IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

[1] WRIT PETITION NO.4252 OF 1994

01 New Vrindavan Magas Vargiya
Sahakari Grihanirman Sanstha,
Maryadit, Harsool, Aurangabad,
through its Secretary,
Shri Mahadeo s/o Dnyandeo Nagargoje,
aged 37 years, Occ: Service,
R/o Bhagwan Niwas, Nageshwarwadi,
Aurangabad.

02 Vrindavan Vihar
Sahakari Grihanirman Sanstha,
Maryadit, Harsool, Aurangabad,
through its Secretary,
Shri Tanaji s/o Rangrao Patil,
aged 30 years, Occ: Service,
R/o Bhagwan Niwas, Nageshwarwadi,
Aurangabad. Petitioners

Versus

01 Shri Ram Mandir (Math),
Balaji Jaswantpura, Aurangabad,
through its President,
Shri Balasaheb R. Pawar,
R/o CIDCO, N-3,
Aurangabad.

02 The Joint Charity Commissioner,
Aurangabad, at Aurangabad,
Near Prin-Travel Hotel,
Adalat Road, Aurangabad. Respondents

Mr.K.D.Bade Patil, advocate for petitioners.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.S.K.Tambe, A.G.P. for Respondent No.2.

WITH
[2] WRIT PETITION NO.4261 OF 1994

Raghunandan Sahakari Graha-
Nirman Sanstha Limited, Pisadevi,
Taluka and District Aurangabad,
through its Chairman, Shri Narayan
Bhayyasaheb Deshmukh,
R/o Ramnagar, M-1-19/1,
N-2, CIDCO, Aurangabad Petitioner

Versus

01 Shriram Mandir (Math),
Balaji Jaswantpura, Aurangabad,
through its President Balasaheb
Ramrao Pawar, N-3, Plot No.136,
CIDCO, Aurangabad.

02 Lala Laxminarayan Jaiswal,
age: major, Occ: Business,
R/o Kumbharwada, Aurangabad,
Taluka and District Aurangabad.

03 The Joint Charity Commissioner,
Aurangabad, near Baba Petrol
Pump, Aurangabad, Taluka and
District Aurangabad. Respondents.

Mr.V.D.Salunke, advocate for the petitioner.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.S.K.Tambe, A.G.P. for Respondent No.3

WITH
[3] WRIT PETITION NO.4264 OF 1994

Vanjai Magasvargiya Sahakari
Graha-Nirman Sanstha Ltd.,
Pisadevi Road, Opp. New Mondha,
Jaswantpura, Harsul, Tal. &
District Aurangabad, through its
Chairman Shri Sakahari Himmatrao
Dhakane, R/12-B, New Shantiniketan
Colony, Aurangabad.

Versus

01 Shriram Mandir (Math),
Balaji Jaswantpura, Aurangabad,
through its President Balasaheb
Ramrao Pawar, N-3, Plot No.136,
CIDCO, Aurangabad.

02 Lala Laxminarayan Jaiswal,
age: major, Occ: Business,
R/o Kumbharwada, Aurangabad,
Taluka and District Aurangabad.

03 The Joint Charity Commissioner,
Aurangabad, near Baba Petrol
Pump, Aurangabad, Taluka and
District Aurangabad. Respondents.

Mr.A.M.Karad, advocate for the petitioner.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.S.K.Tambe, A.G.P. for Respondent No.3

WITH

[4] WRIT PETITION NO.4265 OF 1994

Vanrai Magasvargiya Sahakari
Graha-Nirman Sanstha Ltd.,
Pisadevi Road, Opp. New Mondha,
Jaswantpura, Harsul, Tal. &
District Aurangabad, through its
Chairman Shri Sakahari Himmatrao
Dhakane (Georaikar), R/12-B, New
Shantiniketan Colony, Aurangabad.

Versus

01 Shriram Mandir (Math),
Balaji Jaswantpura, Aurangabad,
through its President Balasaheb
Ramrao Pawar, N-3, Plot No.136,
CIDCO, Aurangabad.

02 Lala Laxminarayan Jaiswal,
age: major, Occ: Business,
R/o Kumbharwada, Aurangabad,
Taluka and District Aurangabad.

03 The Joint Charity Commissioner,
Aurangabad, near Baba Petrol
Pump, Aurangabad, Taluka and
District Aurangabad. Respondents.

Mr.A.M.Karad, advocate for the petitioner.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.S.K.Tambe, A.G.P. for Respondent No.3

WITH
[5] WRIT PETITION NO.4283 OF 1994

Chandrakant Ganpatrao Nikam,
aged 40 years, Occ: Business,
R/o New Kamal Niwas,
Khokadpura, Aurangabad. Petitioner

Versus

01 Shri Ram Mandir (Math),
Balaji Jaswantpura, Aurangabad,
through its President,
Shri Balasaheb Ramrao. Pawar,
R/o N-3, Plot No.136, CIDCO,
Aurangabad.

