

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.7683 OF 2014

Karmveer Kakasaheb Wagh Education	}	
Society, Amrutdham, Panchvati,	}	
Nasik-422 003	}	
Regn. No.MH/202/Nashik/5/1/1970	}	
Through its Chairman	}	
Shri.Balasaheb Deoram Wagh	}	
Dist-Nashik	}	...Petitioner

V/s.

- | | | | |
|----|---------------------------------|---|---------------|
| 1. | Shri.Vyankatesh Mandir Trust | } | |
| | PTR No.A-348, Nashik, Tapovan, | } | |
| | Through its Trustees : | } | |
| | 1. Swami Krushnacharya Guru | } | |
| | Shatkopacharya | } | |
| | 2. Swami Govindacharya Guru | } | |
| | Balbhadracharya | } | |
| | 3. Swami Ramchndra Guru | } | |
| | Shatakopacharya | } | |
| | All R/at Shri.Vyankatesh Mandir | } | |
| | Tapovan, Panchvati, | } | |
| | Nashik-422 003 | } | |
| 2. | Ajay Murlidhar Bajaj | } | |
| | R/at Bunglow No.7, | } | |
| | Hecienda Colony | } | |
| | Uday Baug, Pune-13 | } | |
| 3. | Joint Charity Commissioner | } | |
| | Nashik, Ragion, Nashik | } | |
| 4. | Bhaskar Laxman Jadhav | } | ..Respondents |

WITH

CIVIL WRIT PETITION NO.7881 OF 2014

- | | | | |
|----|---------------------------------|---|---------------|
| 1. | Shri.Vyankatesh Mandir Trust | } | |
| | PTR No.A-348, Nashik, Tapovan, | } | |
| | Through its Trustees : | } | |
| | 1. Swami Krushnacharya Guru | } | |
| | Shatkopacharya | } | |
| | 2. Swami Govindacharya Guru | } | |
| | Balbhadracharya | } | |
| | 3. Swami Ramchndra Guru | } | |
| | Shatakopacharya | } | |
| | All R/at Shri.Vyankatesh Mandir | } | |
| | Tapovan, Panchvati, | } | |
| | Nashik-422 003 | } | ...Petitioner |

V/s.

- | | | | |
|----|---------------------------------|---|---------------|
| 1. | Karmveer Kakasaheb Wagh | } | |
| | Education Society, Amrutdham, | } | |
| | Panchvati, Nasik-422 003 | } | |
| | Regn. No.MH/202/Nashik/5/1/1970 | } | |
| | Through its Chairman | } | |
| | Shri.Balasaheb Deoram Wagh | } | |
| 2. | Ajay Murlidhar Bajaj | } | |
| | R/at Bunglow No.7, | } | |
| | Hecienda Colony | } | |
| | Uday Baug, Pune-13 | } | |
| 3. | Joint Charity Commissioner | } | |
| | Nashik, Ragon, Nashik | } | |
| 4. | Bhaskar Laxman Jadhav | } | ..Respondents |

Mr.P.B. Shah for the Petitioner in Writ Petition No.7683 of 2014

Mr.K.S. Patil for the Petitioner in Writ Petition No.7881 of 2014.

Mr.S.D. Rayrikar, AGP for Respondent No.3 in both Petitions.

Mr.Atul P. Singh for Respondent No.2 in both Petitions.

CORAM : C.V. BHADANG, J.

RESERVED ON : 20th DECEMBER 2019

PRONOUNCED ON : 07th JANUARY 2020

JUDGMENT

1. Rule made returnable forthwith. The learned counsel for the respondents waive service. Heard finally by consent of parties.

2. The challenge in both these petitions is to the order dated 03rd March 2014 passed by the learned Joint Charity Commissioner, Nashik below Exhibit-74 in Application No.23 of 2005. As such they are being disposed of by this common judgment.

