

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

**REVIEW APPLICATION NO.118 OF 2017
IN
WRIT PETITION NO.9902 OF 2015**

Chandrasen Vallabhji Chauthani & Others .. Applicants

VERSUS

The Joint Charity Commissioner, Nashik Region,
Nashik & Others .. Respondents

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Shri V.B. Patil, Learned Counsel for the applicants.
Shri R.B. Bagul, Learned AGP for the Respondent – State
Shri V.D. Hon, Learned Senior Counsel for the respondents

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WITH

**CIVIL APPLICATION NO.12485 OF 2017
IN
WRIT PETITION NO.9902 OF 2015**

Ashokrai Kumudchandra Laiwala & Another .. Applicants

VERSUS

The Joint Charity Commissioner, Nashik ..Respondent

.....

Shri A.V. Hon, Learned Counsel for the applicants
Shri R.B. Bagul, Learned AGP for the Respondent – State

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CORAM : P.R. BORA, J.

Reserved on : 04.10.2017
Pronounced on : 31.10.2017

PER COURT :-

1. By filing the present application, the applicants have sought review / recall of the order passed by this Court on 3rd April, 2017 in Writ Petition No.9902/2015.

2. The present respondent nos.2 and 3 had filed the aforesaid writ petition against the judgment and order passed by the Joint Charity Commissioner, Nashik, Region Nashik in Enquiry Application No.20 of 2015 decided on 5th June, 2015. Respondent Nos.2 & 3 had filed the aforesaid application before the Joint Charity Commissioner under Section 36 (1)(a) of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the 'Trust Act') seeking permission to sell one of the immovable property owned by the trust.

3. Respondent nos.2 & 3 are the trustees of the public trust namely Shri Laxmi - Narayan Mandir Sansthan, Bhusawal, Tq. Bhusawal, Dist. Jalgaon registered under the provisions of the Trust Act bearing PTR No.A-336 (Jalgaon). The trustees of the said trust had resolved to sell one of the property owned by the trust more particularly land Survey No.79/1 admeasuring 1 Hec, 37 R. The

trustees had published the notice inviting offers for purchase of the said property, whereupon total 5 offers were received and since the price offered by the present revision applicants was highest, the trustees had entered into an agreement with them to sell the said property to them for the price offered by them subject to the permission by the Charity Commissioner. Accordingly, an application was preferred before the Joint Charity Commissioner seeking permission to sell the said property to the review applicants for the price offered by them. The learned Joint Charity Commissioner after having conducted the necessary enquiry in the matter, dismissed the said application vide his order dated 5th June, 2015.

4. The aforesaid order was challenged by the trustees before this Court by filing Writ Petition No.9902 of 2015. This Court set aside the order passed by the Joint Charity Commissioner and directed the Joint Charity Commissioner to permit the trustees to publish a fresh public notice containing necessary clauses therein in terms of the observations made by this Court in para no.14 of the said Judgment. The order so passed by this Court is sought to be recalled / reviewed in the present application.

5. Shri V.B. Patil, learned Counsel appearing for the

applicants submitted that, since respondent nos.2 & 3 had entered into an agreement with the applicants to sell them trust property, subject to the permission of the Charity Commissioner the applicants were necessary party in the writ petition filed by them. The learned Counsel submitted that, after the trust has accepted the offer given by the applicants, which was the highest offer amongst the bidders who have bidden for the subject property, the trust had executed an agreement of sale with the applicants and as such the interest of the applicants was created in the trust property, which was the subject matter of the writ petition before this Court. The learned Counsel submitted that, since the applicants were not party to the writ petition and hence did not get the opportunity to put forth their contention before this Court, the interest of the applicants has been prejudicially affected.

6. The learned Counsel submitted that, there was total transparency in the entire transaction and as such in fact the Joint Charity Commissioner should not have refused the permission to sell the said property in favour of the applicants. The learned Counsel further submitted that, the observation made by this Court while deciding Writ Petition No.9902 of 2015 to the effect that the notice published in two newspapers by trust inviting offers for purchase of

the subject property belonging to the trust was not containing any information that, there are tenants in the said property is factually incorrect. The learned Counsel inviting my attention to the advertisements so published by the trust one in English and one in Marathi newspaper submitted that, in the said notice it is specifically mentioned that, the 7/12 extract of the subject property bears the entry of tenants and has to be sold as it is. The learned Counsel further brought to my notice the tender form, which was issued by the trust to the prospective bidders for submitting their offers. The learned Counsel pointed out that, in the said tender form, it has been specifically stated that, the tenderer has to purchase the property as it is and amount of Rs.Twenty Lakhs has to be paid by the tenderer to the tenants for relinquishing their rights and vacating the suit property.

7. The learned Counsel further submitted that, the conclusion recorded by this Court is thus based on the factual incorrect information. The learned Counsel, therefore, prayed for recall of the order passed by this Court in Writ Petition No.9902 of 2015 on 03.04.2017.

8. Shri V.D. Hon, learned Senior Counsel appearing for

respondent nos.2 & 3 submitted that, as has been submitted on behalf of the applicants the observations made by this Court that, as about the public notice published by the trust in two newspapers inviting offers for sale of the subject property are factually incorrect. The learned Senior Counsel submitted that, respondent nos.2 & 3 are in agreement with applicants so far as the prayer made by the applicants for review / recall of the order passed by this Court on 03.04.2017 in Writ Petition No.9902/2015 is concerned.

9. The learned AGP prayed for passing appropriate orders.

10. I have carefully perused the advertisement as was published by the trust in English as well as in Marathi newspaper, inviting offers for sale of the property Gat No.79/1 belonging to the trust. It is true that, in the said advertisement it is mentioned that, the 7/12 extract of the above mentioned property bears the entry of tenants and has to be sold as it is. In view of the specific information given as above in the said public notice the observation made by this Court in para 13 of the impugned order that, the said notice does not contain any information that, there are tenants in some of the portion of the subject property is factually incorrect.

11. Further, there is substance in the submission made on behalf of the applicants, which have been supported by respondent nos.2 & 3 that, the aforesaid incorrect information has weighed in issuing directions by this Court to invite fresh offers for the subject property.

12. In the aforesaid circumstances, without entering into the discussion whether the applicants have any locus to file the present application seeking review / recall of the order passed by this Court in Writ Petition No.9902/2015, in view of the fact that, the prayer so made is also supported by the original writ petitioners and further having regard to the fact that, the aforesaid incorrect information is one of the reason for recording certain conclusions by this Court though the same may not be the sole reason, I am inclined to accept the request made in the application. It appears to me that, when certain conclusions, arrived by this Court, are based on some incorrect information, such an order should be recalled and the parties shall be afforded an opportunity to make the fresh submissions. Hence the following order.

ORDER

(i) The order dated 03.04.2017 passed in Writ Petition No.9902 of

2015 is recalled.

(ii) Writ Petition No.9902 of 2015 be placed for further consideration before the appropriate Bench holding the assignment.

(iii) Review Application stands allowed in the aforesaid terms.

(iv) In view of the order passed in Review Application No.118 of 2017, the Civil Application No.12485 of 2017 does not survive. Hence stands disposed of.

(PR. BORA, J.)