:-

> "*11. The short controversy in the present case is as to whether the impugned order which is passed by the Charity Commissioner under Section 36(1)(a) of the Bombay Public Trust Act dated 6-8-2001 is sustainable in law particularly when the Charity Commissioner has come to the conclusion that the financial need of the Trust is genuine and that there is no dispute regarding the fact that the consideration which is to be received by the Trust is more than adequate consideration. Before the controversy between the parties can be decided, it would be relevant to refer to the provisions of Section 36(1)(a) of the Bombay Public Trust Act which reads as under : –*
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> *"36. Alienation of immovable property. of public trust. –*
> *[(1)] [Notwithstanding anything contained in the instrument of trust -]*
> *(a) no sale, exchange or gift of any immovable property, and*
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> *(b) .... shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such condition as the Charity Commissioner may*

think fit to impose, regard being had to the interest, benefit or protection of the trust."

12. From the perusal of the above section, it is clear that the Charity Commissioner is empowered to scrutinize any application for sale or transfer of the immovable property which is owned by the Trust in order to ensure that the property is being sold for an adequate consideration and that the money is going to be utilised for fulfilling the aims and objects of the Trust and is not likely to be frittered away by the Trustees. The Apex Court as also this Court has time and again held that the Charity Commissioner should consider the need of the Trust and grant permission wherever the property of the Trust is being sold after following proper procedure so that the market value of the said property is received by the Trust.

13. The Division Bench of this Court in the case of Madhukar Sunderlal Sheth and Ors. v. S.K. Laul and Ors. reported in 1993 Mh.L.J. 1107 (the Judgment delivered by Mrs. Sujata Manohar, J. as she then was) has observed in paragraph No. 5 as under :--

"5. The Charity Commissioner, under the Bombay Public Trust Act is required to give his sanction bearing in mind the interest, benefit and protection of the trust. He has to apply his mind, inter alia, to the price at which the property is to be sold under the agreement. The Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may have entered into, are liable to be examined by the Charity Commissioner at the time when he grants his sanction. Approval by the Charity Commissioner ensures reasonableness of the agreement of sale. These factors will also have to be borne in mind by the Income Tax Authorities while exercising their power under Section 269UD. The discretionary power under

that section cannot be exercised arbitrarily. It will have to be exercised bearing in mind the purpose for which it is conferred. Hence the submission of the petitioner that if there is delay on the part of the Charity Commissioner in granting sanction, and there is a rise in the property market, the purchaser of such a property will be at a disadvantage, loses its force. The question of consideration has to be considered by the income-tax authorities in the context of the special circumstances which accompany a sale by a public trust. The purchaser can also apply in accordance with law for an early sanction by the Charity Commissioner."

Similarly, the learned Single Judge of this Court (Shri S.P. Bharucha, J., as he then was) in the case of Arunodaya Prefab v. M.D. Kambli and Ors., reported in 1979 Mh.L.J. 104 in paragraph No. 22 of the Judgment has laid down what is the duty of the Charity Commissioner when an application is made under Section 36. The Paragraph No. 22 reads as under :

"22. Before parting with this case, I would add this note of caution. If the Charity Commissioner directs trustees to invite offers for sale of trust property in respect whereof the trustees have already entered into an agreement for sale and applied for sanction thereof, there are bound to be difficulties of the sort which have occurred in this petition. If the Charity Commissioner is inclined to direct the trustees to invite offers for the sale of trust property, he must first ascertain that the trustees would be willing to sell the property to one of these offers. Where an agreement for sale has been arrived at and is sent up for sanction, the Charity Commissioner must satisfy himself of the adequacy of the price offered upon the basis of instance of sale in the locality or upon an architects report or upon some similar basis."

14. *We have perused the application which is made by the petitioners. In the said applications in para 5 the Objects of the said Trust are given and the main* *objects contained in the Memorandum of Association are reproduced in the said paragraph. In para 6, the details regarding the property belonging to the Trust are given and it is mentioned that the Trust had purchased the property in February 1978. The area of the said Plot as also the boundaries of the said Plot have been mentioned. It is also mentioned that the said property was acquired out of the own generation of the funds of the Trust over a period. A copy of the agreement for sale dated 17-2-1978 as also the latest accounts and Balance Sheet was annexed to the said application. Thereafter, in para 8, the petitioners had given the need for alienation of the said property. The need has been elaborately mentioned in para 8(a) to (1). It is clearly mentioned that initially the property was acquired with a view to shifting the school run by the said Trust and the idea was to expand the said School. It is mentioned in the said applications that the Trust does not have any fund for the said expansion. Thereafter, it is mentioned that the Management proposed to provide better conducive infrastructure to the children at Junior and Senior KG levels to provide better foundational education to them and other facilities which are to be provided are also mentioned. In para 8 it is mentioned that already there are two English Medium Schools in the said Bangur Nagar area where the plots are situated within the radius of 100 meters from either schools and within the radius of 400-500 meters of the said plots, there are three English Medium Schools. It was, therefore, mentioned that starting another unaided school within this area would not be economically viable. In para 8, it is mentioned that there are three other plots which are reserved for Municipal School in the said area and in the Blue Print of Bangur Nagar, Plot Nos. 154 and 155 are not earmarked for development of the school. It is further mentioned that, initially, the plots were purchased for providing school play ground and the Management spent over a lakh of rupees to reclaim and level the ground. However, since these plots are three Kilometers away from the school, majority of the students living in the* *neighbourhood would not be in a position to reach the ground as it can be reached only by taking a bus-ride journey. In para 8(d) the provisions of Grant-in-Aid Code have been mentioned and have been reproduced to show that the Government is not in a position to provide additional aid and the recognition would not be granted by the State Government. Further, in paras 8(e), (f) and (g) reference is made with regard to the other statutory provisions as a result of which the plots in question cannot be developed. It is further mentioned in para 8(h) that the Primary School did not receive aid from the Municipal Corporation for the last two years. In this view of the matter, it was mentioned that there was no other way but to sell the aforesaid two Plot Nos. 154 and 155 in Bangur Nagar area. In Para 14, it is mentioned that the prevailing market price was much lesser than what the Trust was getting by selling the said plots. The Valuer had valued the plot at Rs. 29,80,000/- for each plot whereas the Trust was getting Rs. 40 lakhs for each plot which is quite higher than the market price. The Applicant therefore stressed the need that there was a compelling necessity for the Trust to dispose of its property. It must be mentioned here that the Charity Commissioner while deciding the said application has not disputed the need of the petitioner to dispose of the said Plots.*

