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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9838 OF 2017

Naresh Harischandra Mhatre & Ors. ...Petitioners
vs
Shree Ganpati Dev. Shahbag & Anr. ...Respondents

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Mr Rajiv Patil Sr. Counsel with Tanmay R. Vispute for the Petitioners
Mr S.H.Kankal AGP for the State.

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CORAM : **B.P.COLABAWALLA, J.**
SEPTEMBER 22, 2017.

P.C. :

1. This Writ Petition is filed under Articles 226 and 227 of the Constitution of India challenging the Judgment and Orders dated 11th April, 2016 and 22nd February, 2017 passed by the learned Charity Commissioner. The principal challenge in this Writ Petition is really to the order dated 22nd February, 2017 passed by the Charity Commissioner under which the application filed by the Petitioners under Section 36(2) of the Maharashtra Public Trust, 1950 ("**the Act**") was rejected by the Charity Commissioner.

2. The brief facts that give rise to the present controversy are that Respondent No.1 is a trust registered under the Maharashtra Public Trust Act, 1950. It was registered in the office of

the Assistant Charity Commissioner, Alibaug (Raigad) on 21st June, 1977. The said trust was created with an object to perform the daily Pooja of idol Ganpati and to celebrate Ganpati Utsav from Vaishakh Shuddha Panchami till Dwadashi. The said trust was gifted an immovable property, namely, Gat.No. 942 admeasuring 38.4 Gunthas ("**the said property**") by one Smt. Changubai Bama Patil under a registered gift-deed dated 14th November, 1945. Pursuant thereto, the name of the said trust was recorded in the 7 x 12 extracts by Mutation Entry No. 1059 dated 13th October, 1951.

3. It was the case of the trustees that the said property was a barren land and no income was generated out of said property and thus they were interested in selling the same. Accordingly, the trustees sought permission of the Charity Commissioner under Section 36(1)(a) of the Act to sell and alienate the said trust property to Respondent No.2. This sanction of the Charity Commissioner was accorded to the trust on 11th April, 2016. The Petitioners herein were not the parties to the proceedings before the Charity Commissioner under Section 36(1)(a) of the Act.

4. Once the Petitioners learnt of the aforesaid sanction, they filed an application before the Charity Commissioner under Section 36(2) of the Act seeking revocation of the permission granted under

Section 36(1)(a) of the Act. This application was filed on 9th May, 2016 and finally decided by the Charity Commissioner by his order dated 22nd February, 2017. The Charity Commissioner, in the impugned order, rejected the application filed by the Petitioner basically on two grounds. Firstly, the Charity Commissioner held that since the property had already been alienated and the sale-deed was already executed in favour of Respondent No.2, he had no jurisdiction to revoke the sanction granted under Section 36(1)(a) of the Act. Secondly, the Charity Commissioner held that there was no fraud, mis-representation or suppression of any material fact which would allow him to revoke the sanction granted under Section 36(1)(a) of the Act. It is being aggrieved by this order that the Petitioners are before me in my writ jurisdiction under Articles 226 and 227 of the Constitution of India.

5. I have heard the learned Senior Counsel appearing on behalf of the Petitioners at length and also perused the papers and proceedings in the Writ Petition including the impugned order dated 22nd February, 2017. It is not in dispute before me that after the sanction was accorded by the Charity Commissioner under Section 36(1)(a) of the Act, the said trust property has been alienated and a sale-deed has been executed in favour of Respondent No.2. The consideration of Rs.91 Lacs has also been paid by Respondent No.2 to

the said trust. It was the case of the Petitioners before the Charity Commissioner that there was a civil suit that was filed by some of the Petitioners on 3rd December, 2015 whereby certain easementary rights that were granted by the said trust in favour of Respondent No.2 were challenged. Though no injunction was granted in the said civil suit, the same was not disclosed to the Charity Commissioner and which was a material fact which entitled the Charity Commissioner to revoke the sanction granted under Section 36(1)(a) of the Act. The Charity Commissioner, after going through all the material that was placed before him, came to a finding that the title of the trust was never challenged in the said suit, namely, that the said property admittedly belonged to the trust. What was challenged in the suit, was only the right of the trust to create easementary rights in favour of Respondent No.2. This being the position, the Charity Commissioner came to the conclusion that this was not a fact that was material and that would have altered his decision to accord the sanction to alienate the trust property under Section 36(1)(a) of the Act.

6. Over and above this, the Charity Commissioner also held that after the sanction was granted to alienate the trust property under Section 36(1)(a) of the Act, and the same was acted upon and third party rights were created, then the Charity Commissioner had

no jurisdiction under Section 36(2) of the Act to revoke the sanction granted under Section 36(1)(a) of the Act. In this regard, the Charity Commissioner relied upon several decisions of this Court as well as of the Gujrat High Court. One of those decisions, namely in the case of **Motilal Girdharilal Sharma & Ors.** Vs **Dattatray Bandu Jagtap & Ors.** reported in **2005 B.C.I. 107**, has been heavily relied upon by the Charity Commissioner to come to the aforesaid finding. After going through this decision and which happens to be a Division Bench Judgment of this Court, the Charity Commissioner held that once the property had already been alienated and third party rights were created, he had no jurisdiction to revoke the sanction granted under Section 36(1)(a) of the Act. In the impugned order the Charity Commissioner further recorded that the trust property has been sold on an "**as is where is**" basis and whatever rights the Plaintiffs had in the said civil suit, could be agitated by them against the purchaser. It is in these circumstances that the Charity Commissioner rejected the application filed by the Petitioner under Section 36(2) of the Act.

7. On going through the order of the Charity Commissioner, I find no illegality or perversity in the same. In fact, the findings given by the Charity Commissioner in the order dated 22nd February, 2017 are supported by several decisions of this Court as referred to in the impugned order itself. This being the case, I find that the

Charity Commissioner correctly held that he has no jurisdiction to revoke the sanction that he had granted earlier under Section 36(1)(a) of the Act and thereafter proceeded to reject the application filed by the Petitioners under Section 36(2) of the Act. I, therefore, find no infirmity in the order passed by the Charity Commissioner. This being the case, I find no merit in this Writ Petition and it is accordingly dismissed. There shall be no order as to costs.

8. It is, however, clarified that the order of the Charity Commissioner passed under Section 36(2) of the Act will not come in the way of the Petitioners from independently challenging the sale of the said property by the trust to Respondent No.2, if they are so entitled to in law.

(B. P. COLABAWALLA, J.)