IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10895 OF 2014

1. Mrs. Naseema Ayub Shaikh
   Age : 44 Yrs., Occ. Service,
   R/o : Rabodi II, Thane.
2. Mr. Sushil Govind Mein
   Age : 40 Yrs., Occ. Service,
   R/o : Rabodi II, Thane.
3. Mrs. Kranti Sushil Mein
   Age : 36 Yrs., Occ. Household,
   R/o : Rabodi II, Thane.
4. Mrs. Vijaya Laxman Jagdale
   Age : 55 Yrs., Occ. Household,
   R/o : Chambur, Bombay.
5. Mrs. Laxmi Kulbushan Vora
   Age : 48 Yrs., Occ.
   Household, R/o : Thane. **..... PETITIONERS**

V E R S U S

1. The Trustees,
   Jijamata Education Society,
   At & Post : Rahata,
   Tq. Kopargaon, Dist.
   Ahmednagar.
2. Joint Charity Commissioner
   Public Trust Registration Office,

Pune Region, Pune
Maharashtra State. ..... **RESPONDENTS**

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Mr. T.K.Jadhav, Advocate for Petitioners.
Mr. S.G.Chapalgaonkar, Advocate for R.No.1.
Mr. S.K.Tambe, A.G.P.for R.No.2 – State.

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CORAM : SUNIL P. DESHMUKH, J.

DATE OF JUDGMENT : 31st AUGUST, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. The petitioners are before this court aggrieved by the order on Exh. 1 in Application No. 51/2013 u/s 36 (1) (a) of the Bombay Public Trust Act passed by the Joint Charity Commissioner, Pune Region, Pune on 10/09/2014.

3. Respondent No. 1 is the Trust-applicant before the Joint Charity Commissioner in application dated 20/03/2012 referring to that the object of the Trust is educational, social and cultural and that the Trust requires funds for erection and

development of school building and that the concerned property bearing gut No. 168 admeasuring 3 Hectares 78 Aar. situated at Pimpri Nirmal in Rahata taluka does not fetch any income to the Trust and that as a matter of fact, certain amount is required to be expended on it for its maintenance and further that the threats of encroachment are hovering and various other untoward incidents are also apprehended.

4. Having regard to aforesaid, the Trust has given publication for sale of property. Learned counsel further refers to that certain amount had been paid in May, 2010 after publication of sale and the exchange of money had taken place for preparation of proper revenue record in order to enter into final transaction.

5. The petitioners are having interest in purchase of said property. It is stated that substantial amount from the sale had been received by the Trust and the same has also been expended on the construction of new school building.

6. Petitioners apprehended a fresh publication in respect of the sale of property again and as such petitioners had approached the Joint Charity Commissioner under written notes of arguments, as have been annexed to the petition at Exh. 'G'

from page No. 126 onwards till 146, requesting the Joint Charity Commissioner not to insist upon the public notice afresh taking into account various aspects involved in the matter and that parties have gone a long way in respect of creating liabilities against one another and had further requested the Joint Charity Commissioner to grant sanction to the transaction, making it clear that petitioners had also been open to the conditions that will be imposed by the Joint Charity Commissioner in respect of the same.

7. The learned counsel for the petitioners refers to that there is no particular procedure prescribed and that it does not contemplate a fresh publication once it had been made and the transaction had already been entered into pursuant thereto.

8. Learned counsel refers to various citations, viz. **Suburban Education Society & Anr. Vs. Charity Commissioner of Maharashtra State & Ors., 2004 (2) ALL MR 575**, a Judgment by the Division Bench, and the observations according to learned counsel, which are relevant, are that, the scope of the authority u/s 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 said

property is being sold in the interest of the Trust, more particularly, according to the learned counsel, the Charity Commissioner is not supposed to substitute his own ideas and views vis-a-vis the functioning of the Trust. It is further emphasized by learned counsel that in the very authority, the contention was that because petitioners had accepted advance money and entered into agreement for sale without obtaining previous permission of Charity Commissioner, transaction itself was liable to be rejected. However, the Division Bench appears to have observed that, such an interpretation can not be given to Section 36 (1) (a) and Trust is supposed to make application to Charity Commissioner after complying with various formalities.

9. The learned counsel for respondent No. 1 purports to counter aforesaid submissions. As a matter of fact, Mr. Chapalgaonkar, learned counsel fairly concedes to and stands by that, it would be appropriate that the Charity Commissioner passes proper order since the order does not make any reference to the situation, and has not considered its purport and implication at all. In the circumstances, the matter can be remitted back to the Joint Charity Commissioner for taking proper decision.

10. The learned Assistant Govt. Pleader submits that the

transaction is purportedly entered into 2010 and permission has been sought in 2012. The property prices are growing day by day, may not hold good now and as such, it cannot be said that under such transaction, interest of the Trust is protected. He, therefore, purports to support the impugned order. He submits that in case of fresh publication, it would be open for the petitioners to submit bid in respect of the same. The doors can not be said to have been foreclosed in view of the impugned order.

11. Having regard to aforesaid submissions, it would be relevant to consider that the transaction has been entered into between the Trust and the petitioners way back in 2010 and that the parties appear to have treated the same as executed and the amount so fetched by the Trust appears to have been expended for the purpose of school building and other objects of the Trust. All these aspects may be required to be considered while taking the decision in the matter. The decision rendered by the Division Bench of this Court [supra] and the other decisions would also be necessary to be considered while the matter is being considered. The petitioners appear to be quite flexible/accommodative in the sense that the petitioners are open for conditions those would be imposed by the Charity Commissioner in the matter. In view of this, I think it proper to remit the matter to the Charity

Commissioner for reconsideration. The Charity Commissioner shall apply his mind to the facts and the Judgments relied on.

12. With these observations, Writ Petition stands disposed of. Rule is made absolute in the above terms.

[SUNIL P. DESHMUKH, J.]

KNP/W.P. 10895.2014 - [J]