15. Thereafter, in paragraphs Nos. 17 and 18, the petitioners have stated the efforts which have been taken by the Management in disposing of the property by inviting offers from the public at large by publishing notices in two News-papers viz. Free Press Journal and Navshakti. The Trust also annexed the Valuation Report of the Architect who had valued the market value of the said property at Rs.29,88,000/- for each plot. It is also mentioned in para 18 that in terms of the valuation published by the Architects Publishing Corporation of India, the value of the said property works out to Rs. 33,99,816. Thus the price which was offered to the petitioner was much higher than the said price which was shown in both the

Valuation Reports. In para 22, the manner in which the said amount was to be utilized has been mentioned and it is explained that this was done for the purpose of pursuing objections of the Trust which were mainly educational.

16. The Charity Commissioner does not dispute the fact that the Trust has no funds for expansion or that due to growing strength of students it was necessary to provide additional facilities for their cultural and other activities. The Charity Commissioner, however, comes to the conclusion that though the offer of the purchaser in both the proceedings is highest, he records a finding that these Plots are purchased out of the funds raised by the parents donations given by the parents at the time of admission of their children to the School and that this fact should not be ignored. He further states that the Trust requires open land in future and the same would not be available in that locality. In our view, the finding that the plots are purchased out of the funds raised by the parents and donations given by the parents at the time of admission is not borne out by the record, except the mere statement of respondent No. 3. There is no evidence to suggest that these plots have been purchased out of the donations which have been given by the parents at the time of taking admission for their children. The observation of the Charity Commissioner that, in future, the Trust requires the open land also is equally unfounded. The Charity Commissioner also, in our view, has completely erred in observing as under :--

"Moreover, Swetamber Murtipujak Jain Sangh is intending to construct temple. As a matter of fact at present our nation required more educational institutions than the temples. A prayer to the God can even be made by sitting in one corner of our residential house, but school cannot be maintained in our residence."

In our view the said observation made by the Charity Commissioner is absolutely unfounded

> *inasmuch as the scope of authority which is exercised by the Charity Commissioner under Section 36(1)(a) is very limited. The Charity Commissioner in the first place is required to consider whether the Trust has a genuine need for the purpose of selling its immovable property and secondly whether the said property is being sold in the interest of the Trust and its beneficiaries. The Charity Commissioner is not supposed to substitute his own ideas and views vis-a-vis the functioning of the Trust. It is very strange that the Charity Commissioner has observed as under : –*
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> *"No doubt the trust intending to provide better conductive infrastructure to the children of junior and senior K. G. level to provide better fundamental education to them, which requires heavy funds. However, that problem can be solved by securing loans from other Institutions like banks and other financial institutions etc. It is not necessary to put the plots for sale."*
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> *These observations clearly demonstrate that the Charity Commissioner does not dispute the fact that the funds are required by the Trust. However, he is of the view that instead of selling the plots, the Trust should approach the Financial Institutions for loan. In our view, the said approach of the Charity Commissioner is absolutely unwarranted."*

13 It is, therefore, apparent that the Joint Charity Commissioner has to consider such an application within the ambit of it's jurisdiction. I find that the said Authority has erroneously gone into the issue of the change report which has been accepted by the Assistant Charity Commissioner and which has not been called in question by any person or authority. The same has attained finality.

14 It is the Petitioner's contention that Rs.16 lac may be an insufficient amount. The Petitioner has contended that it requires an amount of more than Rs.20 lac for carrying out the said construction as per the directions of the Divisional Deputy Commissioner, Social Welfare Department dated 07.10.2014.

15 Considering the view taken by this Court in the Suburban Education Society (supra), I am of the view that the competent authority has travelled beyond it's ambit in dealing with the application filed by the Petitioner under Section 36(1)(a) of the Maharashtra Public Trusts Act.

16 In the light of the above, the impugned judgment dated 28.01.2015 rejecting Application No.5/2013 is quashed and set aside. Application No.5/2013 is remitted back to the Joint Charity Commissioner, Aurangabad for being decided afresh especially in the light of the observations of the Division Bench of this Court in the matter of Suburban Education Society (supra).

17 The Petitioner shall appear before the said Authority on 21.08.2015 at 11:00 am and shall, thereafter, abide by the dates of hearing as decided by the said Authority.

18 The Petitioner is at liberty to place such documents on record which it deems proper for rendering assistance to the competent authority in deciding it's application.

19 Looking at the urgency involved, the competent authority shall decide the said application afresh as expeditiously as possible and preferably on or before 17.10.2015, without being influenced by any of it's observations made in the earlier order dated 28.01.2015 which has been quashed and set aside.

20 The Writ Petition is, therefore, partly allowed in the above terms.

(**RAVINDRA V. GHUGE, J.**)