IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11243 OF 2015

M/s. Krypton & Co. and another .. Petitioners
vs.
The Charity Commissioner and others .. Respondents

Mr. V.B. Naik, Sr. Advocate i/b. M/s. Dhruve Liladhar & Co. for the Petitioners.
Mr. Shardul Singh for Respondent No.2-Trust.
Mr. G.S. Godbole i/b. Kaustubh Thipsay for Respondent No.3.
Mr. R.S. Apte, Sr. Advocate i/b Mr. S.M. Kamble for Respondent No.4

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 21 November 2015.
Date of Pronouncing the Judgment : 30 November 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 30 October 2015, by which the Charity Commissioner has accorded sanction under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (said Act) to the Trustees of Shree Kapole Wadi Trust (said Trust) for the development-cum-sale transactions in respect of the trust property situated at City Survey No.9, Bhuleshwar Division, Panjarapole Lane, C.P. Tank, Mumbai admeasuring 890.1 sq.mtrs (said property) in favour of Respondent No.3, i.e., Gold Sukh

Lifescapes LLP(GSL), subject of course, to certain terms and conditions specified in the impugned order.

3] By public notice/advertisement dated 11 November 2008, the Trust invited offers from reputed developers for the development of the said property. The development was subject to certain terms and conditions specified by the Trust. Several developers, including the Petitioners herein, i.e., M/s Krypton & Co. (Krypton) submitted offers. By offer dated 10 December 2009, Krypton offered to allot to the Trust 15000 sq.feet of carpet area in the from of marriage hall etc., in lieu of consideration. The Trust resolved to accept the offer, subject of course, to sanction by the Charity Commissioner under Section 36(1)(a) of the said Act. Accordingly, Application No. 43 of 2010 was made to the Charity Commissioner seeking sanction under Section 36(1)(a) of the said Act.

4] After almost five years and during pendency of proceedings before the Charity Commissioner, GSL and one Mohammed Ali Latiff- Respondent No.4 made offers for the development of the said property to the Trust, directly before the Charity Commissioner. As offers made by the said two parties appeared to be much better than the Krypton offer, the Charity Commissioner, by order dated 1 July 2015 directed the Trust to hold a meeting and consider the offers of GSL and Respondent No.4. I*nter se* auction/bidding, thereupon ensued amongst Krypton, GSL and Respondent No.4 before the Charity Commissioner. Krypton enhanced its earlier offer from 15000 sq.ft to 18000 sq.ft. GSL enhanced their offer to 26000 sq. ft. Respondent No.4 offered around 25000 sq.ft. The Trust, as recorded in its Resolution dated 17 July 2015, expressed inclination to accept the offer of GSL, which was the highest offer. The Charity Commissioner afforded opportunity to the Krypton to match the offer of GSL. However, Krypton expressed inability to match such offer. Ultimately, the Charity Commissioner by the impugned order dated 30 October 2015 has accorded sanction under Section 36(1)(a) of the said Act to the Trustees of the said Trust for execution of development-cum-sale agreement in view of GSL, subject to certain terms and conditions specified in the impugned order.

5] Mr. Vineet Naik, learned senior advocate for the Petitioners, at the outset, has made statement that the Petitioner does not press for execution of development-cum-sale agreement in favour of itself. However, Mr. Naik expressed serious reservations with regard to the decision making process, which has culminated into making of the impugned order. Mr. Naik pointed out that the Charity Commissioner has permitted himself to be swayed by the offer in financial terms, but bestowed no consideration whatsoever to the aspect of feasibility of the offer made by the GSL. In this regard, Mr. Naik laid emphasis upon the terms and conditions prescribed by the Trust, which *inter alia* involved verification as to feasibility of development offer through reputed Architects. That apart, Mr. Naik by placing reliance upon certain decisions of this Court as well as the Hon'ble Apex Court submitted that the Charity Commissioner failed to exercise jurisdiction vested in him by according sanction, when in fact, the public notice/advertisement inviting offers had been initially issued in the year 2008 or 2009 and there was no further public notice/advertisement for inviting fresh offers. Mr. Naik submitted that it is the duty of the Charity Commissioner to ensure that the efforts have been made by the Trust to obtain the best price in respect of the property, which is proposed to be alienated and this can be only achieved where there is wide publicity, transparency and reference to current market conditions. For these reasons, Mr. Naik submitted that the impugned order warrants interference.

6] Mr. R.S. Apte, learned senior advocate for Respondent No.4, substantially supported the submissions made by Mr. Naik in this petition.

