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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2223 OF 2017

Shri. Avinash Bhaskar Avhad .....Petitioner

V/s.

Maharashtra Academy of Engn. & Educational Research, Pune. .....Respondent

Mr. P. B. Shah i/b Mr. Mahesh Rawool for the Petitioner
Mr. Surel S. Shah for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 3, 2019.

P.C.

Heard.

2 In 1983, a Public Trust, Maharashtra Academy of Engineering and Education Research P.T.R. No. F/2555 (Pune) with an object of imparting education came to be established. In 1983, the said Trust claims to have received in gift portion of land admeasuring 5 Hectares 93 R out of S. No. 124/13+18+14+17+20 to 22+24+25/1, situated at Kothrud, Pune from the founder Trustees Dattatray,

Asha, Suresh and Ajit Kumar.

3 State Government in 1996 allotted land admeasuring 5.64.04 Hectare old Survey No. 123/A/1/2 in Pune Sub-Division, Taluka: Haveli within local limits of Pune Municipal Corporation at village Kothrud having C.T.S. No. 1127 to carry out object of the applicant Trust.

4 In 1997, development plan of the Pune city, 40 ft development plan road leading to Poud came to be shown in the aforesaid land bearing Survey No. 124 situated at Kothrud.

5 Ghaisas family who are owners of land Survey No. 124 at Kothrud came with a proposal of exchange of land. Respondent-Trust so as to have maximum utilisation of their land located at Survey No. 123/A/1/2 which was alloted to the petitioner by the State Government, moved an application under Section 36 of the Maharashtra Public Trust Act ('the Act' for short) before the Joint Charity Commissioner, Pune praying permission to exchange the

properties by application dated 24/09/2014 with the land owned by the Ghaisas Family.

6 In the said application, respondent-Trust narrated all minute details as regards holding of property by respondent-Trust and Ghaisas family, permission granted by Government of Maharashtra for exchange of properties, executing Deed of Exchange on 25/10/2004.

7 Present petitioner in the said proceedings preferred by the respondent-Trust for grant of post-facto permission to exchange the land caused his intervention under Section 73A of the Act. Petitioner also filed objection to the prayer for granting post facto permission under section 36 (1) (a) of the Act. Said proceedings were entertained by the learned Joint Charity Commissioner, Pune and after considering objections raised by the petitioner, vide order impugned dated 30/03/2016 allowed the same with following observations:

"Order

1. Application No. 39/2014 is allowed.

2. The ex post facto sanction is hereby accorded under Section-36(1)(a) of the Maharashtra Public Trusts Act, 1950 to the trustees of "Maharashtra Academy of Engineering and Educational Research, Pune" bearing P.T.R. No. F-2555 (Pune) for exchanging the land belonging to the trust bearing old Survey No. 123/A/1/2 (New Survey No. 1127), admeasuring 2520 sq. mtrs., situated at village Kothrud, Pune against the land admeasuring 2520 sq. mtrs., out of Survey No. 124/13+18+14+17+20 to 22+24+25/1, situated at Kothrud, Pune belonging to Dr. Suresh G. Ghaisas family without any consideration.

3. This order is subject to the trustees complying all the provisions and prohibitions, if any, that are contained in any other laws for the time in force, which are applicable to this transaction.

4. Entry of this order be taken in Schedule-I of the Register of Public Trust".

8 It is this order which is questioned by the petitioner who claim to be person interested. According to the petitioner, he was a Trustee and also Member of the Trust. According to him, there are no powers with the authority to legalise the exchange by granting ex-post facto sanction. According to him, the exchange was not in the interest of the Public Trust as there is substantial financial loss caused to the

public Trust as the valuation of the property received in exchange is less than the valuation of property given in the exchange. So as to substantiate the same, the learned counsel for the petitioner invited the attention of this Court to the valuation report, development plan, reservation on the land which is exchanged in favour of the Trust.

9 *Per contra* the learned counsel for the respondent-Trust would urge that the exchange was effected after following due process i.e. after obtaining permission of the State Government in the matter as contemplated under the letter of allotment and the Land Disposal Rules framed under Maharashtra Land Revenue Code. The learned counsel then would urge that the petitioner is busy in twisting arms of the Trustees and putting spokes in the smooth administration of the Trust. According to him, there is maximum and convenient utilisation of the land received in exchange which is far better than the land given. He would urge that Trust is benefited because of the exchange of the land and as such, according to him, the petition is liable to be dismissed.

10 Considered rival submissions.

11 What is required to be noted is the exchange of the land was preceded with permission from the State Government dated 21/09/2004 and the exchange was approved by the Managing Committee of the Trust in question.

12 The case of the petitioner that there is reservation on the land and as such, in future the trust might put to loss is concerned, needless to say that in such an eventuality viz. Acquisition of the land of the Trust by Planning Authority pursuant to reservation, respondent-Trust will be entitled to compensation under the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Such compensation in any case will be more than the market value.

13 Apart from above, the petitioner who claims to be a person interested is unable to demonstrate as to the mode and manner in which the Trust has suffered monetary or loss of utilisation of space.

14 The Trust in its own interest has taken a decision to exchange the land so as to have proper utilisation of the land to achieve its object. The same is within the ambit of the scheme under which the Trust functions. That being so, the fact that Joint Charity Commissioner has appreciated the aforesaid facets of the matter and has granted ex-post facto sanction pursuant to provisions of Section 36 of the Act.

15 Apart from above, the fact remains that State Government while granting permission for exchange has considered valuation report, the property maps, the development plan etc.

16 Alienation of immovable property of the Trust is governed by Section 36 of the Act. Sub-Section (1) (a) of Section 36 provides for exchange or gift of immovable property of Trust with previous sanction of the Charity Commissioner. Such sanction is subject to conditions to be accorded having regard to the interest benefit of the Trust.

17 Such sanction can be accorded by the Charity Commissioner on an application. While granting such application, regard is required to have to the interest benefit or protection of Trust.

18 Sub-Section (5) to Section 36 of the Act was added by Maharashtra Act No. 55 of 2017 which empowers the Charity Commissioner to grant sanction in exceptional and extraordinary situation with retrospective effect, if it is satisfied that;

(a) there was emergent situation which warrant such transfer

(b) there was compelling necessity for the said transfer

(c) the transfer was necessary in the interest of the Trust

(d) the transfer is for a consideration which was not less than prevalent market value to be certified by expert.

(e) best price for the property was secured

(f) the action by the Trustee is bonafide and the Trustees have not derived any benefit either pecuniary or otherwise out of the transaction.

(g) transfer was effected by a registered instrument.

19 If the aforesaid parameters as laid down under Section 36 are applied to the facts of the present case, but for the alleged valuation report and the bald statement made by the petitioner, there is no material to infer that Trustees of the respondent Trust have derived any benefit either pecuniary or otherwise out of the transaction of exchange carried out. Rather, before the Charity Commissioner, it was demonstrated that exchange was necessary in the interest of the Trust and the property received in exchange has not caused any financial or pecuniary loss to the Trust.

20 The learned Joint Charity Commissioner has also considered the fact that the Deed of Exchange executed and acted upon was pursuant to the consent extended by the father of the petitioner who was the then Trustee. Apart from above, the learned Joint Commissioner while granting sanction to the exchange of land has examined papers and noted that there is no reservation on the land which has come to the share of the Trust in exchange.

21 In view of above, this Court hardly notice any material illegality

or irregularity which warrants interference in the order impugned granting ex-post facto sanction to the Exchange Deed.

22 As such, petition fails, dismissed.

[NITIN W. SAMBRE, J.]