

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7726 OF 2014

Bharat Gunvantrai Shah & Ors.

... Petitioners

V/s.

Charity Commissioner, Mumbai & Ors.

... Respondents

Mr. Uday Warunjikar i/b. Jitendra S. Shukla for the petitioners

Mr. A. D. Vatkar, AGP for respondent No.1.

Mr. Simil Purohit, Akash Lodha, Mr. Karan i/b. Wadia Ghandy & Co. for
respondent Nos.2 to 5.

Mr. V. C. Ghosalkar for respondent No.6.

CORAM: K.K. TATED, J.

DATED : JULY 19, 2017

JUDGMENT :

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

2. By this petition under Article 226 and 227 of the Constitution of India, the petitioner challenges the order and judgment dated 07.07.2011 passed by the Charity Commissioner, Maharashtra State, Mumbai in application J-4/140/2010 u/s.36(1)(a) of the Maharashtra Public Trusts Act, 1950 granting sanction in favour of the respondent trust for sale of trust property i.e. land admeasuring 190.64 sq. mtr. (as per the records maintained by Superintendent of Mumbai City Survey

and Land Records) being CTS No.1222 of Fort Division, together with building standing thereon known as “Kothari Mansion”, consisting of ground plus four floors situated at Mint Road, Opposite GPO, Fort, Mumbai -400001 on “as is where is basis” to respondent No.6 for consideration of Rs.1,05,00,000/- as per the terms and conditions mentioned in the Memorandum of Understanding (MOU). In addition to this amount, respondent No.6 had to clear the Trust liabilities towards various statutory dues i.e. arrears of monthly taxes of Rs.39,39,024/- arrears of repair cess of Rs.18,89,826/- reimbursement of property tax of Rs. 6 lacs and penalty of late payment of property taxes repair cess approximately Rs.25,50,000/- i.e. sum of Rs.89,79,850/-. The total consideration was Rs.1,94,78,850/-. Lastly the Charity Commissioner has also directed to complete the sale within six months from the date of granting sanction. The Purchaser to bear the expenses of transaction, right from registration of the stamp duty and other ancillary expenses/fees.

3. Pursuant to the said sanction granted by the learned Charity Commissioner, the Trust has executed deed of conveyance dated 28.12.2012 in favour of respondent No.6 and same was registered.

4. The Trust in question is registered as a public Charitable Trust under the provisions of the Maharashtra Public Trust Act, 1950 being registration No.A-1904 (Bom). The trust is governed by the High Court decree passed in Suit No.3360/47 (scheme). The main object of the Trust is to maintain the clinic or ward for Hindus suffering from tuberculosis (TB) and pay expenses in respect thereof and for treatment

with nominal fees or without fees or otherwise of all Hindus suffering from TB either as indoor patients or outdoor patients or otherwise as may be deemed fit by the Trustees. The Trustees have powers to sell the property of the trust as per clause 20 of the High Court Decree in Suit No.3360/2014 (scheme - Exhibit 17).

5. The said property was tenanted property and very old which was constructed about at least 80 years ago. It was the contention of the Trust in application u/s.36(1)(a) of the said Act that the Trust was not fetching income except rent from the tenanted premises. Therefore, it was not even difficult to maintain the property. The tenants of the property were not paying rent regularly. So the trust was finding it extremely difficult to manage and administer the said property. Not only that the said property was required heavy repairs and that was not possible for the Trust to do the same. Because of that the Trust's other activities were affecting. Hence, the Trusts by resolution dated 15.04.2009 decided to sell the said property.

6. The Trust invited offers in respect of the said property. The Trustees, with intention to get good offers, decided to invite the offers by giving public notice in newspapers and accordingly they gave public notice in two newspapers viz "Mumbai Samachar" (Gujarati) and "Free Press Journal" (English) dated 17.04.2009. In response to the said public notice no offer was received by the Trust. After expiry of the time stipulated in public notice for submitting the offer respondent No.6, by his letter dated 05.05.2009 offered to purchase the property. The Trustees accepted the offer given by respondent No.6 by passing

unanimous resolution to that effect on 05.08.2010.