7] Mr. G.S. Godbole, learned advocate for Respondent No.3-GSL, submitted that the conduct of the Petitioners dis-entitles the Petitioners to any relief in the exercise of extra-ordinary equitable jurisdiction of this Court. Mr. Godbole pointed out that the Krypton, without any demur, took part in the proceedings before the Charity Commissioner particularly when orders were made to the consideration of offers of GSL and Respondent No.4. Krypton also chose to enhance its previous offers, but ultimately though opportuned, expressed inability to match the final offer made by GSL. Having acquiesced in all this, Krypton is hardly any good relator to raise issues which it now chooses to raise in this petition. Mr. Godbole further pointed out that the offer made by GSL has been examined, not only by the Trust but also by the Charity Commissioner and the same is found to be in accord with the market value of the said property as per Ready Reckoner values. The Petitioners, i.e., Krypton has also made no allegations that the said property is being frittered away for a song. Rather, it is the grievance of Krypton that the offer made by GSL is excessive in pecuniary terms, therefore, might not be feasible to execute. Mr. Godbole pointed out that GSL will have no objection, if alternate relief in terms of prayer clause (d) of the Petition is granted in this matter. The alternate relief merely requires GSL to intimate Krypton, if, post the execution of development-cum-sale agreement, there is any proposal on the part of GSL to alter the carpet area, which GSL has offered to the said Trust, so that the Krypton can take out appropriate proceedings in this regard. Mr. Godbole attempted to distinguish the decisions relied upon by Mr. Naik by contending that the allegations therein pertained to disposal of Trust property below the current market rates. For all these reasons, Mr. Godbole submitted that this petition be dismissed with costs.

8] Mr. Shardul Singh, learned counsel for Respondent No.2-Trust, supported the submissions made by Mr. Godbole. Mr. Singh pointed out that the building upon the said property, which houses about 26 tenants is almost 80 years old and any further delay in the implementation of the project might seriously prejudice the interest of the Trustees. The Trustees are content with the offer made by GSL, which according to them, is not only the best offer obtainable but further, the Trustees having considered the credentials and experience of GSL are satisfied that such offer is feasible and implementable. For all these reasons, Mr. Singh also submitted that this petition be dismissed with costs.

9] Having heard the learned counsel for the parties, at the outset, it is necessary to make reference to the scope of jurisdiction to be exercised by the Charity Commissioner in the matter of exercise of powers under Section 36(1)(a) of the said Act. The section which begins with a non-obstante clause, provides that notwithstanding anything contained in the instrument of the Trust, no sale, exchange or gift of any immovable property belonging to the Trust shall be valid without previous sanction of the Charity Commissioner. The sanction which may be so accorded by the Charity Commissioner may be subject to such conditions as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the Trust. In exercising powers in this section, the Charity Commissioner, in the first place is required to consider whether the Trust has genuine need to alienate the trust property and secondly whether the terms of alienation are in the interest of the Trust or its beneficiaries.

10] The Hon'ble Apex Court, in case of ***Chenchu Rami Reddy and anr. Vs. Government of Andhra Pradesh and ors.***[1]***,*** has held that more often than not, detriment to what belongs to '*many*', collectively, does not cause pangs to '*any*', for no one is personally hurt directly. That is why public officials and public minded citizens entrusted with the care of '*public property*' have to show exemplary vigilance. What is true of '*public property*' is equally true of property belonging to religious or charitable institutions or endowments. The property of such institutions or endowments must be jealously protected. It must be protected for a large segment of the community has beneficial interest in it. The authorities exercising the powers under the Act must not only be alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the *closest-and-best-attention approach* to guard against all pitfalls. The approving authority must be aware that in such matters the Trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible under-hand deal or understanding with the purchasers at the cost of the

1 (1986) 3 SCC 391

concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment.

11] The Full Bench of this Court in case of ***Sailesh Developers and anr. Vs. Joint Charity Commissioner, Maharashtra***[2] , whilst conceding *locus standi* to a party, who comes forward and submits his offer directly before the Charity Commissioner to challenge the decision making process of the Charity Commissioner, has made certain significant observations with regard to the scope of power vested in Charity Commissioner under Section 36 of the said Act. The Full Bench at paragraph '28' has held that the Charity Commissioner whilst exercising powers under clauses (b) or (c) of Section 36(1) of the said Act can impose conditions having regard to the interest, benefit or protection of the trust. Before passing an order of sanction or authorisation, the Charity Commissioner has to

2 2007(3)Mh.L.J.