3. Karmaveer Kakasaheb Wagh Education Society

(‘Society’ for short) and Vyankatesh Mandir Trust (‘Trust’ for short) are both registered under the Bombay Public Trust Act, 1950 (‘Act’ for short). The trust is the absolute owner of the agricultural land bearing Survey No.275 admeasuring 5 H 37 R situated at Panchvati, Nashik. In the year 1994 the trust had decided to sale 9 Acres of land from out of the aforesaid survey number pursuant to which a public notice was issued. The fourth respondent Mr.Bhaskar Laxman Jadhav was the highest bidder at Rs.2.5 lakhs per acre totalling to Rs.22.5 lakhs. The trust accepted the said offer and an application under Section 36 of the Act was filed before the Charity Commissioner for permission in the year 1996. The learned JCC granted sanction for sale 06th February 1998 which was partially modified on 19th June 1998 imposing condition that the sale transaction shall be completed within one year from 19th June 1998. It appears that the transaction could not be completed within stipulated time.

4. In the year 2001 the trustees of the trust and Mr.Bhaskar Jadhav mutually agreed for extension of time to

complete the formalities and the consideration was enhanced to Rs.75 lakhs. Accordingly the JCC was moved again for extension of time to execute the sale deed on the revised terms. However, it appears that the matter again fell through and in January 2002 the trustees moved the JCC for revised permission to sale the land to persons other than Mr.Bhaskar Jadhav and others. On 02nd May 2003 the learned JCC rejected both the applications i.e. for extension of time and revised sanction.

5. On 15th August 2004 Mr.Bhaskar Jadhav and trustees of the trust entered into yet another agreement for extension of time to complete formalities and consideration was further enhanced to Rs.125 lakhs. Accordingly a second application for extension of time was made before the JCC on 20th July 2005 which came to be rejected.

6. On 19th February 2007 the trustees of the trust issued a fresh public notice for sale of the trust land in pursuance of which the petitioner-society gave its highest bid of

Rs.43 lakhs per acre on 23rd February 2007.

7. Mr.Bhaskar Jadhav and others filed Writ Petition No.1502 of 2007 challenging the order dated 24th July 2006 rejecting the second application for extension of time. According to the petitioner-society it was not joined as a party respondent in the said petition nor the trust brought to the notice of this Court, the highest bid offered by the petitioner-society.

8. It appears that on 28th August 2008 Mr.Bhaskar Jadhav and trustees of the trust entered into a compromise as a result of which this Court set aside the order dated 24th July 2006 and second application for extension of time was remitted back to the learned JCC for deciding the same afresh.

9. The petitioner-society sought impleadment in the second application for extension, which was disallowed on 29th February 2008. The petitioner-society challenged the same before this Court in Writ Petition No.7863 of 2008. This Court

on 24th April 2009 remanded the entire matter to JCC to decide as who should be the purchaser of the said land and to consider all the bids received, pursuant to the public notice dated 19th February 2007 including the bid of the petitioner-society.

10. Mr.Bhaskar Jadhav and others challenged the said order before the Hon'ble Supreme Court in SLP No.30469 of 2009 which was dismissed on 11th December 2012.

11. Normally this should have put an end to the matter as it was open to the Charity Commissioner to decide all the bids as directed by this Court in the order dated 24th April 2009. However, it is at this stage that the second respondent Mr.Ajay Murlidhar Bajaj filed an application (Exhibit-74) for his impleadment purportedly under Section-73A of the said Act which was resisted by the trust.

12. The learned Charity Commissioner by an order dated 03rd March 2014 has partly allowed the application. Feeling aggrieved, both the society, as well as the trust are

before this Court.

13. I have heard the learned counsel for the parties and perused record.

14. It is submitted by the learned counsel for the petitioners that the impleadment could not have been allowed, on the ground that the intervenor is a person interested, within the meaning of Section 2(10) of the Act. It is submitted that by virtue of the change report No.198 of 1988 being accepted on 01st September 1989 the aforesaid land has become absolute property of the trust without any condition. It is submitted that the second respondent is acting at the behest of the Mr.Bhaskar Jadhav who has lost the matter upto the Hon'ble Supreme Court.

15. The learned counsel for the second respondent has supported the impugned order. It is strenuously urged that the land was gifted by his father Mr.Shrinivas Bajaj as per affidavit-cum-agreement dated 05th November 1982 with a specific

condition that the same shall not be sold without the permission of the donor or his legal representatives.

