

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

WRIT PETITION NO.13758 OF 2017

Chandrabhushan Anand .. Petitioner
Vs.
Shree Venkatesh Devashthan & Ors. .. Respondents

Mr.Rajesh S. Patil for the petitioner.

Mr.K.R.Bulchandani a/w Mr.Amit D. Nikam i/by M/s.Kamal & Co.
for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 20th December 2017

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 27th November 2017 passed by the Joint Charity Commissioner in Application No.J-4/476/2015 granting permission to the respondent no.1 Trust and the trustees of Shree Venkatesh Devashthan Trust to give on lease a property situated at Plot No.161 of the Shivaji Park Scheme, Cadel Road, Dadar, Mumbai-400 016.

2. The petitioner is a party to the eviction suit filed by the respondents in respect of a tenement bearing Flat No.6, Cadel Road No.5, Shivaji Park, Mumbai 400 016 and claims to be a tenant in respect thereof.

3. On 27th December 2013, the respondents passed Resolution to dispose of various immovable properties of the trust. In so far as the property in question is concerned, the same is admeasuring 510 sq. mtr. The trustees issued an advertisement in the three newspapers namely “Free Press Journal”, “Navshakti” and “Navbharat Times” having wide circulation in Mumbai. The petitioner lodged his objection to the said advertisement on 15th July 2014 and alleged that respondents had intended to sell the suit property to one of the relatives of one of the trustees.

4. On 12th August 2015, the Joint Charity Commissioner passed an order granting permission to the respondents to sell the said property. The respondents thereafter made an application on 15th July 2016 for an amendment to delete prayer for sale of Dadar property and to add prayer of leasing out the property in perpetuity on the ground that the said property was a leasehold property and could not have been sold. The said application was once again objected by the petitioner on various grounds.

5. The Joint Charity Commissioner granted approval to the application made by the respondents for giving the suit property on

lease. The said order passed by the Joint Charity Commissioner is impugned by the petitioner in this writ petition.

6. Mr.Patil, learned counsel appearing for the petitioner invited my attention to the balance sheet of the trust for the year ended 31st March 2014 and would submit that the said balance sheet of the trust would clearly indicate that the Trust had about Rs.50 crore in the bank account as well as Cash in hand on 31st March 2014 and thus there was no necessity to sell any immovable property of the trust.

7. Learned counsel invited my attention to the valuation report relied by the trust before the Joint Charity Commissioner and also to the objections raised by the petitioner before the Joint Charity Commissioner at page 76 of the petition. Learned counsel invited my attention to the points for determination framed by the Joint Charity Commissioner and would submit that though a point was framed 'whether the trust proved the compelling necessity to alienate the trust property', there was no finding rendered on the said issue.

8. It is submitted by the learned counsel that the Trust did not issue advertisement in the leading newspaper "Times of India" which is

having wide publication in Mumbai and is normally read by the residents of Mumbai. He submits that the advertisement was however issued by the Trustees deliberately in “Free Press Journal” in English, “Navshakti” in Marathi and “Navbharat Times” in Hindi which do not have wide circulation.

9. It is lastly submitted by the learned counsel that offer of Rs.5 crore made by the petitioner has not been considered by the Joint Charity Commissioner. The said offer is again made by the petitioner now before this Court.

10. Mr.Bulchandani, learned counsel for the respondents, on the other hand, opposes this petition on several grounds including the ground of locus of the petitioner to file this petition. He submits that the petitioner is a rank trespasser of one of the properties of the trust. Trustees have filed an eviction suit against the petitioner in Small Causes Court which is still pending. The petitioner has filed this petition with ulterior motives with a view to pressurize the respondents to withdraw the said proceedings against him.

11. Learned counsel invited my attention to the objections filed by the petitioner before the Joint Charity Commissioner. He submits that

it was for the respondents to decide whether to issue an advertisement in Times of India or in Free Press Journal or other two newspapers having wide circulation or not.

12. In so far as the offer of the petitioner is concerned, it is submitted by the learned counsel that the said so called offer made by the petitioner is no offer in the eyes of law. The said offer was made after two years from the date of advertisement issued by the respondent. He submits that inspite of such offer made by the petitioner before the learned Joint Charity Commissioner while raising an objection and though no bid was submitted by the petitioner in response to the advertisement issued by the respondents, learned Joint Charity Commissioner was kind enough to render an opportunity to the petitioner to raise his offer. Though the learned Joint Charity Commissioner gave an opportunity to the petitioner, the petitioner did not bother to raise his offer, he withdrew the offer made by him.

