IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6657 OF 2014

1] Vicky Dilip Mutha,
Age : 35 Years, Occ. : Business & Agriculturist,
R/o Deshmukhwadi, Sarjepura,
Ahmednagar-1.

2] Pradip Mangilal Changediya,
Age : 39 Years, Occ. : Business & Agriculturist,
R/o At Post Sonai, Tal. Newsa,
Dist. Ahmednagar.

3] Sau. Yevanta Pradip Changediya,
Age : 33 Years, Occ. : Business & Agriculturist,
R/o At Post Sonai, Tal. Newasa,
Dist. Ahmednagar.

4] Mrs. Aruna Dilip Mutha,
Age : 56 Years, Occ. : Business & Agriculturist,
R/o Deshmukhwadi, Sarjepura, Ahmednagar – 1.

5] Sunil Hastimal Mutha,
Age : 51 Years, Occ. : Business & Agriculturist,
R/o Burud Galli, Ahmednagar – 1.

6] Rohan Sunil Mutha,
Age : 25 Years, Occ. : Business & Agriculturist,
R/o Burud Galli, Ahmednagar.

... Petitioners.

Versus

The Panjarapol Sanstha,
A duly Registered Public Trust,
Having its Address : At Arangon Road,
Ahmednagar, Tal & Dist. Ahmednagar.
Through : Its authorised signatory & Trustee,
Shri Satish Mohanlala Dugarwal,
Age : 57 Years, Occ. : Business,
R/o MSEB Colony, Maniknagar, Ahmednagar,
Tal & Dist. Ahmednagar.

... Respondents.

. . .
Mr. R. R. Mantri, Advocate for Petitioners.
Mr. A. P. Bhandari, Advocate for Respondent/Sole.
. . .

CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.

RESERVED ON : 06th APRIL, 2016.
PRONOUNCED ON : 06th MAY, 2016.

JUDGMENT : (PER V. L. ACHLIYA, J.)

. Rule. Rule is made returnable forthwith. With consent of parties, Petition is heard finally at the stage of admission.

2] By the present petition filed under Article 226 of the Constitution of India the petitioner has claimed reliefs as follows :-

> "B. Issue a writ of certiorari or any other appropriate writ and or direction and quash and set aside the order dt. 26.08.2011 passed below Exh.1, order dt. 27.06.2012 passed below Exh.12 and the order dt.04.03.2013 passed below Exh.24 and be further pleased to allow the said applications.
>
> C. Issue a writ or certiorari or any other appropriate writ and or directin and call for the record and proceedings of application no.35/2011, under Section 36 of Bombay Public Trust Act, pending on the file of the Ld. Joint Charity Commissioner, Pune, and on perusal of the same or otherwise quash and set aside the order dt. 24.06.2014 passed below Exh.-45, and be further pleased to open

> and finalise the tenders as per the notice dt. 30.04.2014 bearing outward no.1527 to 1532 – Exh.42 and be further pleased to direct holding of proper enquiry and taking appropriate action in accordance with the law against the trustees of the respondent no.1 and the valuer."

