IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5987/2016

Huda Farhan Aghadi & Anr. … Petitioners

V/s.

The Charity Commissioner & Ors. … Respondents

Mr. H. S. Anand for the petitioner.
Mr. Ravi Kadam, Senior Advocate with Y. K. Tiwari, Mr. Yash Tiwari i/b. K. P. Tiwari & Co. for respondent No.6.
Ms. Aparna Vatkar, AGP for the Respondent No.1.
Mr. Atul Daga with Revis Rubens with Sujit Suryavanshi with Yohan Rubens i/b. Vigil Juris for respondent Nos.2 to 5.

CORAM: K.K. TATED, J.
DATED : OCTOBER 18, 2016

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties, matter is taken up for final hearing at the stage of admission itself.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 07.04.2016 passed by the learned Charity Commissioner, State of Maharashtra, Mumbai below exhibit 1 in application No.465/2015 u/s.36(1)(a) of the Maharashtra Public Trust Act, 1950 (said Act) by which the learned Charity Commissioner accepted the highest bid of respondent No.6 Crystal Construction Co. of Rs.2,10,00,000/- for sale of the property bearing Sy.No.8 H.No.1(pt)

corresponding to CTS No.209 admeasuring 3531.30 sq.mtr. or thereabout situated at village Marol, Mumbai Suburban District on “as is whereas” and “as it is where it is” basis on terms and conditions.

3. The petitioner also challenges the order dated 26.04.2016 passed by the learned Charity Commissioner, Maharashtra State State, Mumbai in application No.465/2015 accepting the highest bid of respondent No.6 and allowing A. H. Wadia Trust (hereinafter referred to as the said Trust) to sell the said property to respondent No.6.

4. It is the case of the petitioner that the said trust is owner of the said land. Initially on 16.10.1998, the said Trust gave no-objection-certificate in Benazir CHS for development of the said property. In 2012, M/s. Star Reality, which is a partnership firm, made efforts with the society and also deposited amount of Rs.25 lacs for the purpose of initiating development of the said property and executed various documents for the same. M/s. Star Reality, partnership firm started working on to to get the property conveyed so as to enable to develop the same by getting the approval from Slum Rehabilitation Authority which is the planning authority and for development under 33(10) of the Development Control Rules. Apart from getting an option of development by obtaining permission from Brihanmumbai Municipal Corporation whichever would be beneficial for them and the members of the society. With efforts of the petitioner the said trust agreed to sell the property to them on “as is where as basis”. Thereafter the said trust gave public notice for the same.

5. Pursuant to the said public notice from the Trust, respondent No.6 and Noor Mohamaad Yusuf Patel and the petitioner paid the deposit amount with the trust. The respondent No.6 gave Demand Draft of Rs.25 lacs and the petitioner gave Demand Draft of Rs.56 lacs. The offer of respondent No.6 was for Rs. 71 lacs and offer of the petitioner was Rs.1.60 Crores.

6. On 01.10.2015, the said trust accepted the petitioner's offer and resolved to make an application u/s. 36 of the said Act to obtain sanction from respondent No.1 Charity Commissioner. In October 2015, the said Trust made application u/s. 36 of the said Act seeking sanction of the sale of the said property.

7. On 18.11.2015, respondent No.6 and 7 made intervening application before the respondent No.1 Charity Commissioner. The Charity Commissioner held auction of the suit property. In that auction, the respondent No.6 offered price of Rs.1.71 crores and respondent No.7 for Rs.1.70 crores. They also deposited 35% of the offer amount.

8. On 06.01.2016, the members of the Benazir CHS made intervening application stating that the trust has already given no objection in their favour for redevelopment and therefore there is no question of holding auction of the suit property. In that application the trust filed reply on 28.01.2016 denying the contention of intervention application of the Benazir Society. Thereafter the matter was adjourned before the Charity Commissioner.