02 The Joint Charity Commissioner,
Aurangabad, at Aurangabad,
Near Prin-Travel Hotel,
Adalat Road, Aurangabad. Respondents

Mr.K.D.Bade Patil, advocate for petitioners.
Mr.S.S.Bora, advocate for Respondent No.1.
Mr.S.K.Tambe, A.G.P. for Respondent No.2.

CORAM : ROHIT B. DEO, J.

DATE : 30th January, 2020.

ORAL JUDGMENT :

1 These petitions involve common facts and questions of law and are, therefore, heard and decided by this common judgment.

2 These petitions are preferred challenging the common judgment dated 20.10.1994, rendered by the Joint Charity Commissioner, Aurangabad, in Application No.05 of 1993, whereby and whereunder, while according sanction under Section 36 (1)(a) of the Maharashtra Public Trusts Act, 1950 (for short, "the Act") to sell the land admeasuring 16 acres 2 gunthas from out of S.No.124 and land admeasuring 17 acres and 37 gunthas from out of S.No.125, situate at Harsool, Aurangabad, owned by Respondent No.1-Trust, the Joint Charity Commissioner enhanced the sale consideration to Rs.10 lakhs per acre. The petitioners herein are the successful bidders who participated in the tender process conducted by Respondent No.1-Trust and whose bids were between Rs.11.50 to Rs.17.25 per square feet, which approximately corresponds to Rs.5,00,940/- to Rs.7,51,410/-, per acre.

3 The facts are broadly admitted or incontrovertible.

4 The Respondent No.1 is a Public Trust registered under the provisions of the Act. Respondent No.1-Trust is the owner and is in possession of several landed properties including the agricultural land admeasuring 60. 20 acres forming part of S.No.124 and agricultural land admeasuring 17.37 acres forming part of S.No.125, situate at village Harsool, Aurangabad.

5 Respondent No.1-Trust resolved to alienate the said agricultural lands. The decision was predicated on the apprehension that it would be extremely difficult for the Respondent No.1-Trust to manage and protect the agricultural lands and that there was an imminent risk and threat of encroachment. The decision was also influenced by the fact that the said agricultural land was not a source of income for the Respondent No.1-Trust. For the aforesaid reasons, amongst others, the Respondent No.1-Trust took a conscious and collective decision to alienate the said agricultural lands.

6 It is not in dispute that pursuant to the resolution of the Trustees, a transparent and fair process of inviting bids from prospective purchasers was undertaken. The petitioners herein participated in the tender process, which was given due publicity, and emerged successful.

7 In view of the mandate of Section 36(1)(a) of the Act, the Respondent No.1-Trust applied for sanction to sell the said agricultural lands to the successful bidders.

8 One Tanaji Bapu Brahmane preferred objections to the prayer for grant of sanction contending that he was a tenant *qua* a portion of the agricultural land, which the Respondent No.1-Trust proposed to alienate. The said objection is rejected by the Joint Charity Commissioner, and for sound reasons. In the present petitions, it would not be necessary to spell out with particularity the nature of the objections raised by Shri Tanjaji Bapu Brahmane. Suffice it to note that the Joint Charity Commissioner recorded a finding that the material on record *inter alia*, the revenue record, clearly shows that the said objector is not in possession of any portion of the agricultural land qua which sanction was sought.

9 The Joint Charity Commissioner then proceeded to examine, whether it would be in the interest of Respondent No.1-Trust to grant sanction for the proposed sale. The issue is considered by the Joint Charity Commissioner in paragraph 16 of the judgment, which reads thus:

"16 As regards according sanction for

sale of the said lands, there is no harm to consider the prayer made by the applicant trust in the interest of the trust. There is reason to believe that encroachment is likely to be committed over the lands and then it would be very difficult for the applicant-trust to remove the same and thereby considerable loss or damage is likely to be caused to the trust. Moreover there is no income from these agricultural lands and on that ground also sanction for sale of these lands deserve to be accorded by this authority in the larger interest of the trust. Under these circumstances the necessity for sale of these lands has been established by the applicant trust in the instant proceeding."

10 The Joint Charity Commissioner, having recorded a finding that the sale was in the interest of Respondent No.1-Trust, proceeded to observe that the agricultural lands deserve to be sold at the rate of Rs.10 lakhs per acre. Beyond observing that the Respondent No.1-Trust would benefit from the enhancement of the sale consideration, there is no attempt made to ascertain the then prevailing fair market value of the agricultural lands. The conclusion of the Joint Charity Commissioner that the sale consideration ought to be Rs.10 lakhs per acre is sans reasons.