3] Before appreciating the submissions advanced it is necessary to consider the brief facts leads to filing of present petition. The respondent is a public trust duly registered under the provision of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as "said Act"). It owns an agricultural land bearing block no. 2985 at village Sonai, Tq. Newasa, District Ahmednagar admeasuring 7 Hector, 63 R. There exist cattle shed, electric water pump installed in the well situated in said land. In the meeting of Managing Committee of the trust held on 20.08.2004 and 19.02.2005 it was resolved to sale the land for the reasons set out in the resolution passed. Pursuant to the decision the bids were invited by issuing public notice in newspapers. Petitioners have participated in the process and offered the bid of Rs.1,11,99,999/- (Rupees One Crore Eleven Lakhs Ninety Nine Thousand Nine Hundred Ninety Nine Only). Since the bid of the petitioners was found to be highest the Managing Committee decided to accept the same subject to requisite permission under Section 36 of the said Act. The resolution to this effect was passed in the meeting of the Managing Committee of said trust held on 31.08.2009. Initially the petitioners have paid Rs.11,00,000/- (Rupees Eleven Lakhs) as earnest amount and later on paid Rs.25,00,000/- (Rupees Twenty Five Lakhs) to the respondent trust. On 13.05.2010, the respondent trust filed application under section 36 of the said Act before the Joint Charity Commissioner, Pune seeking permission to sale the said land in favour of petitioners. The application was registered as application no.35/2011. After hearing and perusing an application the Joint Charity Commissioner was pleased to pass an order to call fresh offers in the matter by taking note that offer/bid was invited in 2008 and during the intervening period the prices of the immovable property have increased. The petitioners moved an application to recall the order dated 26.08.2011. However, the Joint Charity Commissioner refused to entertain the request and decided to proceed with the order to call the fresh bids in the matter. Pursuant to the order passed by the Joint Charity Commissioner the notices were published in newspapers inviting tenders/bid in respect of said property. In all five bids were received in response to the notice published in the newspaper which includes the petitioners as one of the bidder. Petitioners submitted their bid alongwith demand draft of Rs.30 Lakhs as bid amount. The bids so invited were to be opened on 20.05.2014 in presence of the persons who have submitted their offers. However on that date the Joint Charity Commissioner was not available and therefore opening of tender was postponed to 24.06.2014. On

24.06.2014, the respondent moved an application vide Exh.45 stating therein, that the respondent has learn that in the Regional Development Plan the part of the said land is shown reserved for agricultural purpose and further stated that, in view of the subsequent development the price of the land is more than 11,66,00,900/- (Rupees Eleven Crore Sixty Six Lakhs and Nine Hundred) and if there is any bid matching to that amount same be accepted otherwise fresh bid be called in the matter on the basis of fresh valuation of the said land obtained by respondent. Learned Joint Charity Commissioner pleased to allow the application moved by the respondent vide order 24.06.2014. Being aggrieved by the decision of Joint Charity Commissioner dated 26.08.2011 and 24.06.2014 the petitioners have preferred this writ petition, challenging those decisions on the grounds set out in the petition.

4] We have heard the learned counsel appearing for petitioners and the respondent and further perused the impugned orders the report of valuation referred and relied during the course of submissions. We have also considered the certain events which occurred during the pendency of the petition and offers received for said land. The offers received in sealed covered during the hearing of the petition were opened before the Court.

5] Learned counsel for the petitioners assail the impugned orders passed by the Joint Charity Commissioner with contention that the orders are arbitrary, perverse and illegal. He has argued that while dealing with the application under Section 36 of the said Act the Joint Charity Commissioner is expected to decide the application for grant of permission for sale on the basis of the date on which the offers are invited and delay in processing the application can not be ground to call for the fresh bids. It is contended that the orders passed to invite the fresh bids is purely based on mere assumption and presumption on the part of respondent and Joint Charity Commissioner without any concrete material on record to form such opinion. He has submitted that the petitioners parted with 36 Lakhs when the bids were initially invited and offer was accepted by trust subject to permission by Charity Commissioner. In the fresh bid invited the petitioners have submitted demand draft of Rs.30 Lakhs. The learned Joint Charity Commissioner has passed the order dated 24.06.2014 soley on the basis of say of the respondent that now the value of property is more than 11,66,00,000/-. He has further submitted during the course of hearing of the petition this Court has directed the respondent to bring the prospective buyer who is willing to offer 11 crores or at least more than 7 crores. However no such offer of buyer willing the purchase property by paying price of Rs.7 crores or 11 crores was produced before the Court. The bids which have received though reflects that two offers of Rs. 8,21,00,000/- (Eight

Crore Twenty One Lakhs) those persons have not submitted demand draft of Rs.5,00,000/- each with their offer. Except one person who has quoted price of Rs.1,25,00,000/- no other person has fulfilled the condition of bid to enclosed the demand draft of Rs.5,00,000/-. It is therefore contended that the stand of the respondent that the price of the property is more than 11 crore is imaginary and without any basis. He therefore urged to set aside the impugned order and further direct the Joint Charity Commissioner to open and finalise the tenders already received.

