IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13558 OF 2018

Dalmia Charity Trust
Through its Authorized Trustee .....Petitioners.

Vs.

M/s. Perfect Infra
Through Authorized partners & Anr. .....Respondents.

WITH

WRIT PETITION NO. 13857 OF 2018

M/s. Perfect Infra
Through Authorized partners ....Petitioners.

Vs.

Dalmia Charity Trust
Through its Authorized Trustee & Anr. ....Respondents.

Mr. P.S. Dani, Senior Advocate I/by Mr. Pavan Patil for the Petitioner in WP No 13558 of 2018.
Mr. V.B. Naik, Senior Advocate a/w Mr. S.D. Patil I/by Mr. P.S. Gole for the Petitioner in WP No. 13857 of 2018.
Mr. S.D. Rayrikar AGP, for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 18th JUNE, 2019.

<u>P.C.</u>:-

By the present petitions, Petitioners have impugned the

Judgment and Order dated 14th September, 2018 passed in Application No. 340 of 2016 under Section 36(1) (a) of the Maharashtra Public Trusts Act, 1950 (for short, *"MPT Act"*) by the Joint Charity Commissioner-I, Maharashtra State, Mumbai, rejecting the Application.

2 Heard Shri. P.S. Dani, the learned Senior counsel for the Petitioner-Trust, Shri Vineet B. Naik, the learned Senior counsel for M/s. Perfect Infra i.e. prospective purchaser and the learned AGP for the Respondent State. Perused the entire record annexed to the Petitions.

3 Shorn off unnecessary details, the brief facts giving rise to the present Petitions can be summarized as under:-

(i) The Petitioner in Writ Petition No. 13558 of 2018 is a Public Trust known as Dalmia Charity Trust. The said Trust is registered under the provisions of MPT Act having P.T.R. No. A-1591 (Mumbai). The Trust owns immovable property consisting of two buildings namely Dalmia and Anand Sagar, totally comprising of 89 tenants. The said buildings stand on a piece and parcel of land bearing CTS No. 263 in Town Planning Scheme (TPS) Mahim-III, admeasuring about 1925.39 square meters situated at T.H. Kataria

Marg, Matunga (West) Mumbai-400 016. The said Dalmia and Anand Sagar buildings have been constructed in the year 1918 and 1958 respectively and as of today, the said buildings require extensive repairs.

(ii) The record indicates that, by an Agreement to Lease dated 27th February, 1956 the trustees of the Trust agreed to lease an area admeasuring about 900 sq. yards to Shri A.S. Anand, Shri V. Parmar and Shri. J.S. Anand for a period of 99 years from 1956 with right to construct a ground plus three story building thereon. The said lessees thereupon constructed a building known as 'Anand Sagar' on portion of the said area leased to them.

(iii) As per Clause No. 17 of the scheme of Trust-Deed, the trustees have power to sell the immovable property of the Trust. It is the case of the Petitioner Trust that, the Trust was in huge arrears of taxes which were payable to the Municipal Corporation of Greater Mumbai and the said arrears had accumulated to the tune of Rs.12,00,000/- (Rupees Twelve Lakhs only). That, the trustees from their own funds as well as from the recovery from the arrears of rent have cleared the arrears payable to the Municipal Corporation. That, as the structure of the said buildings is quite old, it requires regular repairs. That, the Trust does not have required funds to carry out the repairs of the said structures.

(iv) In view of the said difficulties faced by the Trust, the Board of Trustees in its meeting held on 22nd December, 2015 unanimously resolved to sell the immovable property together with the structure and all its liabilities on '*as is where is basis*' and a valuation report of it was obtained from Shri. Hitendra Gangwar, a Government Registered Valuer dated 2nd January, 2016. The said Shri Gangwar, valued the said immovable property of the Trust at Rs.9,14,00,000/- (Rupees Nine crores Fourteen Lakhs only).

(v) The Trust, thereafter through their Advocate issued a public notice calling for the offers from the public at large for sale of the said immovable property on '*as is where is basis*' and '*with 100% earnest money*', to be deposited at the time of bidding. The said notice was published in three newspapers namely '*Asian Age*', '*Mumbai Lakshadeep*' and '*Jagrug Times*'.

(vi) In response to the said public notice, the Petitioner-Trust received only one offer from M/s. Perfect Infra, who expressed willingness to purchase the said immovable property on '*as is where is basis*' for a consideration of Rs.10,50,00,000/- (Rupees Ten Crores

Fifty Lakhs only) by its Offer Letter dated 11th February, 2016.