7. For the purpose of sale, the Trustees had obtained a valuation report from the Government approved valuer Anmol Sekhri Consultants Pvt. Ltd. who assessed the valuation at Rs.1,03,74,151/- in August 2010 and Gore Associates, Consulting Architects, Surveyors and registered valuer who assessed the property at Rs.1,94,32,464/- in May 2011.

8. During pendency of the application for sanction, respondent No.6 purchaser, by his letter dated 20.06.2011 agreed to revise his offer by paying consideration amount of Rs.1.05 crores shown in the MOU. In addition to this amount the respondent No.6 also agreed to discharge the Trust liability of Rs.89,78,850/-.

9. The learned Charity Commissioner, considering the Trust's application u/s.36(1)(a) of the said Act and Valuation Report submitted by the Trust and public notice given by them and offer given by Respondent No.6, granted sanction to sell the property to Respondent No.6 by its judgment dated 07.07.2011.

10. Being aggrieved by the judgment dated 07.07.2011 passed by the learned Charity Commissioner, Maharashtra State, Mumbai, the petitioner filed the present writ petition under Article 226 and 227 of the Constitution of India challenging the same on various grounds as narrated in the writ petition.

11. The main contention of the petitioner is that the Trust, without following due process of law as required by the said Act, decided to sell the suit property in favour of respondent No.6 by executing the MOU dated 09.08.2010. The learned counsel for the petitioner submits that as per the MOU the respondent Trust decided to dispose of the valuable property of the Trust without calling offers from public at large. The learned counsel for the petitioner submits that the area of the property as per valuation report submitted by Anmol Sekhri Consultants Pvt. Ltd. dated 11.08.2010 is as under:

“1. Land Area – 228 sq. yards, 2052 sq.ft. (As per Mumbai City survey & land records)

- A. Terrace covered with AC sheets, approx area – 1700 sq.ft.*
- B. 4th Floor area – 1891 sq.ft. carpet, 2175 sq.ft. built up*
- C. 3rd Floor area – 1891 sq.ft. carpet, 2175 sq.ft. built up*
- D. 2nd Floor area – 1891 sq.ft. carpet, 2175 sq.ft. built up*
- E. 1st Floor area – 1891 sq.ft. carpet, 2175 sq.ft. built up*
- F. Ground Floor – 1891 sq.ft. built up ground floor open area occupies in front of restaurant – 360 sq.ft. built up*

II Total area – 12579 sq.ft. built up (as per physical measurement)”

12. The learned counsel for the petitioner submits that the land area admeasuring about 228 sq.yard equivalent to 2052 sq.ft. having built up area of 12579 situated in the heart of Mumbai City i.e. Fort, the respondent Trust disposed of the same for meager amount i.e. only Rs.1,94,78,850/-. He submits that the petitioners are ready and willing to pay the said amount to the respondent trust. He submits that this is

a loss to the Trust as well as public at large. Therefore, the sanction accorded by the learned Charity Commissioner by impugned order dated 07.07.2011 is required to be set aside.

13. The learned counsel for the petitioner submits that the learned Charity Commissioner has failed to appreciate the fact that, when initially the respondent Trust issued public notice calling offers from public at large for sale of the property they failed to get any offer from the public. He submits that the respondent Trust, on the basis of the offer given by respondent No.6, entered into MOU privately and made an application for sanction under section 36(1)(a) of the said Act. He submits that the learned Charity Commissioner failed to give public notice after making the application by respondent Trust on 14.09.2010 calling the offers from public at large. This is contrary to the law and on this ground also the sanction accorded by the learned Charity Commissioner in favour of the respondent No.6 is required to be set aside.

14. The learned counsel for the petitioner submits that the learned Charity Commissioner has failed to apply his mind to the facts and circumstances of the case. He submits that respondent No.1 learned Charity Commissioner failed to appreciate the applicable laws, more particularly provisions of section 36(1)(a) of the said Act at the time of passing the impugned order dated 07.07.2011. He submits that the respondent No.1 ought not to have granted sanction since the precondition for the same as found in section 36 of the said Act was not satisfied by respondent Nos.2 to 5, the Trust and Trustees thereof.

15. The learned counsel for the petitioner submits that respondent No.1 failed to appreciate that the alleged MOU dated 09.08.2010 was *void-ab-initio* and same was beyond the powers of respondent Nos.3 to 5 and hence, there is no question of granting any sanction in favour of them to sell the said property to respondent No.6. He submits that the alleged MOU dated 09.08.2010 was nothing but sham, bogus and deceptive and fraudulent act jointly done by respondent Nos.3 to 5 on the one hand and respondent No.6 on the other. He submits that the respondent No.1 has failed to appreciate that there was neither any occasion nor any need for respondent Nos.3 to 5 to enter into MOU.

16. The learned counsel for the petitioner submits that they learnt about the transaction between respondent Trust and respondent No.6 purchaser in the year 2014 when respondent No.6 filed suit against them for eviction and executed decree. He submits that as soon as they learnt about the sale of property in the year 2014, they filed the present Writ Petition. He submits that respondent No.6 obtained *exparte* decree in RAE & R Suit No.591/951/2012 on 19.04.2014 and executed the same and thereafter they immediately filed the Writ Petition on 29.07.2014. Therefore, there is no question of laches and/or delay on their part to file the Writ Petition. He submits that the petitioner was tenant of 1st and 3rd floor of the said property for last several years.

17. The learned counsel for the petitioner submits that bare reading of the impugned judgment dated 07.07.2011 passed by the learned

Charity Commissioner shows that he failed and neglected to consider interest, benefit and protection of the Trust at the time of according sanction u/s.36(1)(a) of the said Act. He submits that if the sanction is granted by the learned Charity Commissioner without considering the interest of the Trust and allowed them to sell the property at a meager price than the market rate, same order is required to be set aside. In support of this contention, he relies on the Full Bench Judgment of this court in the matter of *Sailesh Developers & Ors. Vs. Joint Charity Commissioner, Maharashtra 2007(3) BCR 7*. He relies on para 29 and 30 of the said judgment which read thus

“29. 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. . Thus narrow interpretation sought to be given to the power of Charity Commissioner under clauses (a) and (b) of Sub Section 1 of Section 36 cannot be accepted. Thus the view taken in the case of *A.R. Khan Construwell and Co.* (supra) is the correct view. The case of *Arunodaya Prefab* is not correctly decided.

30) The second question referred to the Full Bench for decision is regarding locus standi of a person who appears before the Charity Commissioner and offers his bid to challenge the order passed by the Charity Commissioner. The trustees and persons having an interest in the Trust can always challenge the order. We have already held that the proceeding under Section 36 of the said Act before the learned Charity Commissioner is a judicial proceeding. The Apex Court has held that a trust property is on par with a public property so far as its sale or transfer is concerned. It is, therefore, very difficult to say that such a person who appears before the Charity Commissioner and offers his bid has no locus standi to challenge the final order passed by the Charity Commissioner. Such a person will certainly have locus standi to file the petition under Articles 226 and 227 of The Constitution of India for challenging the final order passed under Section 36 of the said Act. However, the scope of challenge will be naturally limited.

Such a person will be in a position of a bidder challenging the auction or tender process of sale of a public property. The challenge by such a person to the order will be limited to the decision making process of the Charity Commissioner. In the case of A.R. Khan Construwell the Division Bench has rightly held that after the decision in the case of Arunodaya Prefab, the concept of locus standi has been expanded.”

18. On the basis of the abovementioned facts and the law declared by this court in the aforesaid judgment, the learned counsel for the petitioner submits that this is a fit case where the impugned order passed by the learned Charity Commissioner dated 07.07.2011 on respondent Trust’s application u/s.36(1)(a) of the said Act is required to be set aside.

19. On the other hand, the learned counsel for respondent Trust vehemently opposed the Writ Petition. He submits that, after considering the evidence on record and valuation reports of the Government approved valuers and the offer given by respondent No.6 which was in the interest of the Trust, the learned Charity Commissioner passed the impugned order and accorded sanction for their transaction. Therefore, there is no question of allowing the Writ Petition by setting aside the impugned order. He submits that in any case, the petitioner has filed the Writ Petition in the year 2014 i.e. after more than three years when the transaction was completed between the Trust and respondent No.6. Even on the ground of laches on the part of the petitioner this is a fit case to reject the same with costs.

20. The learned counsel for respondent No.6 vehemently opposed the Writ Petition. He submits that the Writ Petition as it is filed by the

petitioner is not maintainable in law. He submits that as per the sanction granted by the learned Charity Commissioner by the impugned order, the respondent Trust executed the Deed of Conveyance dated 20.12.2011 in his favour. He submits that the said conveyance was duly registered. He submits that the learned Charity Commissioner, at the time of considering the proposal given by respondent No.6 to purchase the suit property, considered the market value on the basis of two valuation reports of the Government approved registered valuers. He submits that the respondent No.6, in fact, purchased the said property for Rs.1,94,78,850/-. He submits that though the valuation of the suit property was made at Rs.1.5 crores, the respondent No.6 accepted the respondent Trust's liability to the extent of Rs.89,78,850/- towards the arrears of municipal taxes, repair cess etc. He submits that if both the valuation reports submitted by the valuer is compared, then in that case it is crystal clear that the respondent No.6 has paid much more price to the respondent Trust. Considering these facts, the learned Charity Commissioner has permitted the respondent Trust to sell the said property to respondent No.6.

21. The learned counsel for respondent No.6 submits that the petitioner was tenant in respect of 1st and 3rd floor of the said property. He submits that as soon as the conveyance dated 20.12.2011 was executed in favour of respondent No.6, he issued letter dated 07.01.2012 to the petitioner calling upon him to pay the arrears of rent, assessment taxes and repair cess in respect of the said property. Said letter was duly served on the petitioner on 09.01.2012. They

acknowledged the same by putting their stamp. Therefore, the statement made by the petitioner on solemn affirmation in the Writ Petition that they learnt about the transaction between the respondent Trust and respondent No.6 in the year 2014 is incorrect. He submits that the petitioner, in para 13 of the Writ Petition submits that they learnt about the transaction between respondent No.6 and the respondent Trust when the decree dated 19.04.2014 was executed and the petitioner was dispossessed from the tenanted premises. Paragraph 13 of the Writ Petition reads thus

“13. The petitioners states that there is no delay in filing the present petition. The petitioners have learnt about the impugned sanction accorded by the respondent No.1 in favour of the respondent No.2 and the consequent conveyance executed by the respondent Nos.2 to 5 in favour of respondent No.6 only upon the execution of the aforesaid Ex-parte decree on 19.04.2014. Therefore, this petition filed today is in time. The petition under Articles 226 and 227 of the Constitution of India is the only remedy which is effective and efficacious. In the event, the reliefs prayed therein, are granted the same will be effective and complete and this petition is the only efficacious remedy.”

22. The learned counsel for respondent No.6 submits that bare reading of the letter dated 07.01.2012 duly served on the petitioner and para 13 of the petition shows that the petitioner, with *mala fide* intention made incorrect statement on solemn affirmation to gain favourable orders in their favour. For making incorrect statement, the Writ Petition is liable to be dismissed summarily with costs.

23. The learned counsel for the respondent No.6 submits that pursuant to the decree passed by the Small Causes Court, Mumbai in RAE & R Suit No.591/951/2012, as on today, the petitioner is not a

tenant of the suit property i.e. Kothari Mansion. He submits that in any case as soon as the impugned order was passed by the learned Charity Commissioner on 07.07.2011, the respondent Trust, after following due process of law, executed a registered conveyance deed dated 20.12.2011 in favour of respondent No.6. He submits that the said conveyance deed is not challenged by the petitioner by following due process of law. He submits that in view of conveyance dated 20.12.2011 in favour of respondent No.6 nothing survives in the Writ Petition, because as on today, the respondent Trust is not owner of the suit property. In support of his contention, the learned counsel for respondent No.6 relies on the Division Bench judgment of this court in the matter of **Sam Sarosb Bhacca Vs. P. V. Kakade, Joint Charity Commissioner, LAWS (Bom)-1993-2-105**. He relies on para 3 of the said judgment, which reads thus:

“3. In the case of Shri Mahadeo Deosthan Wadali, a question arose as to whether the Charity Commissioner can under Section 36 (2) of the said Act, revoke the sanction given to a public trust for alienation of its immovable property by a sale deed, after the sale deed is executed pursuant to the sanction granted under Section 36 (1) of the said Act and the property alienated by the trust no longer retains the character of property as that of a public trust. In that case, an application for obtaining sanction for transfer of 10 acres of land belonging to Shri Mahadeo deosthan Wadali, a registered public trust was made to the Joint Charity commissioner under Section 36 (1) of the said Act. The Joint Charity commissioner, after making necessary enquiries, had granted sanction, the trust executed a registered sale deed in respect of the property in favour of the purchaser thereof and possession of the property was given to the purchaser. The entire transaction was completed. Thereafter an application under section 36 (2) of the said Act for revoking the sanction already granted was filed by a trustee along with other persons on the ground that while obtaining sanction, the other

trustees had grossly undervalued the property by Suppressing material fact. The questions about maintainability of the application under Section 36 (2) of the said act and jurisdiction of the Joint Charity Commissioner to revoke the sanction after the sale deed was executed exhausting the sanction already granted were raised. The Joint Charity Commissioner was of the view that the application for revocation was maintainable despite the earlier execution of the sale deed. On merits, the Joint Charity Commissioner came to the conclusion that the earlier sanction was obtained by the concealment of material facts and revoked the sanction. The Order of the Joint Charity Commissioner was challenged by the trust and the trustees other than one who had applied for revocation of the sanction in the Writ Petition before the Division Bench of this Court, the Division bench held that if in pursuant to the sanction, a sale deed is executed, the property would be divested of the character as a trust property and interest would be created in the purchaser who may not get an opportunity to show why the sanction should not be revoked. A property may change hands several times and if a sanction granted in respect of a trust property could be revoked at any time even after successive sale deeds and even after it changes its character as the trust property, a chaotic condition is likely to be created. It has been further held by the division Bench that a sanction, therefore, has to be granted to alienate the trust property and has to be revoked only for the trust property i.e. while the property retains the character as the trust property and not after the public trust is divested of that property and interest in such property is created in persons other than the trustees. The Division Bench has also held that the power of revocation in the inter of harmony, has to be exercised only when the sanction remains alive and does not get itself merged in the sale deed and the power granted to the Joint charity Commission under Section 36 (2) of the said Act cannot be invoked by the Joint Charity Commissioner to revoke a sanction granted under Section 36 (1) of the said Act, after the sanction merges itself into a sale deed and the property loses the character as that of a trust property. The Division Bench allowed the said Writ Petition and the orders passed by the Joint Charity Commissioner under Section 36 (2) of the said Act were quashed and set aside as being without jurisdiction.

On 6th November, 1989, while relying upon the judgment of the division Bench of this Court in the case of Shri Mehadeo Deosthan, Wadali, the 1st Respondent held that the ratio laid therein applied to the facts involved in the present case and further held that he had no jurisdiction to entertain and decide the said application of the petitioners under Section 36 (2) of the said Act. The present Petition is filed to challenge the said Order of the 1st Respondent.”

24. In this authority, the Division Bench of this court held that if entire transaction is completed, then the application u/s.36(1)(a) of the said Act for revocation of sanction to sell the Trust property is not maintainable. On the basis of these submissions and the law declared by this court in the matter of Sam Sarosb Bhacca (supra), the learned counsel for respondent No.6 submits that the petition itself is not maintainable in law. He submits that in any case, considering the facts and circumstances of the present case that the learned Charity Commissioner, after considering the valuation report, application dated 14.09.2010 made by the Trust in which the Trust has specifically stated that it is not possible for them to maintain suit property because of meager income from the tenants, there is no substance in the Writ Petition and it is liable to be dismissed with costs.

25. Heard both sides at length. The point involved in the present Writ Petition is whether the impugned order dated 07.07.2011 passed by the learned Charity Commissioner, Maharashtra State, Mumbai on application made by the respondent Trust u/s. 36(1)(a) of the said Act is required to be set aside.

26. It is to be noted that respondent Nos. 2 to 5, in their application

u/s.36(1)(a) of the Act specifically stated that it is very difficult for them to maintain the old building. They also stated that they were getting meager income by way of rent from the Trustees. Paragraph 6 of the said application reads thus:

“6. Compelling Necessity to alienate the property :

a. *The building is very old and was constructed about atleast 80 years ago. The building has already completed its useful life. The proeprty is becoming more and more burdensome to the said Trust with each day passing by due to the reasons like (a) the property fetching no income or profit tot he said Trust, (b) the property being in dilapidated condition requiring heavy repairs © the said Trust as being public trust not earning anything from the property except the rent from the tenanted premises therein which is not even sufficient to maintain the property (d) there being no tenement occupied by the said trust itself in the property (f) there being no tenements which are vacant and being capable of being occupied by the said trust itself in the property (g) various unauthorised occupants occupying the tenements in the property not paying any rent for the same, and (h) the holding of the property by the said trust not resulting into achivevement of any of its objects.*

b. *Considering the aforesaid facts and position the said trustees are of the view to sell the property and utilize the amount of sale proceeds for carrying out the objects of the Trust more effectively and efficiently.”*

27. This itself shows that it was very difficult for the Trust to maintain the suit property and that was affecting their aims and objects for want of funds.

28. It is to be noted that before selling the suit property, respondent Nos.2 to 5 Trust had issued public notice in two news papers calling offers from the public at large. They have not received any response

pursuant to the said public notice. Thereafter respondent No.6 gave his offer to purchase the suit property for Rs.1,05,00,000/-. During the course of discussion the respondent No.6 agreed to accept the respondent Trust's other liabilities also to the extent of Rs.89,78,850/-. The learned Charity Commissioner, after considering the valuation report, financial position of respondent No.2 Trust and offer given by respondent No.6, passed the impugned order. Moreover, after passing the impugned judgment dated 07.07.2011, the respondent Trust executed registered deed of conveyance in favour of respondent No.6 on 20.12.2011. As soon as the conveyance was registered in favour of respondent No.6, the respondent No.6 issued notice dated 07.01.2012 to the petitioner for arrears of rent, assessment tax and repair cess. In spite of having knowledge about the transaction between respondent Trust and respondent No.6, the petitioner filed the Writ Petition on 29.07.2014 i.e. after more than two years.

29. Bare reading of reply filed by respondent No.6 dated 30.09.2014 shows that the petitioner has filed the Writ Petition just to protect his tenancy in respect of 1st and 3rd floor in the suit property. The respondent No.6 filed the said suit which was decreed by the Small Causes court on 19.04.2014. Thereafter the said decree was executed by respondent No.6 and vacated the petitioner by due process of law. Because of these events, it seems that the petitioner has filed the Writ Petition to pressurize the respondent Trust and respondent No.6.

30. The authority cited by the petitioner in the matter of Saalesh Developers (supra) is not applicable in the facts and circumstances of

the case. In the case in hand, the learned Charity Commissioner, after considering two valuation reports and the application made by the respondent Trust showing their difficulties in maintaining the suit property, passed the impugned order. Apart from that pursuant to the order dated 07.07.2011 passed by the learned Charity Commissioner, the respondent Trust executed registered conveyance dated 20.12.2011 in favour of respondent No.6.

31. Hence, on the basis of these facts, as well as in view of the Division Bench judgment of this court in the matter Sam Sarosb Bhacca (supra), I do not find any substance in the Writ Petition. Hence, the Writ Petition stands rejected.

(K.K. TATED, J.)