IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5700 OF 2015

Ms Natasha Nekoo and another ... Petitioners
v/s
Hon'ble Joint Charity Commissioner
(Pune) and others ... Respondents

Mr. Areez Gazdar i/b M/s Veritas Legal for Petitioners.
Mr R.P. Kadam, AGP for Respondent No.1.
Mr Suraj Iyer i/b M/s Ganesh and Co. for Respondent Nos.2 and 3.

CORAM : B.P. COLABAWALLA, J.

DATE : 11TH DECEMBER, 2018

P.C.:

1. Rule. Respondents waive service. By consent of parties, rule is made returnable forthwith and heard finally.

2. By this Writ Petition, the Petitioners challenge a part of the order passed by the Charity Commissioner under section 36(1)(a) of the Maharashtra Public Trusts Act 1950.

3. The brief facts are that Bai Bhicaijee Jehangir Mody Parsi Sanitorium Trust filed an application under section 36(1)(a) of the Maharashtra Public Trusts Act 1950 seeking permission to sell the property of the Trust, admeasuring 8332 sq.mtrs. and situated at Lonavale bearing Survey No.164, Hissa No.1 and covering several C.T.S. numbers as mentioned in paragraph 2 of the impugned order. This application was made by one of the Trustees of the said Trust By the impugned order, the Charity Commissioner gave his sanction under section 36(1)(a) to sell the said property to the highest bidder – M/s Santosh Builders for a consideration of Rs.8,30 crores. However, at paragraph 6 of the operative part of the order, the Charity Commissioner directed that out of the sale proceeds of Rs.8.30 crores, an amount of Rs.50/- lakhs shall be given to Hirabai Cowaji Jehangir Medical Research institute, Pune, Rs.50/- lakhs to Aamha Sevak Sanstha, Latur, and Rs.50/- lakhs to Eklavya Balshikshan Arogya Trust, Pune. It is being aggrieved by this portion of the impugned order that the present Writ Petition has been filed.

3. The learned counsel appearing on behalf of the Petitioners submitted that the charity Commissioner could not have, in these circumstances, directed that an amount of Rs.1.50 crores be given to

three independent Trusts and that too out of the proceeds received from the sale of the property that belong to Bai Bhicaijee Jehangir Mody Parsi Sanitorium Trust, Pune. The learned counsel appearing on behalf of the Petitioner submitted that the Charity Commissioner had no power or jurisdiction to pass such directions. The property of the Trust was sold for Rs.8.30 crores and it was the Trust alone that was entitled to this consideration. The Charity Commissioner could not have in these circumstances directed that out of the sum of Rs.8.30 crores, an amount of Rs.1.50 crores be given to three independent Trusts. The learned counsel therefore submitted that paragraphs 6, 7 and 8 of the operative part of the the impugned order is completely unsustainable and has to be set aside. The learned Advocate appearing on behalf of Respondent Nos.2 and 3 supported the arguments canvassed on behalf of the Petitioners.

5. On the other hand, the learned AGP appearing for the State placed reliance on section 55 to contend that the Charity Commissioner certainly has the power to pass the directions as was done in paragraph 6 of the operative part of the impugned order. He further submitted that the direction passed in paragraph 6 of the operative part of the impugned order was at the instance of one of the Trustees of the said Bai Bhicaijee Jehangir Mody Parsi Sanitorium Trust, Pune as is clearly recorded in

paragraph 12 of the impugned order. He therefore submitted that there was nothing wrong in the impugned order and consequently there was no merit in this Writ Petition.

6. I have heard learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I find that the directions passed in paragraph 6 of the operative part of the impugned order are wholly unsustainable in law. As mentioned earlier, the Trust was wanting to sell one of its property situated at Lonavala. For this purpose, one of the Trustees filed an application under section 36(1)(a) of the Act seeking sanction of the Charity Commissioner. Initially the price that was offered for the property was Rs.6.90 crores. However, on public notice being issued, the price fetched for the said property was Rs.8.30 crores. This money entirely belongs to the Trust. The Charity Commissioner therefore could not have directed that out of the sale proceeds of Rs.8.30 crores, a sum of Rs.1.50 crores be distributed to three separate Trusts as directed in paragraph 6 of the operative part of the impugned order. The charity Commissioner has no jurisdiction to pass such directions.

7. Having said this, I find that the reliance placed by the learned

AGP on section 55 of the Act is wholly misplaced and misconceived. Section 55 stipulates that if upon an application made or otherwise, the Assistant or Deputy Charity Commissioner is of the opinion that the original object for which the Public Trust was created has failed, or the income or any surplus balance of any Public Trust has not been utilized or is not likely to be utilized, or in the case of a Public Trust other than a Trust for religious purpose, it is not expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the Public Trust or the object for which the Public Trust was created, and the property or income of the Public Trust or any portion thereof should be applied to any charitable or religious object, the Assistant or Deputy Charity Commissioner shall pass appropriate orders after making an inquiry and reporting to the Charity Commissioner. I fail to see how section 55 can be pressed into service for justifying the directions given by the Charity Commissioner in paragraph 6 of the operative part of the impugned order. There is no reference to section 55 in the impugned order or that the Charity Commissioner is exercising his powers under section 55 of the Act to justify the directions given.

8. In these circumstances, I find that the directions given in paragraph 6 of the operative part of the impugned order are wholly

unsustainable in law. Consequently, even the directions given in paragraphs 7 and 8 cannot be sustained. In these circumstances, paragraphs 6, 7 and 8 of the operative part of the impugned order are hereby quashed and set aside. The rest of the order is sustained.

9. Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

All parties are directed to act on an authenticated copy of this order.

(B. P. COLABAWALLA, J.)