13. It is submitted by the learned counsel that three offers were received by the Trust pursuant to the advertisement issued by the respondent. The highest bid was for Rs.4.41 crore which was much higher than the valuation of the property opined by the Valuer. He

submits that the entire property is a tenanted property. There is hardly any income out of said property of the Trust and it was not possible to manage and maintain the property.

14. It is lastly submitted by the learned counsel that the impugned order passed by the Joint Charity Commissioner is a well reasoned order and thus the findings rendered by the Joint Charity Commissioner being not perverse, no interference is permissible by this Court under Article 227 of the Constitution of India.

15. In so far as the issue of locus raised by Mr.Bulchandani, learned counsel for the respondent is concerned, it is not the case of the petitioner that the petitioner is the beneficiary of the trust. The petitioner is not a person interested in so far as the management of the respondent trust is concerned. The petitioner does not dispute that in eviction suit filed by the respondent against the petitioner in respect of one of the tenements which is a part of the property of the respondent is still pending. I am thus inclined to accept the submission of the respondents that the petitioner had no locus to raise any objection.

16. In so far as the submission of the learned counsel for the petitioner that the respondents ought to have issued advertisement in

the “Times of India” and not other three newspapers is concerned, in my view, there is no merit in this submission of the learned counsel for the petitioner. The fact remains that the petitioner was fully aware of such advertisement and had raised his objection in writing before the learned Joint Charity Commissioner objecting the permission sought by the respondent. It is not in dispute that pursuant to such advertisement issued by the respondent, three bidders have submitted their bids. The highest bid of Rs.4.41 crore which was for much higher than the amount shown in the valuation report obtained by the respondent. The petitioner did not produce any other valuation report showing valuation of the property more than the amount disclosed in the valuation report relied upon by the respondents before the learned Joint Charity Commissioner.

17. In so far as the submission of the learned counsel for the petitioner that there was no necessity to sell the property in question is concerned, a perusal of the findings recorded by the Joint Charity Commissioner indicates that the said property was admittedly fully tenanted. There was hardly any income generated out of such tenanted property. It was not possible for the respondents to maintain such tenanted property. For the purpose of achieving objects of the trust, the

respondent-trust has rightly taken a decision to seek permission to transfer the property on lease so as to generate corpus out of such transaction so as to utilise the said fund for the purpose of activities of the trust.

18. In my view, the Joint Charity Commissioner has rightly accepted the reasons for seeking such permission for giving the property on lease which was in the interest of the trust. Be that as it may, the petitioner himself had participated in the sale and submitted his bid and thus cannot be allowed to raise the issue that there was no necessity of sale the property in question by the trust. The submission made by the learned counsel, on instructions from his client, has no merit.

19. In so far as the so called offer made by the petitioner before the Joint Charity Commissioner is concerned, it is not in dispute that the petitioner did not submit any bid pursuant to the advertisement issued by the respondent. The so called offer made by the petitioner before the Joint Charity Commissioner was made after two years of the advertisement issued by the respondent. A perusal of the said so called offer indicates that the said offer of Rs.5 crore was on various terms and conditions and was not an unconditional offer. In my view, there is

thus no substance in the submission of the learned counsel for the petitioner that though the offer was made by the petitioner, the same was not considered by the Joint Charity Commissioner. A perusal of the record indicates that though the petitioner had made an offer of Rs.5 crore at one stage, the said offer was withdrawn by the petitioner.

20. Be that as it may, a perusal of the order passed by the Joint Charity Commissioner indicates that though the offer made by the petitioner was not an offer in the eyes of law and is not made in response to the advertisement issued by the respondent within the time prescribed, the Joint Charity Commissioner was liberal in rendering further opportunity to the petitioner to raise his offer. Though such opportunity was rendered to the petitioner, the petitioner thereafter did not turn up nor raised his offer. The respondent no.1-Trust has already received three offers out of which the highest bidder's bid has been accepted by the trust. The highest bidders has already deposited the substantial amount with the respondents and the documents are already stamped.

21. In my view, no case of any malafides on the part of the respondents to sell the property in favour of successful bidder is made

out. The offers were received by the trust in response to the public advertisement issued in the three newspapers having wide circulation.

22. A perusal of the proceedings filed by the petitioner indicates that the whole purpose of filing objections before the Joint Charity Commissioner and thereafter pursuing the proceedings further for filing this writ petition is totally mischievous and is with ulterior motives.

23. The impugned order passed by the Joint Charity Commissioner is a reasoned order. I do not find any infirmity with the order passed by the Joint Charity Commissioner. No interference is thus warranted with the impugned order. Writ petition is dismissed with cost quantified Rs.50,000/- which shall be paid by the petitioner to the respondent within two weeks from today.

R.D. DHANUKA, J.