9. On 07.04.2016, the Charity Commissioner re-auctioned the suit property. On that day the advocate for the petitioner could not attend due to his personal difficulty. The petitioner No.2 was present. The respondent No.6 offered sum of Rs.2.10 Crores. Petitioner No.2 also participated in re-auction. Being the highest bid, the Charity Commissioner accepted the bid of respondent No.6. Thereafter the Charity Commissioner passed final order on 26.04.2016 allowing the said trust to execute the conveyance in favour of respondent No.6 on some terms and conditions, which read thus:

> *"Sanction is hereby accorded under section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 to the trustees of A.H. Wadia Trust, P.T.R. No.B/470 (Mumbai) to sell the propety bearing Sy.No.8 Hissa No.1 (pt) corresponding to CTS No.209 admeasuring 3531.30 sq.mtrs. or thereabouts situated at village Marol, Mumbai Suburban District on "as is where is" and "as it is where it is" basis to Crystal Construction Co., Mumbai at the consideration of Rs.2,10,00,000/- (Rupees Two Crores Ten Lakhs only) on the terms submitted along with Exh 14 and on the following additional terms and conditions:-*
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> > *(i) The purchaser shall pay amount of Rs.2,10,00,000/- (Rupees Two Crores Ten Lakhs only) by crossed cheque/ demand draft to the Trust.*
> >
> > *(ii) The trustees are directed to return the demand draft of Huda Aghadi and Nawaz Aghadi of Rs.56,00,000/- (Rupees Fifty Six Lakhs) to them forthwith.*
> >
> > *(iii) The sale deed shall be executed within a period of six months from the date of this order.*
> >
> > *(iv) All expenses including stamp duty, registration charges, etc. shall be borne by the purchaser.*

> *(v) The entire amount of sale proceeds shall be held as trust corpus and kept intact forever in the form of investment in fixed deposits yielding monthly interest or otherwise in any Nationalized Bank and should not be withdrawn without prior permission of this Authority. Interest amount may be withdrawn.*
>
> *(vi) The interest accrued on the fixed deposits shall be utilized only for the purpose and objects of the trust.*
>
> *(vii) This permission shall be subject to all the relevant laws and rules applicable to the transaction and the property as well.*
>
> *(viii) The trustees are directed to file necessary change report after completion of the sale transaction."*

10. Being aggrieved by the orders dated 07.04.2016 and 26.04.2016 passed by respondent No.1, the petitioner filed the present Writ Petition.

11. The learned counsel for the petitioner submits that the impugned orders passed by respondent No.1 is against justice, equity and good conscience and same is liable to be set aside. He submits that the respondent No.1 should have adjourned the auction of the said property on 07.04.2016 considering the fact that the petitioner No.1, mother of petitioner No.2 who was interested to participate in the auction. Apart from that the advocate for the petitioners, was not present and therefore when the petitioner No.2 who is about 26 years of age as on the said date and was not mentally prepared for auction, as he was dependent on his mother, the respondent No.1 Charity Commissioner could have adjourned the matter to any short date for

the purpose of auction. He submits that in fact, on 07.04.2016, the matter was kept for re-validating the draft deposited by respondent Nos.6 and 7. He submits that though the petitioner No.2 requested the respondent No.1 Charity Commissioner to adjourn the auction date, same was not considered by the respondent No.1 Charity Commissioner. He submits that in the interest of trust, the petitioner is ready and willing to purchase the said property for the sum of Rs. 2.40 crores. He submits that even today also the petitioner is ready and willing to purchase the said property for Rs.2.40 crores.

12. The learned counsel for the petitioner submits that the respondent No.1 Charity Commissioner failed to consider the fact that initially the trust issued No-Objection Certificate in favour of the Benazir CHS for development. On the basis of said No-Objection Certificate, the petitioner, with consent of the said society spent amount for development. He submits that these facts were not considered by respondent No.1 Charity Commissioner at the time of passing the impugned order.

