

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1102 OF 2015**

Dwarka Charitable Trust	)	
through its trustee	)	
Mr. Parag Bhimashankar Muley	)	
Age 40 yrs occu Business	)	
R/at, 926, Shivajinagar F. C Road,	)	
Pune – 4	)	..Petitioner

Vs.

1 State of Maharashtra	)	
Notice to be served through AGP	)	
High Court Bombay	)	
2 Joint Charity Commissioner	)	
Pune Region Pune	)	
3 Mrs Rupali Anand Gandhi	)	
Age __ Years Occ Business	)	
R/at, Chatur Apts, 55/1, Erandwane	)	
Law College Road, Pune -04	)	
4 The Pune Municipal Corporation	)	
Through the Commissioner	)	
Pune at Pune	)	..Respondents

Mr. A. A. Deshpande for the Petitioner

Mr. S. K. Hande for the Respondent No.3

Mr. R. M. Pethe for the Respondent No.4

Ms Aparna Vhatkar AGP for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.

DATE : 22nd MARCH, 2016

ORAL JUDGMENT

1 Rule with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 13-9-2014 passed by the Learned Joint Charity Commissioner, Pune Region Pune, by which order, the Application No.13 of 2013 filed by the Petitioner came to be rejected.

3 It is not necessary to burden this order with unnecessary details. The Petitioner is a trust registered under the Maharashtra Public Trust Act, 1950 (for short the said Act) and bear registration No.E-519. The Petitioner were desires to sell its property situated at Balewadi, Survey No.35, admeasuring 6.5R. It seems that there are two plots comprising in the said survey No.35 which the Petitioner trust wants to sell. The Petitioner wants to sell the said properties in view of the fact that the said property bears reservation of “garden” in the development plan of the Pune Municipal Corporation (PMC) and in view thereof no construction can be carried out on the said property. It is the case of the Petitioner that to fulfill the objects of the trust, it wants to sell the said property. The Petitioner had accordingly invited offers by publishing the notice in the local newspapers. The offer of the Respondent No.3 at Rs.1.15 crores was the highest offer.

4 The Learned Joint Charity Commissioner framed the following issues and answered all the said issued against the Petitioner :

1. Has the trust legal necessity for sale of the said property
2. Is it in the interest of trust
3. Is trust entitled for the relief.
4. What order

However, in so far as the issue Nos.1 and 2 are concerned, though the said issues were answered in the negative, in the body of the order, there is no finding recorded by the Learned Joint Charity Commissioner in support of the answer to the said issues. The application in question has been principally rejected on the ground that since the property bears the reservation of “garden” in the development plan, the Petitioner trust cannot be permitted to sell the property. The Learned Joint Charity Commissioner has accordingly by the impugned order dated 13-9-2014 has rejected the said application.

4 The above Petition has been heard from time to time. On behalf of the Respondent No.4 an affidavit has been filed by one Prashant Madhukar Waghmare in which affidavit it is confirmed that survey No.35 of Balewadi is reserved for G-1 garden as per Notification dated 30-8-2013 which is an

extract of the development plan. To the said affidavit is annexed the said Notification dated 30-8-2013. The Respondent No.3 has also filed the affidavit. In paragraph 2 of the said affidavit it has been mentioned by the Respondent No.3 that she is aware that the plots are served for garden purpose and that she is willing to purchase the said plot as she want to avail the benefits of Transferable Development Rights (TDR) arising from the said plots and that she is ready and willing to hand over the said plots to the PMC by entering into an agreement with the PMC. The Respondent No.3 as indicated above is the highest bidder i.e. 1.15 crores, pursuant to the bids that were invited by the Petitioner trust.

5 Since the application filed by the Petitioner which is referable to Section 36 of the said Act has been rejected principally on the ground that the property is reserved for “garden” in the development plan and therefore the trust cannot be allowed to sell the said property, in my view, in the light of the affidavit filed on behalf of the PMC as well as the Respondent No.3 who is the highest bidder who as indicated above has stated that she wants to purchase the said plots to avail the benefit of TDR and that she is ready and willing to hand over the said plots to the PMC, it would be just and proper to set aside the impugned order and remand the matter back to the Learned Joint Charity Commissioner for a denovo consideration of the said application. On remand, the Learned Joint Charity Commissioner to take into consideration the affidavit

filed on behalf of the Respondent Nos.3 and the Respondent No.4 i.e. PMC in the above Petition. The remand is also necessitated in view of the fact that the Learned Joint Charity Commissioner has not recorded any finding in the order as regard the legal necessity to sell the property though in the issues framed an answer has been given. The impugned order is accordingly quashed and set aside and the matter is relegated back to the Learned Joint Charity Commissioner for a denovo consideration of the application in terms of the observations as contained above. The said exercise to be carried out by the Learned Joint Charity Commissioner latest by 31-7-2016. The parties to appear before the Learned Joint Charity Commissioner on 12-4-2016. Needless to state that the all the contentions of the parties are kept open for being urged before the Learned Joint Charity Commissioner. The Learned Joint Charity Commissioner to decide the application on its own merits and in accordance with law uninfluenced by the fact that on an earlier occasion the application was rejected.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]