16. The learned counsel has referred to the contents of the said affidavit and in particular clause-3 thereof. It is submitted that even in the enquiry in change report No.198 of 1988 the second respondent and his mother Thakurdevi Bajaj made it clear that the property is gifted with the specific condition that it shall not be sold without permission of the donor or his legal representatives. It is submitted that the JCC is justified in allowing the second respondent to intervene in the matter.

17. I have carefully considered the rival circumstances and the submissions made. The only ground on which the second respondent is seeking, intervention is that the subject land was owned by his father Shri.Shriniwas and was donated to the trust on 05th November 1982 with the specific condition that it shall not be sold without permission of the donor or his legal representatives. It is submitted that this fact is not

brought to the notice to the JCC. It is therefore submitted that the second respondent has rightly been allowed to intervene in the matter before the application for sanction is considered by the JCC.

18. It is necessary to note that when in the earlier round the Joint Charity Commissioner had granted permission for sale in favour of Mr.Bhaskar Jadhav on 06th February 1998 the petitioner had not made any attempt to interven in the matter. It is significant to note that the initially application for such permission was filed in the year 1996 and it is for the first time that the intervention is sought on 12th March 2013 after Mr.Bhaskar Jadhav has lost upto the Hon'ble Supreme Court.

19. In so far as the ground for intervention is concerned a bare perusal of the affidavit does show that as per clause-3 there was a condition that the land shall not be sold without permission of the legal representatives. However, at the same time the affidavit recites that in the event such transfer is made the second respondent and his mother or the heirs will have no

claim on the sale consideration. Perusal of the affidavit *prima facie* shows that the land was being looked after by Swami Shatkopacharya Guru Balibhadracharya from the year 1956. However, the land continued to be in the name of the second respondent and his mother. In the enquiry in change report No.198 of 1988 the second respondent and his mother were noticed and they raised similar contention about the conditional grant/donation which is noticed by the Assistant Charity Commissioner in his judgment and order dated 01st September 1989. However, the operative part clearly shows that while recording the property in the name of the trust and allowing the change report no such condition is attached. The said order has attained finality. Be that as it may the principle consideration before the JCC while deciding the application under Section 36 of the Act is to ensure that the interest of the trust is protected and the permission has to be granted having regard to the interest, benefit and the protection of the trust. It is evident that the JCC is bound to consider the application within the parameters of Section 36 of the said Act. The decision of the Hon'ble Supreme Court in the Special Leave

Petition No.30469 of 2009 dated 11th December 2012, which is reported in AIR-2013-SC-523 would show that the Charity Commissioner is directed to have a fresh look on the sale of the trust land in accordance with the direction of this Court in the order dated 24th April 2009 in Writ Petition No.7863 of 2008. Paragraph No.59 of the judgment in the case of Bhaskar Jadhav (Supra) reads thus :-

59. For the reasons mentioned above, we decline to grant special leave to appeal to the petitioners for suppression of a material fact and direct the Charity Commissioner to have a fresh look at the sale of the Trust land, subject matter of this petition, in accordance with the directions of the High Court. However, we leave it open to the Charity Commissioner to permit all the parties before it to submit fresh offers for the Trust land and if deemed necessary, a fresh public notice for sale of the Trust land may be issued. On the basis of the bid given by respondent No.1 as disclosed to us in Court, we make it clear that the price for the sale of the Trust land shall not be less than Rs.3.87 crore.

20. Considering the overall circumstances and looking to the ground on which the intervention is sought in my considered view it could not have been allowed only on the purported ground that the second respondent is a person interested in the trust particular in view of the fact that the application for sanction has to be considered within the parameters available under Section 36 of the Act in the light of the decision of the Supreme Court as above.

21. It is necessary to note that the matter about sale of the land is pending from the year 1994 and deserves to be concluded one way or the other at the earliest.

22. In the result both the petitions are allowed. The impugned order dated 03rd March 2014 is set aside and application at Exhibit-74 filed by the second respondent is hereby dismissed. The Joint Charity Commissioner shall decide the application as expeditiously as possible. In the circumstances there shall be no order as to costs.

C.V. BHADANG, J.