11 The learned Counsel for the petitioners contend that irrationality is writ large on the face of the judgment impugned. The submission is that the figure of Rs.10 lakhs per acre is picked out from thin air and such an approach does no justice to the role and responsibilities of the Joint Charity Commissioner as a guardian of charities. The learned Counsel for the petitioners would submit that there is not even a whisper in the judgment impugned which would give a clue or indicate the thought process of the authority and the figure, which is arrived at, is irrational and whimsical. The learned Counsel would submit that the petitioners have participated in the public tender process and have emerged successful bidders fair and square. Concededly, the sanctity or purity or transparency of the public tender process was not questioned, and is not in issue. The learned Counsel for the petitioners would submit that the bids, which have emerged in such process, are presumed to correspond with and reflect the fair market value, as then prevailing. The judgment impugned is, therefore, clearly flawed to the extent the sale consideration is arbitrarily enhanced to Rs.10 lakhs per acre, is the submission.

12 The learned Counsel for the Respondent No.1-Trust would submit, in rebuttal, that while the tender process was

transparent, and while the Respondent No.1-Trust is ready to concede that the bids may have reflected the fair price, as was then prevailing, the passage of 26 years, from the order impugned and the final hearing of the petitions, would make it imperative that the entire bidding process ought to be conducted afresh. The learned Counsel for the Respondent No.1 would submit that the paramount consideration would be the interest of the Trust and if a public auction or public tender, which may be held/resorted to today, is likely to fetch a substantial higher bid, this Court ought to order a fresh auction of tender. The learned Counsel for the Respondent No.1 has invited my attention to several decisions, including the decision of learned Single Judge in **Ashwin Jayantilal Shah Vs. Shri Panjarpol Sanstha & others**, 2001 (2) ALL MR 476, which articulates thus:

> *“17 There is no doubt about the fact that in matters, such as the present one, involving sale of property belonging to a Public Trust, there has to be a finality at some stage to the sale process. Unless a finality is arrived at some stage, the bidding or tendering process may run the risk of being long drawn out and an offer made by successful tenderers can be displaced by subsequent offers made by persons who are aware of the last price, which was quoted*

before the authority concerned. But, the interests of ensuring finality to the process ought not to detract from the importance of realizing a proper price. The difficulty in a case, such as the present one, is the absence of material before the Charity Commissioner which would furnish a realistic market value of the property of the Trust. The claim of unfairness, if any, made on behalf of the intending purchases, such as the petitioner, is in my view, of secondary importance, if at all that is entitled to any importance. However, the Charity Commissioner has placed reliance on the bid of the very party, whose conduct has drawn serious observations in the order of the Charity Commissioner. This approach and perspective, in my view, renders the entire process which was conducted by the Charity Commissioner, in the present case, fallible.

There is no doubt about the fact that as a principle of law, a Public Trust cannot be compelled to sell its property. The function of the Charity Commissioner is to grant or refuse permission to the Trust to sell its property to the intending purchaser with whose proposal the Trust has moved the Charity Commissioner. This principle of law was enunciated in a judgment delivered by a learned Single Judge of this Court Hon'ble Mr. Justice S.P.Bharucha [as the learned Judge *then was] in the case of Arunodaya Prefab Vs. M.D.Kambli & Ors. [1979 Mh.L.J. 104]. In paras 7 and 8 of his judgment, the learned Judge has observed as follows:*

> *"7 Under the terms of Section 36 read with Rule 24, therefore, the Charity Commissioner is concerned only with according or refusing sanction to the particular sale which the trustees propose to make. It is a proceeding which only concerns the trustees. To decide whether such sale is in the interest of the trust, he is empowered to make such enquiry as he deems necessary. It is for the trustees to decide whom they should sell the property to, subject to the Charity Commissioner's sanction to the proposed sale. If the Charity Commissioner needs, before according or refusing sanction, to ascertain the market price for the property proposed to be sold, he may issue such directions as he thinks necessary and it is obligatory upon the trustees to comply with those directions.*
>
> *8 In the present case, the trustees made an application to the Charity Commissioner for sanction of the proposed sale to the second respondent.*

To ascertain whether the price offered by the second respondent was reasonable, the Charity Commissioner directed the trustees to invite offers for the sale of the said property. The trustees declined to do so on the ground that they had already entered into an agreement for sale in favour of the 2nd respondent and had morally committed themselves to the 2nd respondent. There is substance in the contention of the trustees to which I shall advert later. The petitioners submitted offers for the purchase of the said land uninvited to the Charity Commissioner and the trustees. Under Section 36 it was not open to the Charity Commissioner to consider the said offers except only to the extent that they might disclose to him what might be the market value of the said land. It was certainly not open to the Charity Commissioner to sell the said land to the petitioners or to require the trustees to sell the said land to any other than the 2nd respondent. If he considered the proposed sale to the 2nd respondent adverse to the interest of the trust he could only decline sanction."

