IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 514 OF 2018
WITH
CHAMBER SUMMONS NO. 65 OF 2019

Chandrakant Lavjibhai Mehta & Anr. ...Petitioners
vs
Shri Mahuva Kapol Viodyarthi Grih
Balashram and Orphanage Trust & Ors. ...Respondents

Mr.Raj Patel with Amruta Sawant I/b. Sonal Doshi & Co. for Petitioners.
Mr.Chetan Kapadia with Chhaya Asher I/b. K. Ashar & Co. For Respondent No.11.
Mr.Sanjeev Gorwadkar, Senior Counsel I/b. S.M. Kamble for Respondent No.3.
Mr.Khushbu Marwadi with Ashish Gabhale with Vivek Joshi I/b. Jay & Co. for Respondent No.12.

CORAM : S.C.GUPTE, J.

DATE : 15 MARCH 2019

P.C. :

The present chamber summons is taken out by the Petitioners for substitution of Petitioner No.2, who is now deceased. The chamber summons is allowed. Amendment to be carried out within one week. The writ petition is taken up for hearing forthwith by consent of counsel.

2 This writ petition challenges an order passed by the Charity Commissioner, Maharashtra State at Mumbai in an application made before him for revocation of sanction for sale of property under Section 36(2) of Maharashtra Public Trusts Act, 1950 (‘Act’). It is the case of the Petitioners, who were Applicants in the revocation application, that the sale in the present case was sanctioned by the charity commissioner in favour of

Respondent No.11 without proper application of mind. The Respondent trust owned a large piece of land admeasuring 7251 square metres with a structure on it at Mahuva in Banvnagar, Gujarat. The Respondent trust ran an orphanage on this property. It is submitted by the Petitioners that when the trustees of the Respondent trust proposed to sell the property to Respondent No.11 herein, an application was made to the charity commissioner under Section 36(1) of the Act seeking his sanction for the sale. It is submitted that the merits of the application were cursorily considered by the charity commissioner and without even properly advertising the sale, the property was proposed to be transferred to Respondent No.11. The Petitioners, in the premises, approached the charity commissioner with an application for revocation of his sanction under Sub-section (2) of Section 36 of the Act. The revocation was sought *inter alia* on the ground that the sanction was obtained by misrepresentation and concealing from the charity commissioner facts material for the purpose of such sanction. The revocation application was rejected by the charity commissioner *inter alia* on the ground that the charity commissioner had no jurisdiction to revoke his sanction, since the trust had already divested itself of the property in pursuance of the original sanction order passed under Section 36(1). Relying on various judgments including the judgment of this court in the case of **Mahadeo Deosthan, Wadali vs. Joint Charity Commissioner**[1]**,** the charity commissioner held that a sale deed having been executed in pursuance of the sanction order, it would not be proper to revoke the sanction; by reason of execution of the sale deed, the property had lost its character as a trust property. The charity commissioner also held that the sanction order passed by him was not the outcome of any

1 **1989 Mh.L.J. 269**

misrepresentation or concealment by the Respondent trustees. The charity commissioner held that the price of the property could not be said to be inadequate, since since whilst passing the order under Section 36(1), he had taken into account a valuation report of a Government Recognised Valuer estimating the value of the property at about Rs.20.17 crores. What the trust was offered as a consideration of the property was not only a sum of Rs.20.61 crores but even a constructed area admeasuring about 5000 sq.ft. carpet in the new building free of cost for a community hall and 3000 sq.ft. for parking on ownership basis. The charity commissioner observed that in the Petitioners' application for revocation, there was no indication of any specific figure higher than the offered consideration that anyone was offering for the property. In these circumstances, the revocation application was rejected by the charity commissioner.

3 In his challenge to the impugned order, learned Counsel for the Petitioners submits that there have been numerous judgments where our courts have insisted on the charity commissioner issuing a public notice before according sanction to a proposal for sale of trust property. Secondly, learned Counsel submits that a misrepresentation was indeed made by the trustees to the charity commissioner whilst seeking his sanction in the present case. Learned Counsel submits that under the scheme of the trust sanctioned by this court, an advisory board was required to be constituted for looking after the management and affairs of trust hostel and orphanage. Learned Counsel submits that the scheme required the trustees to give prior intimation to the advisory board, if and when they decided to sell any immovable property of the trust; such intimation was required to be given before even approaching the charity commissioner for his sanction under Section 36 of the Act. Learned Counsel submits that minutes of the trust do

not indicate that any such intimation was given.

4 So far as the jurisdiction of the charity commissioner under Section 36(2) of the Act is concerned, there have been quite a few judgments, at least four of our own court, where the courts have considered the nature and extent of the power granted to the charity commissioner under Section 36(2) of the Act for revoking his sanction earlier granted under Section 36(1) for sale of the trust property. The courts have held that after such sanction merges into a sale deed by which the property changes hands, it loses its character as a trust property, whereafter the power of revocation cannot be exercised by the charity commissioner in respect of such property. Our courts have held that once a sale deed is executed, the trust is divested of the property and a third party interest intervenes; at that stage it would not be open to the charity commissioner to revoke his sanction under Section 36(2) of the Act. The charity commissioner has correctly applied this law to the revocation application in the present case.

5 In any event, there is absolutely nothing to suggest that the property has been sold at undervaluation. There is indeed no alternative concrete offer on the scene. It is also to be noted that before seeking sanction of the sale, advertisements were issued in various newspapers, both in English and Gujarati, circulating in Mumbai as well as Bhavnagar, and adequate publicity was given to the proposed sale of the trust property.

6 So far as the Petitioners' case regarding misrepresentation on account of want of prior intimation to the advisory board is concerned, it is not in dispute that such a contention was not even raised before the charity

commissioner in the revocation application. The contention is raised for the first time before this court. It is not open to consider an objection like this at the stage of a constitutional challenge.

7 In any event, the charity commissioner has duly applied all relevant considerations. The charity commissioner has fundamentally come to the conclusion that the sale of the trust property was in the interest of the trust and that the consideration offered was adequate. The permission granted by the charity commissioner, thus, by itself is unassailable.

8 There is accordingly no merit in the challenge. The writ petition is dismissed.

(S.C. GUPTE, J.)