(vii) After acceptance of the said offer of M/s. Perfect Infra, the Petitioner-Trust and M/s. Perfect Infra entered into a Memorandum of Understanding dated 7th March, 2016.

(viii) The Petitioner-Trust after completing the above mentioned formalities, filed an Application bearing No. 340 of 2016 under Section 36(1)(a) of the MPT Act before the Charity Commissioner, Maharashtra State, Mumbai in the month of April 2016 seeking permission to sell the said immovable property belonging to the Trust. The reasons for seeking permission to sell the property have been elaborately mentioned in the Application and more particularly in paragraph Nos. 8 and 9 of the said Application.

(ix) The record indicates that, after filing of the said Application till passing of an Order dated 27th September, 2017 by this Court in Writ Petition Nos. 7667 of 2017 and 7679 of 2017, in the interregnum, various Orders were passed by the learned Charity Commissioner, which are not necessary to be mentioned while deciding the present Petitions. Suffice it to say that, by the said Order dated 27th September, 2017, this Court issued certain directions to the Charity Commissioner.

(x) The Charity Commissioner was directed to publish a fresh advertisement in the newspapers named therein and to indicate the reserve price of the Trust property in question at Rs.15,00,00,000/- (Rupees Fifteen Crores only). The office of the Charity Commissioner thereafter, again published notice in the newspapers and in furtherance thereof, M/s. Perfect Infra has submitted its bid for the said offer at Rs.15,00,00,000/- (Rupees Fifteen Crores only) and deposited the said amount with the Trust.

4 The learned Joint Charity Commissioner, by the impugned Order dated 14th September, 2018 has again rejected the said Application No. 340 of 2016 thereby, refusing to grant permission to the Trust to sell its property to M/s. Perfect Infra.

The learned Joint Charity Commissioner, in its impugned Order has observed that, the written argument of the Applicant does not reveal that, any other documentary evidence is placed on record showing the number of tenants. That, the valuation report of M/s M. B. Sabnis dated 26th March, 2018 does not reveal that, another building i.e. Anand Sagar Building is in damaged condition and requires urgent repairs. That, in view of the decision of the Supreme Court in the case of *Union of India & Ors. Vs. A. Ajit Singh* reported in

AIR 1997 (SC) 2669, the apportionment of compensation is in the ratio of 60% to the tenants and 40% to the landlord. That, all the civic amenities are within one Kilometer from Matunga Road station and even if the property is in possession of the tenant, still the prudent landlord will get much better price than what has been offered by the bidder. The learned Joint Charity Commissioner has observed that the Applicant Trust is entitled to get at least 40% of the valuation, ascertained by the valuer.

The learned Joint Charity Commissioner has relied on the Ready Reckoner rates prevailing in the said area and after doing mathematical calculation has observed that, the value of the residential and commercial premises in the said locality is much higher. The learned Joint Charity Commissioner has finally recorded his conclusion that, the Trust is not getting fair, reasonable and adequate amount from the transaction and ultimately rejected the Application by its impugned Order.

5 Both the learned counsel while assailing the impugned Order dated 14th September, 2018 submitted that, the rent recoverable from the tenants of the said buildings is meager in comparison with the extensive repairs which are required to be carried

out by the Trust for the said buildings. They submitted that, the said buildings namely Dalmia and Anand Sagar were constructed in the year 1918 and 1958 respectively and the life of its structural stability has worsened. They submitted that, as there are 89 tenants in the suit property, no other person or entity has offered its bid to redevelop the property and/or to purchase it. They submitted that, the learned Joint Charity Commissioner has failed to appreciate that, the property is occupied by the 89 tenants who are residing therein and the Trust is selling the said property on '*as is where is basis*'. They submitted that, the earlier valuers had valued the property keeping in mind the fact about the occupancy of the existing tenants and their lawful rights accrued therein whereas, the present valuer M/s. Patwardhan Consultants Private Limited has not taken into consideration the said vital aspect of occupancy of tenants.

Mr. Naik, the learned Senior counsel submitted that, the learned Joint Charity Commissioner has given undue importance to the written arguments submitted by the Petitioners than to the basic pleadings of the Petitioners in their Application filed under Section 36(1) (a) of the MPT Act. They further submitted that, the learned Joint Charity Commissioner has given undue importance to the minor technicalities than to the broader probabilities involved in the present case and particularly, the fact that the Dalmia building is about 100 years old and in case of any untoward incident, the Trust will be held responsible for not taking proper care of their tenants.