be satisfied that the trust property is required to be alienated. Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary in the interest of the trust or for the benefit of the trust or for the protection of the trust, it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to grant sanction to a particular proposal of the trustees or to reject it. It is the duty of the Charity Commissioner to ensure that the transaction of alienation is beneficial to the trust and its beneficiaries. He has to ensure that the property is alienated to a purchaser or buyer whose offer is the best in all respects. It is not necessary in every case that the Charity Commissioner has to ensure that property is sold by the trustees to the person offering highest price or consideration. What is the best offer in the interest of the trust will again depend on facts and circumstances of each case. In a given case, while alienating the trust property, the trustees may provide that as a part of consideration for alienation, the purchaser should construct a building on a part of the trust property for the use by the trustees for the objects of the trust. In such a case, it may be necessary to ascertain the reputation and capacity of the purchaser apart from the consideration offered. When the Charity Commissioner is satisfied that trust property needs to be alienated and when he finds that the offer received by the trustees may not be the best offer, he can always direct that bids be invited by a public notice. When a better offer is received in public bidding or auction, it is very difficult to say that the power of the Charity Commissioner is restricted and he cannot enjoin the trustees to sell or transfer the trust property to a third party who has given an offer which is the best in the interest of the trust. The Trustees approach the Charity Commissioner only when they are satisfied that there is a necessity to alienate the trust property. The trustees hold the property for the benefit of the beneficiaries and therefore once they express desire to alienate the property, it is obvious that Charity Commissioner can always impose condition while granting sanction that the property shall be sold or transferred to a person who has come with an offer which is the best offer in the interests of the trust. The Section gives a power to the Charity Commissioner to impose conditions and the said conditions will include a requirement of selling or transferring or alienating the trust property to a purchaser who has offered the best deal having regard to the interest and benefit of the beneficiaries and the protection of the trust. The power to impose conditions cannot be a limited power when the law requires the Charity Commissioner to exercise the said power having regard to the interest, benefit and protection of the trust. Once the Charity Commissioner accepts the necessity of alienating the trust property, the trustees cannot insist that the property should be sold only to a person of their choice though the offer given by the person may not be the best offer. The property may be vesting in the trustees but the vesting is for the benefit of the beneficiaries. The Charity Commissioner has jurisdiction to ensure that the property is sold or transferred in such a manner that the maximum benefits are available to the beneficiaries of the Trust. Under Clause (b) of Section 36 of the said Act, the Charity Commissioner has jurisdiction to decide whether it is in the interest of the trust that the property of the trust be sold or transferred. Once the learned Charity Commissioner is satisfied that the property is required to be transferred or sold in the interest of the Trust, the learned Charity Commissioner cannot remain silent spectator when he finds that the transaction proposed by the Trustees is not in the interest of the Trust or its beneficiaries. Once the necessity of sale or transfer is established, the Charity Commissioner can certainly ensure that best available offer is accepted, so that the transaction is for the benefit of the trust. If the trustees were to be the final authority to judge what is in the interest of the Trust, the legislature would not have enacted provision requiring prior sanction. While deciding which is the best offer, the learned Charity Commissioner is bound to take into consideration various factors which cannot be exhaustively listed. However, the paramount consideration is the interest, benefit and protection of the trust. It is obvious from the scheme of Section 36 that legislature never intended that trustees could sell or transfer the trust property vesting in them as if it was their personal property. It is the duty of Charity Commissioner to ensure that the property should be alienated in such a manner that maximum benefits are accrued to the trust. The Charity Commissioner while considering an application under Section 36(1) of the said Act of 1950, in a given case can opt for public auction or can invite bids.

12] In case of ***Yafa Jacob Simon and another Vs. Joint Charity Commissioner and others***[3], the learned Single Judge of this Court interfered with the sanction accorded by the Charity Commissioner under Section 36 of the said Act for sale and development of 75 years old building belonging to the Trust, after noting that there was no transparent procedure adopted in the matter of invitation of bids from prospective developers. After taking note of several precedents including in particular the decision of the Full Bench in case of