6] On the other hand, learned counsel for the respondent supported the order passed by the Joint Charity Commissioner. He has submitted that, while dealing with an application filed under Section 36 of the said Act, the Joint Charity Commissioner has to take into consideration the interest, benefit and protection of trust. Therefore the interest of respondent trust is of paramount consideration so far as deciding the application under Section 36 of the said Act. The reasons recorded by the Joint Charity commissioner while passing the impugned orders reflect that the orders are passed in the interest, benefit and protection of the trust. While passing the earlier order the Joint Charity Commissioner has noted that the process was initiated in 2008 by considering valuation of the property as then exist. When the application came up for hearing the Joint Charity Commissioner felt that the period of more than 3 years has lapsed and in the intervening period there was increase in prices of immovable property therefore pass the order dated 26.08.2011 to call fresh bid in the matter and rejected the application moved by petitioners for recall of the order. Thereafter considering the fact that respondent/applicant has produced the evidence in the form of valuation report, showing the price of the land together with structure as Rs.11,66,29,000/- the Joint Charity Commissioner decided to allow the application to call fresh bids in the matter. He has therefore submitted that there is absolutely no illegality and perversity in the order passed by the Joint Charity Commissioner. He has further submitted that, during the course of hearing of the petition there are two offers received from the bidders, who have offered Rs.8,21,00,000/- for the said property. He has therefore submitted that stand taken by the respondent vide application Exh.45 and order passed by Joint Charity Commissioner to initiate fresh bid in the matter duly fortified in view of said offers.

7] We have carefully considered the submissions in advanced and perused the impugned orders. The respondent is a public trust and as from the name “Panjarpol Sanstha” suggest that the trust has been formed to take care of the cows and progeny. While exercising the power under Section 36 of the Maharashtra Public Trust Act of 1950 the paramount consideration before the

Charity Commissioner is the interest of the trust. While granting such permission for sale the Charity Commissioner is expected to take care and satisfy himself that the transaction for sale for which the permission is sought is in the interest of the trust. He has to consider whether there is a bonafide needs to sale such property and same being sold in the interest of trust. Once the Charity Commissioner is satisfied that alienation of property is necessary in the interest of trust or for the benefit of the trust or for the protection of the trust then the Charity Commissioner can grant permission for alienation. It is not the job to be performed mechanically. It is obligatory on the part of Charity Commissioner to examine the matter and arrive to proper decision as to whether alienation of the property is necessary and for the benefit of the trust and beneficiaries. The section itself provides for complete and effectual supervision and control of the Charity Commissioner on the alienation of the trust property. Rule 24 of the Bombay Public Trust Rules, 1951 provides for information to be provided to the Charity Commissioner and also empowers the Charity Commissioner to make such inquiry as he deems necessary. It also empowers the charity commissioner to impose such condition and give such directions as he may deem fit. Rule 24 specifically deals with the manner in which the application under Section 36 to be filed, particulars to be given and inquiry to be conducted. The charity Commissioner is suppose to examine the proposed sale critically to see, whether the trust can be benefited on completion of the transaction. If he is not satisfied he may refuse to accord sanction. Thus the role of the Charity Commissioner in dealing with application under Section 36 is not of silent spectator. On the contrary, the Charity Commissioner is expected to play pro-active role, while dealing such application as the provision together with rule contemplates inquiry to be conducted on the part of Charity Commissioner to satisfy himself that such alienation is in the benefit, interest and protection of the trust and beneficiary of the trust. He can arrive to conclusion that the price at which the trustees have agreed to sale the property is not the price which would secure the adequate benefit to the trust and he may reject the agreement on that ground. The delay in deciding the application can not be ground to overlook the benefit and interest of the trust in alienation of the property. In this context, it is useful to refer the decision of this Court in the case ***Madhukar Sunderlal Sheth and other Vs. S. K. Laul and others***. Reported in ***1992 (3) Bom.C.R. 253.*** In para 5 this Court has observed as under :-

> "5. The Charity Commissioner, under the Bombay Public Trusts 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."