They further submitted that, the aspect of Ready Reckoner Value, which weighed in the mind of the learned Joint Charity Commissioner has no legal basis for it, as the Ready Reckoner Value is for a new structure and its market value prescribed by the Government for applying/levy of Stamp duty towards the transfer of property from one entity to other entity. They submitted that, mere mathematical calculations would be of no avail while testing a case from its practical view and on the anvil of law. The learned counsel for the Petitioners submitted that, a realistic and pragmatic view is necessary while granting permission under Section 36(1) of the MPT Act, as in the present case, the property is occupied by 89 tenants and their welfare has to be taken into consideration by the Trust so also, by the Joint Charity Commissioner while considering the said Application.

The learned counsel appearing for the Petitioners, therefore, prayed that the impugned Order passed by the learned

Joint Charity Commissioner, therefore be set aside by allowing the present petitions.

6 Perusal of record would indicate that, in pursuance of various newspaper notices, it is the Petitioner-Perfect Infra only, has submitted its bid to purchase the Trust property on '*as is where is basis*'. It is to be noted here that, Dalmia building has been constructed in the year 1918, is more than 100 years old and has lived its life. There are 58 occupants/tenants in the said building. Likewise, the other building namely Anand Sagar has been constructed in the year 1958 and 31 occupants/tenants are residing therein. The Petitioner Trust in its Application under Section 36 has categorically stated that, the said buildings are in need of extensive repairs. Undoubtedly, the interest of the occupants/tenants in the said buildings needs to be protected by carrying regular repairs so that the premises can be habitable to them.

As noted earlier, the Petitioner-Perfect Infra is the only bidder who has expressed its willingness to purchase the said property and has in fact, deposited the amount of Rs.15 crores with the Trust in furtherance of Order dated 27th September, 2017 passed in Writ Petition Nos. 7667 of 2017 and 7679 of 2017. It is to be further noted here that, in a megacity like Mumbai, no other person, firm or entity has shown its interest in purchasing the property of the Petitioner Trust on '*as is where is basis*'. It appears from record that, Valuer in its latest report has not taken into consideration the expenditure to be incurred by the purchaser towards the interim arrangement of the occupants/tenants of the said buildings during the redevelopment of the said property, such as compensation and/or rent to be paid to the tenants towards alternate accommodation till the buildings are redeveloped and premises therein are allotted to the tenants. It appears that the Valuer has not properly appreciated the said fact in the latest valuation report.

7 As per the guidelines enumerated by the Supreme Court in the aforesaid case of *Union of India & Ors. Vs. A. Ajit Singh (Supra)*, the apportionment of compensation is in the ratio of 60% to the tenants and 40% to the landlord. The Valuer i.e. M/s. Patwardhan Consultants Private Limited in the latest report dated 27th February, 2019 has valued the aforestated property of the Trust to approximately Rs.46,27,05,357/-.

During the course of arguments, Mr. Naik, the learned counsel for the bidder submitted that, the Petitioner-Perfect Infra has already deposited a sum of Rs.15 crores with the Trust and in the last more than one year the Petitioner Trust has received interest of about Rs.1 crore on it. He further, on instructions, submitted that the Petitioner-Perfect infra will pay an additional amount of Rs.1crore 50 lakhs to the Trust which makes the total consideration for the property to Rs.17.50 crores.

8 After taking into consideration the increased offer given by the Petitioner-Perfect Infra as noted hereinabove, which comes to Rs.17.50 crores, it appears that, the same comes to approximately 38% of the market value mentioned by the Valuer in its latest report dated 27th February, 2019. As noted earlier, there are no other offers received by the Trust to purchase the property. The interest and well-being of the tenants in the Dalmia Building is necessarily required to be taken into consideration. As noted earlier, the said building is 100 years old and lived its life. The Trust is selling the said property on '*as is where is basis*' and it appears that the guidelines issued by the Supreme Court in the case of *Union of India & Ors. Vs. A. Ajit Singh (Supra)* are nearly complied with. The price offered by the Petitioner Trust appears to be in the best interest of the Trust.

9 After taking into consideration aforestated factors, this Court is of the considered view that, the Application preferred by the Petitioner Trust under Section 36(1) of the Mumbai Public Trust Act, needs to be allowed and is accordingly allowed.

The Petitioner Trust is permitted to sell the aforestated property on '*as is where is basis*' to M/s. Perfect Infra on condition that, M/s. Perfect Infra to pay additional amount of Rs.1.50 crores within a period of eight weeks from today and subject to compliance of all necessary legal formalities.

Both the Petitions are allowed in the aforesaid terms.

(A.S. GADKARI, J.)