IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6710 OF 2018

Sanjeewan Vidyalaya Trust ... **Petitioner**
V/s.
Joint Charity Commissioner ... **Respondent**

Mr.Prasad Dani, Senior Advocate a/w. Ms.Diya Jadhav i/b. Mr.Tushar Jadhav for Petitioner.
Ms.M.S. Bane, AGP for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 30th August 2019.

P.C. :

1] The jurisdiction of this Court under Article 227 of the Constitution of India is invoked by impugning the Judgment and Order dated 23rd October 2017 passed by the learned Joint Charity Commissioner-II, Maharashtra State, Mumbai, rejecting Application No. 331 of 2015 filed by the petitioner under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (for short, “the said Act”).

2] Heard Mr.Dani, the learned Senior Counsel for the petitioner and Ms.Bane, the learned AGP for respondent-State. Perused the entire record annexed to the Petition.

3] The petitioner is a public charitable trust registered under the provisions of the said Act, having P.T.R. No. E-5101 (Mumbai).

The property in-question is bearing CTS Final Plot Nos.534/2 and 534/5, ad-measuring about 3431.70 sq. mtrs. and 4107.80 sq. mtrs. together totaling to 7539.50 sq. mtrs. lying and situated within the jurisdiction of Panchgani Municipal Council, Taluka Mahabaleshwar, District Satara.

4] The record indicates that, the 220th meeting of the Board of Trustees of the petitioner-Trust was held on 23rd November 2013 in the office of the said Trust. A resolution No. 1874 was passed by the Board of Trustees and it was decided that, for generating necessary funds for the benefit of the Trust, the suit property be given on lease and/or disposed of by following the required procedure. The Board of Trustees have observed that, the suit property was not developed and was not used for short period. It was resolved that, the funds generated by disposing of the suit property would be utilized to update the existing structure of the Trust, particularly the swimming pool, children's toilets, the old dinning hall, the kitchen and to have some rainy day provisions as a stand by corpus after paying all the dues of the Trust. The said resolution was passed unanimously by the Board of Trustees.

5] In furtherance of the said resolution, the petitioner-Trust obtained a valuation report from the Government Registered Valuer, namely, Mr.Vaibhav Shinde. The said Valuer in its report dated 10th February 2014 had opined that, the fair market value of the suit plot was Rs.8,29,32,960/- and the realizable value was Rs.7,46,39,664/-. In pursuance of the resolution passed by the Board of Trustees of the petitioner-Trust and after receipt of Valuation Report, public notices were issued in 'Sakal Times' Pune (English) and 'Sakal, Satara" (Marathi) dated 15th May 2014 for sale of the said suit plots.

The record further indicates that in response to the public notice issued by the petitioner-Trust, it received four tenders from different entities. That Mr.Rahil Nissar Johari gave an offer of Rs.9,09,00,000/-, but with certain conditions and/or covenants. That Mr.Jayant Thakkar gave offer of Rs.8,01,00,000/-. Mr.Jayant Thakkar, who gave highest offer next to Mr.Johari to the suit property was therefore called for negotiation inter-alia to enhance his bid offer. Mr.Thakkar enhanced the price to Rs.9,18,00,000/-. The petitioner-Trust accordingly entered into MOU dated 10th July 2014 with Mr.Jayant Thakkar. The record further indicates that, for accepting the bid of Mr.Jayant Thakkar, the petitioner-Trust passed necessary resolutions, as necessary under the law in that behalf.

6] The petitioner-Trust thereafter filed an application under Section 36(1)(a) of the said Act before the Joint Charity Commissioner, Maharashtra State, Mumbai, bearing Application No. 331 of 2015.

As noted earlier, the Joint Charity Commissioner by its impugned Judgment and Order has rejected the said application. In para No.15 of the impugned Order it has been held that, there is no specific resolution passed by the Trust to sell the suit property, while trustees have resolved by the Resolution No.1874 to generate funds against the trust property and the property was required to be leased out or disposed off by required procedure. That there is no mention in the said Resolution No.1874 that the trustees have unanimously decided to sell or alienate the trust property.

7] The learned AGP while supporting the impugned Order passed by the Joint Charity Commissioner submitted that, there was no mention in the said resolution about sell of suit property by the trust and therefore, the Joint Charity Commissioner has rightly rejected the application preferred by the petitioner-Trust.