Similarly, in para 22 of his judgment, the learned Judge held that where an agreement for sale has been arrived at and is sent up for *sanction, the Charity Commissioner must satisfy himself of the adequacy of the price offered upon the basis of instances of sale in the locality or upon an architect's report or upon some similar basis.*

18 In the circumstances, I am of the view, the interest of justice requires that if the Trust desires to sell its property, the bidding process must be resorted to afresh. The petitioner shall, in terms of the statement which has been made and undertaking tendered on his behalf by the learned Counsel, deposit Rs.1 crore with the Charity Commissioner within one week and furnish an unconditional Bank Guarantee in the amount of Rs.3 crores of a nationalized bank to the satisfaction of the Charity Commissioner within a period of two weeks from today. The petitioner has furnished an offer in the amount of Rs.4.55 crores with a minimum floor price of Rs.4 crores in terms whereof he has undertaken to furnish a deposit of Rs,.1 crore and the Bank Guarantee of Rs.3 crores. In inviting the offers, the Charity Commissioner shall fix a reserve price of Rs.4 crores. The Trust shall invite fresh offers and it would be open to the petitioner as well as the 2nd and 3rd respondent to furnish their offers. In arriving at this decision, I have also had regard to the fact that the 3rd respondent

> *has deposited an amount of Rs.22.10 lacs with the Trust since November 1997. Even taking into account the interest on the said amount of Rs.3 crores, the enhanced offer, which has been furnished by the petitioner with a statement supported by the deposit and bank guarantee will, in my view, more than sufficiently protect the interest of the Trust."*

13 The submission of the learned Counsel for the Respondent No.1-Trust, that the interest of the Public Trust is paramount, is unexceptionable as a proposition of law. The law is too well entrenched and it would not, therefore, be necessary to delve in deep either in the submission which is canvassed or in the decisions on which reliance is placed. In all fairness to the learned Counsel for the petitioners, it is not even argued that the interest of the bidders would prevail over the interest of the Public Trust. Indeed, the petitioners concede to the principle urged by the learned Counsel for Respondent No.1-Trust and have, therefore, come forward with an offer which, in my considered view, is a fair offer which would strike a golden balance between the interest of the bidders and the interest of Respondent No.1-Trust.

14 The petitioners, who are successful bidders, have offered to purchase the agricultural land at the rate of Rs.3 crores per acre as against the rate of Rs.10 lakhs per acre, which was fixed by the Joint Charity Commissioner while according sanction.

15 The petitioners have participated in the tender process which was open to the public at large. As noted *supra*, it is not even an allegation that the tender process was manipulated or was otherwise improper. The petitioners have offered to pay enhanced consideration of Rs.3 crores per acre, which corresponds to the prevailing ready reckoner rate. It is, in this view of the matter, that I am not inclined to consider the submission of the learned Counsel for Respondent No.1-Trust that a fresh tender process be initiated. It is true that 26 long years have passed. It is obvious that there must have been a paradigm shift in land prices in the locality. But then, the petitioners cannot be blamed for the delay in hearing the petitions, which delay regretfully appears to be an inevitable facet of the justice dispensing system. In my considered view, to now ask the petitioners to participate in a fresh tender process along with the general public, and that too when the petitioners have offered to pay the current ready reckoner rate of Rs.3

crores per acre, would be a travesty of justice.

16 In the light of the discussion *supra*, the sanction granted by the Joint Charity Commissioner is confirmed subject to the modification that instead of Rs.10 lakhs per acre, the petitioners and other bidders, who may be interested in pursuing the bid, shall pay consideration of Rs.3 crores per acre for the agricultural lands in question.

17 Respondent No.1 has purported to cancel the bids of the petitioners and other bidders on the premise that the enhanced amount fixed in the judgment impugned is not deposited. Needless to record, the said action of the Respondent No.1-Trust shall stand quashed.

18 The petitioners shall deposit 25% of the total consideration within six weeks from the date of this judgment and the balance consideration shall be deposited within the next eleven months.

19 The Respondent No. 1 – Trust shall invest the entire sale consideration in fixed deposits with a Nationalised Bank. The interest thereon may be used for renovation and

development works.

20 Rule is made absolute in the aforesaid terms.

21 Pending Civil Applications do not survive and stand disposed of.

ROHIT B. DEO
JUDGE

adb