

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

WRIT PETITION NO.692 OF 2018

Akkalkot Swami Seva Mandal & Anr.	..	Petitioners
Versus		
The Joint Charity Commissioner	..	Respondent

Mr.Amrut Joshi a/w Mr.Nikhil Mishra for the petitioners.
Mr.S.D. Rayrikar, AGP for the respondent no.1-State.

CORAM : R.D. DHANUKA, J.
DATE : 3rd April 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 20th March 2017 passed by the respondent no.1 refusing to grant permission to sell a flat No.6, First Floor, 'G' Wing, Radhe Govind Nagar Co-operative Housing Society Ltd., Ambarnath (E), Mumbai - 421 501.

2. The petitioner no.1 is a public charity trust and is governed by the provisions of the Memorandum of Association and Rules. The main object of the trust is to annachhata/langar (charity meals) for Adivasi and poor needy children, medical check-up, goshala and old age house (vridhhashram) and other objects enumerated in objects clause of Memorandum of Association.

3. The petitioners passed a resolution unanimously on 13th March 2016 to sell the flat in question for utilising the sale proceeds to repay the loan amount of the bank and for other activities of the trust.

The petitioners thereafter issued a public notice in two newspapers viz. “Dainik Ambarnath Janmat” dated 22nd June 2016 and “Ambarnath Times” dated 24th June 2016. The petitioners received six offers. The petitioners accepted the highest offer of Shri Kondibhau Rasubhau Shinde for Rs.27,90,000/- and passed a resolution on 17th July 2016. The petitioners made an application for seeking sanction to sell the said flat in question before the learned Joint Charity Commissioner.

4. The learned Joint Charity Commissioner passed an order on 20th March 2017 thereby rejecting the said application and directed the petitioners to refund the offer amount of Rs.3,00,000/- received from the purchaser on proper identification immediately. This order of the learned Joint Charity Commissioner is impugned in this petition.

5. Learned counsel appearing for the petitioners invited my attention to various objects of the petitioner no.1-trust and also various reasons recorded in the application for seeking permission under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (for short “the said Act”). He also invited my attention to the valuation report obtained by the petitioners and also the resolutions passed by the petitioners & photo copy of the cheque received from the proposed purchaser.

6. It is submitted by the learned counsel that the petitioner no.1-trust had obtained a loan from bank. The outstanding loan amount payable to bank is Rs.10,37,272/- by the petitioner no.1 trust. The flat in question which was required to be sold was not generating any income to the petitioner no.1 trust.

7. It is submitted by the learned counsel that the petitioner no.1 trust has large number of charitable activities for which the petitioners are required to incur day to day expenses. He submits that monthly expenditure of the petitioner no.1 trust is more than Rs.2,00,000/-.

8. The petitioners have proposed to sell the said flat for the purpose of repayment of loan of the bank and balance was to be kept in Fixed Deposits. Income generating out of the Fixed Deposits by way of interest will be utilizing for day to day charitable activities. Learned counsel for the petitioners submits that the learned Joint Charity Commissioner has not considered these relevant aspects in the impugned order and has rejected the application filed by the petitioners under Section 36(1)(a) of the said Act. He submits that though certain amounts are kept in Fixed Deposits, income generating out of the said Fixed Deposits by way of interest are required to be spent on day to day charitable activities.

9. Mr.Rayrikar, learned AGP appearing for the respondent no.1, on the other hand, submits that though the learned Joint Charity Commissioner has considered all the relevant aspects including the issue that the petitioners had not widely circulated the advertisement for sale in the newspapers of the property in question. He submits that the impugned order does not warrant any interference by this Court.

10. Learned counsel for the petitioners in rejoinder submits that the newspapers in which the advertisements were issued by the petitioners have a wide circulation at the place where the property is situated.

11. A perusal of the objects of the trust recorded in the trust deed clearly indicates that the petitioner no.1 trust has number of charitable activities such as annachhata/langar (charity meals) for Adivasi and poor needy children, medical check-up, goshala and old age house (vridhashram) for which the petitioners requires substantial amount for day to day charitable activities. The petitioner no.1 trust has obtained a loan from bank which remained unpaid fully. The bank was pressing the petitioner no.1 trust for repayment of loan. The petitioners have thus proposed to sell the flat in question with a view to repay the loan amount of bank and to deposit the balance amount in Fixed Deposits so as to generate the interest income for day to day charitable activities. The petitioners have explained in the application filed under Section 36(1)(a) of the Act such necessity.

12. In these circumstances, in my view, the learned Joint Charity Commissioner ought to have considered these aspects while dealing with the application filed by the petitioners under Section 36(1)(a) of the said Act and ought not to have rejected the application on the ground that there was no urgent need of sale of the said flat in question. The said property was not generating any income. The petitioners are also required to incur expenses for maintaining the said flat.

13. In my view, the petitioners had thus made out a case for grant of application for sanction of sale the flat in question filed under Section 36(1)(a) of the Act. The petitioners had published the advertisement in two newspapers viz. "Dainik Ambarnath Janmat" and "Ambarnath Times" having wide circulation in Ambarnath where the flat is situated.

14. I therefore pass the following order :-

- (i) The impugned order dated 20th March 2017 passed by the learned Joint Charity Commissioner is set aside.
- (ii) The application made by the petitioners for sanction of sale of the flat in question under Section 36(1)(a) of the said Act is allowed.
- (iii) Writ petition is disposed of in aforesaid terms.
- (iv) There shall be no order as to costs.

R.D. DHANUKA, J.