8] Having considered the challenges raised to the impugned orders in the light of scope and powers of Joint Charity Commissioner U/s 34 r/w Rule 24, we are of the view that the impugned orders can not to said to be perverse, arbitrary and illegal and to be interfered in exercise of writ jurisdiction under Article 226 of the Constitution of India. The orders passed by the Joint Charity Commissioner are in true spirit of Section 36 of said

Act. While passing the first order the Charity Commissioner has noted that the offers/tender were invited in 2008 and taken note that in the intervening period the prices of the immovable properties were increasing. He therefore directed to call the fresh bid/offer. The process of opening the fresh bids was abandoned in view of the fact brought to the notice of Charity Commissioner by respondent, vide application dated 24.06.2014 (Exh.45) that it has come to their notice that portion of the property admeasuring 1 hector 52 R is now shown in residential (R-Zone) in the development plan prepared by the town planning department. In order to ascertain the valuation on the basis of subsequent development the respondent trust obtained the valuation report. The valuer has valued the price of the land together with structure as Rs.11,66,28,668/- as against offer of Rs.1,11,00,000/-. In this background, the Ld. Joint Charity Commissioner has passed the impugned order to call fresh bids. The Joint Charity Commissioner observed that as the part of the property falls in residential zone the valuation of the property must have increased. He therefore arrived to the conclusion that the in the interest of the trust and more particularly the trust itself claim the valuation of the property more than 11 crores, it is necessary to consider the request made in the application and allowed the application. Thus in the background of the facts of the case and the order passed we do not see any perversity, and illegality in the order passed . The orders passed are fully in consonance with the object of Section 36 of Bombay Public Trust Act.

9] During the pendency of the proceeding in order to substantiate the contention raised by the respondent that the value of the property is more than 11 crore the petitioner was asked to bring the purchaser who is willing to offer more than 11 core or at least more than 7 crore. It appears that, in order to bring such offer the trust has invited the bids in which seven bids were received. Out of seven bids two bidders have offered Rs. 8,21,00,000/- for the said property. However, they have not enclosed the demand draft and instead enclosed the cheque amount towards earnest money. We are not supposed to deal with those offers and decide the same. However the fact remains that two bidders have offered Rs.8,21,00,000/- for the said property which support the case of the respondent that the price of the property is more than 7 crore. In view of this also, it is not desirable for us to interfere with order passed by the Charity Commissioner to invite fresh bids in the matter.

10] If we consider the scope of Section 36 then the intended purchaser as that on petitioners have no much role to play in such proceeding. It is basically the trust who has to satisfy the Charity Commissioner that the alienation of the property is necessary and in the interest of the trust and further the price at which the property to be sold is true and correct value of the property. Petitioners can not seek a mandate against the Charity Commissioner to grant permission in his favour. No doubt the petitioners can avail the remedy which are available to them in law against the respondent. However, the agreement of sale being subject to mandatory permission under Section 36 of Trust Act, petitioners can not seek mandate to execute sale in their favour; the remedy such as returned of amount can be availed by them against trust; if permission is refused or any other eventualities for which the transaction couldn’t be materialised. In view of the order dated 24.06.2014 passed by Joint Charity Commissioner to initiate process to call fresh bid and abandoned the process to open the bids already received, which includes the bid received from the petitioners, the petitioners can certainly apply for return of demand draft of Rs. 30 lakhs submitted with their offer. In case such request is made the Charity Commissioner can entertain such request.

11] In view of discussion made in foregoing paras, we are of the view that the petition filed is devoid of merit and substance therein. The impugned orders passed by the Joint Charity Commissioner do not call for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. In the result we dismissed the petition with no order as to costs. However, we grant liberty to petitioners to apply for return of the demand draft of Rs. 30 lakhs in view of decision dated 24.06.2014 taken by the Joint Charity Commissioner. In case the respondent decides to proceed with application seeking permission to sell the land and if fresh bids are invited then the petitioners will be at liberty to raise their offer to match the highest bid received in such process.

12] Rule discharged in above terms.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE