

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14222 OF 2016

Gul Gopaldas Daryani

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

**Mr. J. G. Shukla a/w Mr. K. R. Singh, Mr. Durga Prasad Halwal for the
Petitioner.**

Mrs. V. S. Nimbalkar, AGP for the Respondent No.1.

**Ms. Ankita Singhania a/w Mr. Jay Joshi, Mr. Nitesh Menon i/by I. R.
Joshi & Co., for the Respondent Nos.2, 3, 4 and 5.**

CORAM : R. M. SAVANT, J.

DATE : 8th MARCH, 2017

PC.

1 The order dated 19.10.2016 passed by the Learned Joint
Charity Commissioner allowing the application under Section 36(2) of
the Maharashtra Public Trusts Act, 1950 (For short “the MPT Act”) filed
by the Respondent No.2-Trust is taken exception to by way of the above
Petition.

2 The Respondent No.2 is a public trust and has by way of a
lease from the Respondent No.6 two plots of land being Nos.423 and 424
totally admeasuring 640 sq.yards situated at Ward 2B Adipur,
Gandhidham, District Kutch, Gujarat. With a view to renovate and
refurbish its “Bhakta Niwas” Respondent No.2-Trust was intending to

generate funds as it was short of funds to carry out the said repairs and renovation. The said plots of land have also been encroached upon by one Ahmad Sale Jingiya who has filed a Civil Suit against the Respondent No.2-Trust for declaration and injunction. The Respondent No.2-Trust passed a resolution on 18.02.2014 to alienate the said leasehold plots and the reserve price fixed was Rs.53,50,000/- each. The Respondent No.2-Trust thereafter issued advertisement in the local newspapers for sale of the said two plots. Pursuant to the advertisement there were four intending bidders. However, ultimately the bid/offer of the Petitioner at Rs.55,00,000/- for each of the plots totally amounting to Rs.1,10,00,000/- was the highest bid/offer. The Respondent No.2-Trust accordingly entered into a Memorandum of Understanding dated 28.11.2014 after accepting the bid/offer of the Petitioner on 28.03.2014. The Respondent No.2-Trust thereafter applied for permission under Section 36(1) of the MPT Act. Suffice it would be to state that the said permission was granted by the Learned Joint Charity Commissioner by order dated 28.07.2015. The Learned Joint Charity Commissioner granted such permission on being satisfied that there was a legal necessity for sale of the said two plots to generate funds and that the price offered by the Petitioner herein was the market price for the plots of land in question.

3 The Respondent No.2-Trust thereafter obtained a Valuation Report on 22.04.2015 of the Government Approved Valuer one Rhishikesh S. Marhalkar. According to the Government Valuer, the fair market value of the plots in question was Rs.4,31,31,000/-. The said valuation was on the basis that the property was situated in the heart of the town. After obtaining the said Valuation Report, the Respondent No.2-Trust filed the instant application under Section 36(2) of the MPT Act. The application was founded on the fact that the aspect of the property being a leasehold property and taking into consideration that the property is encroached and a suit has been filed by the encroacher which was also a relevant consideration was not part of the consideration whilst passing the order under Section 36(1) of the MPT Act and that since as per the Valuation Report the value of the said plots of land was Rs.4,31,31,000/- the offer of the Petitioner at Rs.1,10,00,000/- being Rs.3,00,00,000/- less than the valuation, the consideration by the Learned Joint Charity Commissioner was vitiated.

4 The said application was numbered as Inquiry Application No.1 of 2015. The said application was replied to on behalf of the Petitioner herein who was the Respondent. It was denied that any facts were concealed by the Petitioner. It was contended in the reply that the trustees having executed a Memorandum of Understanding in favour of

the Petitioner on 28.11.2014 and having knowledge of the entire facts, cannot now be heard to complain in respect of the said transaction. The Learned Joint Charity Commissioner, Nashik Region, Nashik considered the said application and has by the impugned order dated 19.10.2016 allowed the same and thereby set aside the order dated 28.07.2015.

5 The gist of the reasoning of the Learned Joint Charity Commissioner was that the relevant consideration that the property was a leasehold property, that a suit was filed by the encroacher against the Respondent No.2-Trust which impinges upon the right to alienate the property having not been taken into consideration, as also there being a vast difference between the market value of the property as given by the Government Approved Valuer and the price offered by the Petitioner herein, the order suffers from misrepresentation and is therefore vitiated on the said ground. The Learned Joint Charity Commissioner has observed that the price of Rs.55,00,000/- was accepted in view of the valuation as reported by the Petitioner.

6 It was the submission of the Learned Counsel for the Petitioner that the Trust having fixed the reserve price at Rs.53,50,000/-, it cannot now seek to resile therefrom on the basis of the Valuation Report which has been obtained subsequently. It was also the submission

of Mr. J. G. Shukla, the Learned Counsel appearing on behalf of the Petitioner that the Petitioner had nothing to do with the valuation fixed by the Respondent No.2-Trust which it had done by passing the resolution dated 18.02.2014. It was lastly contended by the Learned Counsel that the conditions requisite for exercising powers under Section 36(2) of the MPT cannot be said to have been satisfied in the instant case.

7 Per contra, the Learned Counsel Ms. Ankita Singhania appearing on behalf of the Respondent No.2-Trust would support the impugned order. The Learned Counsel appearing for the Respondent No.2-Trust would contend that though initially four offers were received for the said plots of land are concerned, significantly the three offerers except the Petitioner withdrew themselves from the said process, resulting in the Petitioner's offer being the sole offer remaining in the field. The Learned Counsel would contend that in the teeth of the Valuation Report submitted by a Government Approved Valuer one Rhishikesh S. Marhalkar, the offer of Rs.1,10,00,000/- of the Petitioner cannot be accepted.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question which arises for consideration is whether the invocation of powers under Section 36(2) of

the MPT act is justifiable in the facts and circumstances of the case. It is an undisputed position that the said two plots of land are the leasehold properties of the Respondent No.2-Trust. The fact that the plots of land have been encroached upon by one Ahmad Sale Jingeriya who has filed a suit for declaration and injunction was also not part of the consideration. However what superimposes itself on the proceedings is the report of the Government Approved Valuer valuing the property at Rs.4,31,31,000/-. Having regard to the said valuation, the offer made by the Petitioner at Rs.1,10,00,000/- pales into insignificance. The acceptance of the offer of the Petitioner results in an offer much below the market price being accepted by the Respondent No.2-Trust, resulting in the Trust being put to a loss. It is well settled that the twin considerations which ought to weigh with the authority exercising powers under Section 36(1) of the MPT Act is the legal necessity to alienate the property and secondly whether the offer which the Trust has received is the best value for its property. Having regard to the said Valuation Report which though obtained subsequent to the acceptance of the offer of the Petitioner, the offer of the Petitioner cannot be said to be such as to conclude that the Respondent No.2-Trust is getting the best value for its property. The Learned Joint Charity Commissioner has in the impugned order observed that the offer at Rs.55,00,000/- was accepted by the Respondent No.2-

Trust in view of the valuation submitted by the Petitioner.

9 In my view, the order passed under Section 36 of the MPT Act can therefore be said to suffer from a misrepresentation in so far as the value of the property is concerned. Though a Memorandum of Understanding has been executed with the Petitioner, no right as such has been created in favour of the Petitioner as no formal document of title has been executed in favour of the Petitioner. In my view, therefore, the exercise of powers under Section 36(2) of the MPT Act by the Learned Joint Charity Commissioner cannot be faulted with in the facts and circumstances of the case. The impugned order does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its writ jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]