13. The learned counsel for the petitioner submits though these objections and grounds were raised by the petitioner in the present petition, the respondent failed to file their reply to deny the same. For want of reply it is to be presumed that the respondent accepted the objections raised by the petitioner. In support of this contention he relies on the apex court judgment in the matter of ***Bharat Sanchar Nigam Ltd. & Ors. Vs. Abhishek Shukla and Ors. 2009 5 SCC 368.*** He submits that it is the duty of the respondent No.1 Charity Commissioner to take a decision in the interest of the trust. He submits

that the petitioner was ready and willing to increase his offer to Rs.2.40 crores. In spite of that the respondent No.1 Charity Commissioner has passed the impugned orders. Hence, same are liable to be set aside. In support of this contention, he relies on the judgment of this court in ***Shailesh Developers and Anr. Vs. Jt. Charity Commissioner, Maharashtra 2007 (3) Mh.L.J. 717.*** Paragraph 28 of the said judgment reads thus:

> *"28. While exercising power either under Clause (b) or Clause (c), the Charity Commissioner 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 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."*

14. Learned counsel for the petitioner also relies on an unreported judgment of this court in the mater of ***M/s. Krypton & Co. and Anr. Vs. Charity Commissioner and Ors. in Writ Petition No.11243/2015 (appellate side) (Coram : M. S. Sonak, J.) dated 30.11.2015.***

15. The learned counsel for the petitioner submits that in the matter of M/s. Krypton (supra), this court held that it is the duty of the respondent No.1 Charity Commissioner to consider the interest of the trust at the time of deciding the application u/s.36(1)(a) of the said Act. On the basis of these submissions and the grounds raised in the petition which are as follows, the learned counsel for the petitioner submits that the orders passed by the respondent No.1 Charity Commissioner dated 07.04.2016 and 26.04.2016 are liable to be set aside and the matter be remanded to the respondent No.1 Charity Commissioner for fresh auction and hearing. He submits that if the petition is not allowed, irreparable loss will be caused to the petitioner as well as the said trust. Those grounds are;

"*19. Being aggrieved by the impugned orders being exhibit-A and B to the petition, the petitioner has approached this Hon'ble Court under Article 227 read with Article 226 of the Constitution of India, challenging the impugned orders on the following, inter alia, grounds which are in the alternative and without prejudice to one another:*

(i) that the impugned order is illegal and arbitrary.

(ii) that the impugned order contravenes the principles of natural justice.

(iii) that respondent No.1 has passed the impugned orders in contravention to the scheme of the Bombay Public Trust Act, more particularly section 36 of the Act.

(iv) that respondent No.1 has passed the impugned order without giving regard to the interest or benefit of the said Trust.

(v) that the concluding the auction in favour of respondent No.6, respondent No.1 has not acted in the best interest of the Trust.

(vi) that the impugned orders are illegal, perverse and liable to be set aside.

(vii) that respondent No.1 erred in not appreciating that allowing the petitioners to participate in the said auction in the absence of their advocate to act to their detriment and cause prejudice against them.

(viii) that respondent No.1 has a statutory obligation to safeguard the interest of the Trust as well as its beneficiaries. That by concluding the auction in favour of respondent No.6, when there is a better offer available, would act against the interest of the Trust and its beneficiaries.

(ix) that if the petitioners were represented through that their Advocate in the auction, they would have offered a higher price that the amount offered by respondent No.6. In view of the

above, concluding the auction in favour of respondent No.6 is neither beneficial to the Trust nor its beneficiaries.

(x) that the petitioners are ready and willing to pay higher price for the said property and respondent No.1 should have ensured that the alienation is done in favour of the buyer whose offer is best in all respects.

(xi) that respondent No.1 had time and again granted an adjournment on account of the Advocate appearing on behalf of the said Benazir Society. The petitioners had presented sufficient cause for their Advocate not appearing on 7th April 2016.

(xii) that the petitioners had sufficient cause for absence of their Advocate when the matter was called out.

(xiii) that the impugned order has the effect of causing grave prejudice to the said Trust case inasmuch as the property of the said Trust can alienate its property for a higher value than that presented by respondent No.6.

(xiv) that it appears that from the Government of Maharashtra has recently proposed to remove the reservation from the said property. In view of which, the said Trust is in a position to now fetch a higher market value for the said property and it is in the interest of the said Trust, to hold a fresh auction for the said property."

16. On the other hand, the learned senior counsel for respondent No.6 vehemently opposed the Writ Petition. He submits that the Charity Commissioner, with consent of all the parties held re-auction on 07.04.2016. At that time, the petitioner No.2 was present. He never objected for re-auction. The Charity Commissioner specifically recorded that the re-auction was done with consent of all the parties. Not only that the petitioner No.2 participated in re-auction and offered a sum of Rs.2.03 crores. He submits that though the petitioner raised

objection for the re-auction as they requested the Charity Commissioner on 07.04.2016 to adjourn the matter, same is not supported by any documentary evidence. He submits that the petitioner failed to place on record any application filed in writing by them before the Charity Commissioner for adjournment. Instead of making an application for an adjournment, the petitioner No.2 participated in re-auction and gave his offer of Rs.2.03 crores. Therefore, the objection raised by the petitioner about an adjournment cannot be considered under Article 227 of the Constitution of India.

17. The learned counsel for respondent No.6 submits that the learned Charity Commissioner, considering the highest bid of respondent No.6 accepted the same and passed the impugned orders. He submits that though the impugned orders were passed by the Charity Commissioner on 07.04.2016 and 26.04.2016, the petitioner has not placed on record any application made by them before the Charity Commissioner stating that they applied for an adjournment orally on the date of re-auction. This itself shows that on one hand the petitioner has participated in re-auction and now when they lost, they are raising the objection to the said auction on account of an adjournment, which is not sustainable in law.

18. The learned senior counsel for respondent No.6 submits that once the Charity Commissioner accepts the highest bid, then there is no question of judicial scrutiny unless the same is arbitrary, discriminatory or any fraud is committed by the parties. In support of this contention, he relies on the judgment of this court in the matter of ***Resmerta Technologies Ltd. Vs. State of Goa 2014 SCC OnLine Bombay 891***.

Paragraphs 9 and 11 of the said judgment read thus:

> *"9. The Apex Court, in the case of Tata Cellular vs. Union of India, (1994) 6 SCC 651 has held that the terms of the invitation to tender cannot be open to judicial scrutiny unless the same are wholly arbitrary, discriminatory or actuated by malice. Therefore, the points which require consideration in the present case are :*
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> *(1) Whether the present petition is hit by delay and laches ?*
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> *(2) Whether the petitioner is estopped from challenging the validity of clause 29 of the tender document by the principle akin to that of estoppel ?*
>
> *(3) Whether clause 29 of the tender document is arbitrary, discriminatory and/or actuated by malice ?*
>
> *11. In Renaissance Distilleries and Breweries Ltd. (supra), the Government of NCT of Delhi invited tenders for grant of licences for wholesale supply of country liquor. The bid of Renaissance Distilleries was not considered despite being lowest and the same was rejected on account of non-submission of VAT certificate which was a requisite pre-condition as per clause 6 of NIT. Renaissance Distilleries challenged the rejection on the ground that submission of VAT certificate was not essential. The Division Bench of Delhi High Court, relying upon the decision of the Apex Court in Tata Cellular (supra) observed that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender was in the realm of contract. It was further held that Renaissance Distilleries having participated in the tender process and having failed to be considered, could not have challenged the condition about submission of VAT Certificate."*

19. On the basis of these submissions and the authority, the learned senior counsel for the respondent No.6 submits that there is no substance in the Writ Petition and same is liable to be dismissed with costs.

