

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3035 OF 2015**

Shri Bramhanath Devasthan	...	Petitioner
V/s.		
Joint Charity Commissioner	...	Respondent

Mr.V.A.Shastry for the Petitioner.

Mrs.M.S.Bane, "B" Panel for State.

CORAM : M.S. SONAK, J.

DATE : 21st MARCH, 2016.

P.C.

. Heard the learned Counsel for the parties.

2. Rule. Rule is made forthwith with the consent and at the request of the learned Counsel for the parties.

3. The challenge in this petition is to the order dated 5th February, 2015 made by Joint Charity Commissioner, Kolhapur, declined to grant the Petitioner permission under Section 36(1) of the Maharashtra Public Trust Act, 1950 (said act) for alienation of the trust property.

4. If the impugned order is perused, then it is clear that the Joint Charity Commissioner has denied permission to the Petitioner on the ground that the tendering process initiated by the Petitioner was not above board but the same was rather suspicious. In the facts and circumstances of the case, there is no reason to interfere with this conclusion, particularly in the light of the circumstances highlighted by the Joint Charity Commissioner in paragraph 7 of the impugned order. However, the Joint Charity Commissioner does not seem to have applied her mind to several other parameters prescribed under Section 36(1) of the said Act, including the fundamental question as to whether the proposed alienation is needed in the interest of the trust.

5. The full bench of this Court in the case of ***Sailesh Developers & Ors. Versus Joint Charity Commissioner Maharashtra, 2007(3) Bombay Case Reporter 7***, has considered in depth the power of a Joint Charity Commissioner in the context of permissions under Section 36(1) of the said Act. The Charity Commissioner

cannot be bound by the results of the tenders invited by the trust. The Charity Commissioner may himself, invite tenders and in such a way assist the trust to recover the best possible price in so far as trust property which is proposed to be alienated is concerned.

6. However, before the Charity Commissioner undertakes such a exercise he/she is required to arrive at some decision as to whether, it is in the interest of the trust to alienate its property. Even after permission is granted, certain reasonable conditions can be made in the matter of utilization of the proceeds for the benefit of the trust. All these aspects do not appear to have been considered by the Joint Charity Commissioner in the present case.

7. Therefore, although the decision of the Joint Charity Commissioner not to accept the bids as a result of the tendering process initiated by the Petitioner trust is not being interfered with, the matter is remanded to the Joint Charity Commissioner to determine, whether it is in the interest of the Petitioner trust to at all alienate the property indicated and if so, it is for the Joint Charity Commissioner

to himself/herself initiates steps for inviting tenders, so that offers which are in the best interest of the trust are obtained and there is transparency in the process.

8. The impugned order is modified to the said extent and the matter is remanded for fresh consideration in accordance of observations contained in this order as well as the Judgment of Full bench of this Court in the case of Sailesh Developers & Ors (Supra).

9. Rule is accordingly made partly absolute to the aforesaid extent. There is no order as to costs.

10. The Petitioner to appear before the Joint Charity Commissioner on 11th April, 2016 at 11.00 a.m. and submit a authenticated copy of this order.

11. The Joint Charity Commissioner is requested to dispose of this proceeding as expeditiously as possible.

(M.S. SONAK, J.)