3 2012(2)Mh.L.J. 895

Sailesh Developers (supra) and the Hon'ble Apex Court in case of *Chenchu Ram Reddy (supra),* the learned Single Judge of this Court has held that the property of trusts and endowment must be jealously protected and that it must be protected because large segment of the community has beneficial interest in it. The Joint Charity Commissioner, after noticing that choice of newspaper in which the advertisement was published, ought to have been put on an immediate guard and first question which the Joint Charity Commissioner ought to have asked itself and answered accordingly was whether this is a proper publication which would fetch the best possible choice. The Joint Charity Commissioner has not adverted to this factor at all. The Joint Charity Commissioner ought to have directed the Trustees to publish a fresh notice in reputed English and Marathi newspapers which have wide circulation and to have invited bids for disposal of the trust property. Such a process would alone have resulted in finding out a correct price of the property of the Trust. The decision of the Joint Charity Commissioner was said to have been vitiated for having failed to take into consideration such a relevant circumstance, as also a circumstance that a caveat had been lodged by the construction company interested in purchasing the Trust property for a price even higher than the price obtained through bidding process premised upon advertisement in some obscure newspapers. The learned Single Judge has observed that the Joint Charity Commissioner has failed in performance of the statutory duty cast on him by law. Yet another aspect which vitiated the decision making process in the said cases was the failure on the part of Joint Charity Commissioner to advert to the aspect of ability and skill of developers, because the transactions proposed was not outright sale of the Trust property. The proposal for alienation involved demolition and reconstruction of all the Trust buildings and allotment of area on ownership basis to the Trust in the new building. Taking into consideration of all such factors, the decision of the Joint Charity Commissioner was set aside and the directions issued for issuance of fresh advertisement in newspapers having wide circulation and for consideration of offers, in accordance with law as laid down by the Full Bench in case of *Sailesh Developers (supra)* and *Chenchu Rami Reddy (supra)*.

13] In the facts and circumstances of the present case, it is true that the Petitioners may have acquiesced with the proceedings before the Charity Commissioner. However, that by itself, it does not immunize the decision making process adopted by the Charity

Commissioner, if the same is not otherwise in accordance with law. The submissions of the parties basically hinged upon pointing out the conduct and deficiencies in each other. Unfortunately, even the Trust indulged in this very exercise without furnish of any valid and cogent reasons as to how there was transparency in the entire process, which commenced on the basis of public notice/advertisement issued in the year 2008-2009. This is not a case where delay in the process is merely on grounds attributable to the Charity Commissioner. GSL and Respondent No.4 were permitted to intervene in the proceedings only in the year 2015 and enhanced offers were submitted by these parties in the year 2015. The Petitioners also acquiesced in the process, therefore, can hardly object to the intervention by GSL and Respondent No.4. The Petitioners were also afforded an opportunity to match the offer made by GSL. All this establishes that even according to the Petitioners, as well as the Trust, the offers made and received in pursuance of public notice/advertisement of the year 2008-2009, had lost significance and could never have been accepted at this distant point of time. As compared to the offer made by the Petitioners, no doubt, offer made by GSL is substantially higher. However, that by itself, is not sufficient to qualify the said offer as the best offer achievable or obtainable in the facts and circumstances of the present case. So also, the mere circumstance that the offer made by GSL may have some broad co-relation with the Ready Reckoner Rates, is not a circumstance, which by itself, is sufficient to qualify the GSL offer as being best offer achievable or obtainable in the facts and circumstances of the present case. The so called satisfaction or contentedness expressed by the Trustees is not also some sole determining factor, particularly considering the scathing observations, made by the Hon'ble Apex Court in case of *Chenchu Rami Reddy (supra)* in the context of role of Trustees in the matter of sale of Trust property by private negotiation. The Charity Commissioner, in making the impugned order, has permitted himself to be swayed by several irrelevant considerations, such as these and in the bargain, there was no reference to several relevant considerations which arose in the matter of exercise of powers under Section 36 of the said Act.

14] There is no indication as to the basis upon which GSL and Respondent No.4 obtained knowledge of the Trust's development proposal and consequent submission of bids before the Charity Commissioner. Initially, the bids submitted by GSL and Respondent

No.4 were only marginally higher than the bids submitted by Krypton. There was some sort of *inter se* bidding between the three parties, which led to submission of enhanced bids by GSL, which has found favour with the Trust and now the Charity Commissioner. The fact, however, remains that there was no wide publicity and consequently there was lack of transparency. Except for some self serving contentions raised by the Petitioners that the offer made by GSL was too excessive to be capable of implementation, there is really no material placed on record that in respect of a property at a prime location like Bhuleshwar, which the parties admit, is at the base of Malabar Hill, better or higher offers were not obtainable or achievable. The rates in a Ready Reckoner are mainly for fiscal purposes and may afford some indication as to the market price. However, it may be fallacious to urge that the Ready Reckoner Rates are to form the sole basis for determination of market price.

15] Upon consideration of the material on record, it does appear that the Charity Commissioner, in making the impugned order has failed to adopt *closest-and-best-attention* approach to guard against all pitfalls illustrated by the Hon'ble Apex Court in *Chenchu Rami Reddy* (supra). In pursuance of the public advertisement of the year

2008 -2009, the bid of Krypton came to be short listed by the Trust. After almost 6 to 7 years, GSL and the Respondent No. 4 intervened in the proceedings before the Charity Commissioner and made offers which were initially only marginally higher than the offers made by Krypton. Therefore, there were negotiations in the form of *inter se* bidding amongst the parties before the Charity Commissioner. Ultimately, GSL has made offer which is substantially higher than the offer made by Krypton. Considering the time rag between 2008 – 2009, when the public notice inviting bids was issued and offers made by GSL and the Respondent No. 4 in the year 2015, it would not be safe to act on the basis of GSL offer or to qualify the GSL offer as being the best, in the facts and circumstances of the case. The offer of GSL, though made before the Charity Commissioner, to the great extent, is a result of negotiations. There are no special reasons to virtually approve sale by way of negotiations of this nature. Even in the public notice / advertisement issued in the year 2008 – 2009, there was no indication of any reserve price after ascertainment of the market value. The entire process does lack the required degree of transparency. The conduct of the Petitioners may not have been above board. However, if this petition is dismissed upon the said premise, the interests of the Trust will suffer. The mandate of the

Hon'ble Apex Court as well as the Full Bench of this Court is that the property of such Trust must be jealously protected. Such protection is necessary because a large segment of the community has beneficial interest in the Trust property. Therefore, the Authorities like the Charity Commissioner are enjoined not only to be most alert and vigilant in such matters but must also show awareness of the ways of the present days world as also the ugly realities of the world today. In the matters of this nature, it is not sufficient that such Authorities take things at their face value or make a less than *closest-and-best-attention* approach to guard against all pitfalls. Upon such touchstone, it would be appropriate if the impugned order is set aside.

16] The contention of the Trust that the process has delayed and that any further delay would seriously prejudice the interest of Trust also cannot be accepted. Mr. Shardul Singh, learned counsel for the Trust, made a grievance that it was for the Petitioners, who have approached this Court and secured directions for expeditious disposal of proceedings under Section 36 of the said Act before the Charity Commissioner. The Petitioners, obviously, were not affected by the delay in the process. If at all, any body was affected, then it was the Trust itself. Even the Trust, took no steps for obtaining any expedition orders. Rather, the Trust, after having resolved favorably as regards the offer of Krypton in the year 2010, chose to reconsider offers made by GSL and Respondent No.4 in the year 2015, without any resistance. The entire process which was virtually in slumber was kickstarted with the intervention of GSL and Respondent No.4, only in the year 2015. Accordingly, the Trust can hardly resist the issuance of fresh public notices, with a view to obtain greater choice and better price, by raising the bogey of delay at this stage. In any case, on the ground that some further time may be necessary, there is no reason to sacrifice trust property or deny to the Trust, current market prices and perhaps with better choices. The proceedings before the Charity Commissioner can always be expedited.

17] Upon cumulative consideration of the aforesaid facts and circumstances, it would be appropriate if the impugned order dated 30 October 2015 is set aside and the proceedings are once again restored to the Charity Commissioner for fresh decision in accordance with law. The Charity Commissioner shall, however, cause said Trust to issue fresh advertisement in newspapers having wide circulation and to invite bids for the purposes of development and sale of the suit property. The advertisement to indicate suitable reserve price, perhaps, based upon the experience gained in the process of *inter se* bidding between Krypton, GSL and Respondent No.4 as well as other relevant parameters. The Trust, together with the Charity Commissioner shall be at liberty to finalise the terms and conditions for development-cum-sale, considering that the proposal involves allotment of built-up space to the Trust as well as the interests of tenants/occupants in the Trust property. Neither the Krypton nor Respondent Nos.3 and 4 shall be barred from taking part in the bidding process, but at the same time, they shall not be entitled to any additional equities in the matter. The Charity Commissioner, is directed to dispose of the proceedings as expeditiously as possible and in any case within a period of one year from today. In disposing of such proceedings, the Charity Commissioner is enjoined to take into consideration the law laid down by the Hon'ble Apex Court in case of *Chenchu Rami Reddy (supra)* and the Full Bench of this Court in case of *Sailesh Developers (supra)*. The Trustees are directed to return amount of Rs.25 Lacs to Krypton, GSL and Respondent No.4, if, the said amounts have not already been returned, within a period of eight weeks from today.

18] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.)

19] The learned counsel appearing for Respondent No.2-Trust and Respondent No.3 GSL seek a stay of eight weeks on the order of remand to the Charity Commissioner, on the ground that they would like to take recourse against this judgment and order before the Hon'ble Apex Court. Pursuant to the remand, the Charity Commissioner has been granted a period of one year to dispose of the proceedings. The same are not likely to be disposed of within the period of eight weeks. No useful purpose would, therefore, be served by staying the order of remand, at this stage. Accordingly, prayer for stay is denied.

(M.S. SONAK, J.)