20. The learned counsel for respondent Nos.2 to 5 Trustees of the said trust also vehemently opposed the Writ Petition. He submits that they never granted any no objection for development of the suit property in favour of the Benazir CHS. He submits that they filed their Affidavit-in-Reply dated 28.01.2016 before the learned Charity Commissioner and denied these facts. In support of this contention, he relies on paragraph 7.2 of their Affidavit-in-Reply which reads thus:

> *"7.2 With reference to para No.3 of the present Misc. Application, I submit that the letter dated 16th October 1998 (i.e. Annexure 1 to the Misc. Application) is false, frivolous, vexatious, baseless, vague, devoid of any merits whatsoever. I submit that in the year April 2012, the Trust had became aware that their then Manager had, without any authority issued the alleged No-objection letters to various persons/entities. The same was illegal and bad in law. The Trust through their Advocates had issued Pubilc Notice in the issue of the Free Press Journa on 12th December, 2012 thereby informing the public at large that the said NOC's are illegal and void. Hereto annexed and marked as **Annexure-A** is a copy of the said Public Notice. In any event the said alleged NOC is of no consequence and has no validity in the eyes of law in as much as it is a settled position in law that a Public Trust cannot part its property in any manner whatsoever without the prior sanction of this Authority. "*

21. The learned counsel for respondent Nos.2 to 5 Trustees submits that there is no substance in the Writ Petition and same is liable to be rejected.

22. Heard both sides at length. The issues involved in the present petition are (i) whether the impugned orders passed by the learned Charity Commissioner on 07.04.2016 accepting the highest bid of respondent No.6 and the order dated 26.04.2016 passed by the learned

Charity Commissioner giving permission to the trust to execute the conveyance deed in respect of the suit property in favour of respondent No.6 is according to law, and (ii) Is it necessary to remand the matter for fresh auction and rehearing?

23. Bare reading of orders dated 07.04.2016 and 26.04.2016 and other relevant documents placed on record by the petitioner in compilation of documents and /or application show that the petitioner No.2 was present before the learned Charity Commissioner on 07.04.2016. The petitioner has not placed on record any documentary evidence and/or application to show that they requested the Charity Commissioner to adjourn the matter for short period. In fact the orders and the documents show that the petitioner participated fully in re-auction and gave their offer of Rs.2.03 crores. The learned Charity Commissioner, considering the highest offer of respondent No.6 to the tune of Rs.2.10 crores accepted the same and passed the impugned order. Therefore, the objection raised by the advocate for the petitioner that the learned Charity Commissioner passed the impugned orders without adjourning the matter at the request of petitioner No.2, is not tenable.

24. The Charity Commissioner accepted the highest bid of Rs.2.10 crores given by respondent No.6 which is in the interest of the trust. The Charity Commissioner has considered the facts of the present matter that the property was encroached upon by third parties and therefore, in the interest of justice, he accepted the highest bid. On this basis, the authorities cited by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case.

25. The objection raised by the petitioner about the grant of No-Objection Certificate by the Trust in favour of the Benazir CHS for development is also tenable because the trust filed their affidavit-in-reply before the Charity Commissioner and denied those facts. The main contention raised by the trust in their Affidavit-in-Reply is that the said No-Objection Certificate was obtained by misrepresentation from their Manager who was not authorized to do so. The said No-Objection Certificate was not granted by the trust after following procedure as required in respect of the trust property. Therefore, the objection raised by the petitioner in respect of the No-Objection Certificate is also not tenable.

26. Considering the above mentioned facts and as the respondent No.6 was the highest bidder of the suit property and the authority of this court in the matter of Rosmerta Technologies Ltd. (supra), I am of the opinion that the petitioner failed to make out any case for setting aside the impugned orders passed by respondent No.1 dated 07.04.2016 and 26.04.2016. Hence, the Writ Petition stands rejected.

27. No order as to costs.

(K.K. TATED, J.)