It is to be noted hear that, the observations made by the Joint Charity Commissioner in para No.15 and submission made by the learned AGP are contrary to Resolution No.1874 dated 23rd November 2013. In the said resolution, the Board of Trustees had unanimously resolved that the suit property owned by the trust be leased out and/or disposed of by following required procedure.

8] A bare perusal of Section 36(1)(c) would indicate that, the words used therein are “dispose of” and not sale. The word dispose of in its common parlance would take into its purview ‘sale’ of an immovable property and therefore, the contention of the learned AGP in that behalf cannot be accepted.

9] The Joint Charity Commissioner has also recorded a finding that, the Government Valuer, namely, Mr.Umesh V. Bhonsale, had submitted a valuation report of the suit property and has opined that, the fair marketable value of the suit property would be Rs.9,35,00,000/-. That the said valuation of the suit property effected by the Government valuer Mr.Bhonsale was of higher value than, the valuation submitted by the Trust in its fresh valuation report dated 8th August 2017. The third circumstance which has weighed in the mind of the Joint Charity Commissioner is that, Mr.Rahil Nissar Johari had given much higher offer than Mr.Jayant Thakkar and therefore, the petitioner-Trust ought to have gave an opportunity to Mr.Johari for enhancing the bid offer. These are the predominant circumstances which have weighed in the mind of the Joint Charity Commissioner while rejecting the application filed by the petitioners for sell of suit property.

It is to be noted here that, the offer given by Mr.Rahil Johari, though on higher side, but was with conditions and/or covenants and according to the Trust, it was not in the benefit or interest of the petitioner-Trust. It therefore appears from the record that, the petitioner-Trust invited Mr.Jayant Thakkar for further negotiations, who *inter-alia* enhanced his offer upto Rs.9,18,00,000/-.

10] During the course of arguments of the present Petition on 8th August 2019, Mr.Dani, learned counsel for the petitioner had fairly submitted that, the valuation report submitted by Mr.Umesh Bhonsale was the latest valuation report then on record before the Joint Charity Commissioner. He further, on instructions, submitted that, the petitioner-

Trust would get the latest valuation done of the suit property through Government Valuer. Accordingly, the petitioner-Trust has obtained a fresh valuation report from Mr.Vaibhav Shinde dated 17th August 2019. The said valuation report is placed on record along with an additional affidavit dated 24th August 2019 affirmed by Smt.Anagha Devy. In the latest valuation report, the valuer has opined that the fair market value of the suit property as per the existing conditions would be Rs.9,42,42,000/-. The proposed purchaser Mr.Jayant Thakkar has also filed an additional affidavit dated 20th August 2019 stating that, in view of the fresh valuation report, he is ready and willing to offer price of Rs.9,45,00,000/- for the suit property. Mr.Dani submitted that, according to the petitioner-Trust ,the said offer is fair price for the suit property of the trust.

11] After taking into consideration the increased offer given by Mr.Jayant Thakkar in pursuance of Valuation Report dated 17th August 2019 given by Mr.Vaibhav Shinde, Government Valuer, the price offered by Mr.Jayant Thakkar to the suit land of the trust appears to be fair and reasonable value in the interest of the petitioner.

12] In view of the latest valuation report and the price offered by Mr.Thakkar, the finding recorded by the Joint Charity Commissioner in para No.17 of the impugned Order has become obsolete. Thus, there is substantive change in the fact situation of the present case after passing of the impugned Judgment and Order dated 23rd October 2017. After getting enhanced fair and reasonable market value of the suit property, the interest of the Trust is squarely protected. The record clearly indicates that, the reasons given by petitioner-Trust for disposing of the suit property are genuine and *bonafide*. It further appears that, the suit property of the Trust is fetching fair and reasonable market value thereby protecting the interest of the Trust.

13] After taking into consideration aforesaid factors, this Court is of the considered view that, the Application preferred by the Petitioner-Trust under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 deserves to be allowed and is accordingly allowed.

14] In view of the above, impugned Judgment and Order dated 23rd October 2017 is hereby quashed and set-aside and the application preferred by the petitioner bearing No. 331 of 2015 under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 is hereby allowed. The petitioner-Trust is granted permission to sell the suit property on *'as is where is basis'* to Mr.Jayant Thakkar for a consideration of Rs.9,45,00,000/-, subject to complying with all the necessary and legal formalities including payment of stamp duty and other charges to all the concerned Government Authorities, as prescribed by the law.

15] Petition is allowed in the aforesaid terms.

[A.S. GADKARI, J.]