

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3338 OF 2019

Bai Zaverbai Purshottam Nathu Charitable Trust ...Petitioner
vs
The Charity Commissioner Maharashtra State And Anr. ...Respondents

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Mr. Sharan Jagtiani, Senior Advocate, a/w. Ms. Gulnar Mistry, Mr. Parag Kabadi and Mr. Yash Dhruva, i/b. DSK Legal, for the Petitioner.

Mr. Kedar Dighe, AGP, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATED: 21 FEBRUARY, 2020

P.C.:

. Heard learned Counsel for the parties. Rule. Rule taken up for hearing by consent of Counsel.

2. This writ petition challenges an order passed by the Charity Commissioner, State of Maharashtra at Mumbai on an application made to him under Section 36 of the Mumbai Public Trusts Act, 1950 ("Act").

3. Short facts of the case may briefly be noted as follows :-

 The Petitioner is a Public Charitable Trust registered under the Act. It owns the subject property, which is a plot of land of 3113.26 sq.mtrs. or thereabouts. There are three structures on the plot. The

structures have been occupied by tenants. There are about 50 tenants, who are in occupation of various premises in these three structures. The trust itself is in occupation of one room in the structures. It is also in possession of a temple in the subject land. It is an admitted position, and also considered so by the learned Charity Commissioner, that the structures were in a dilapidated condition and there has already been a notice of demolition issued by the Municipal Corporation of Greater Mumbai in respect of the structures. On these facts, the trust was desirous of selling the subject land. It initially found a purchaser by the name of Geecy, who had offered to purchase the subject plot for a sum of Rs.15.50 crores. After entering into an understanding with this purchaser, the Petitioner trust applied for Charity Commissioner's sanction under Section 36 of the Act. The permission was not, however, issued by the Charity Commissioner *inter alia* on account of want of sufficient publicity for the proposed sale. The Charity Commissioner also noted that there was resistance from tenants of the property. The trust, in the premises, dropped its original proposal of selling the subject plot to M/s. Geecy. The Petitioner trust, in the premises, gave up its original proposal of selling the subject land to M/s. Geecy and instead re-initiated sale proceedings. It issued public notices in leading newspapers circulating in the locality and, with adequate publicity as well as time given to prospective purchasers, proposed to sell the subject property. The sale notices, however, did not elicit any response from any third party. In time to come, tenants of the subject property themselves found a purchaser, who is Respondent No.2 to the present writ petition. The trust, thereupon, entered into negotiations with Respondent No.2 and came to an understanding, which is reflected in an

MOU signed between them sometime in March 2016. The MOU provides for a consideration of Rs.15.50 crores for sale of the subject land, as against the valuation by a Government approved valuer for a sum of Rs.14 crores. The sale was subject to conditions. At the relevant time, the property was admittedly affected by a proposed rail project; a metro line was proposed to pass through the property. The MOU between the parties provided for the purchaser to either get the property released from the proposal of metro line or seek appropriate NOC from Metro Rail Corporation to enable the plot to be developed. If neither of this was achieved, the MOU gave an option to Respondent No.2 to terminate the MOU and seek refund of monies paid under the MOU. (The purchaser had paid a sum of Rs.1.5 crores under the MOU to the Petitioner trust.) On these facts, an application was made by the Petitioner trust to the Charity Commissioner under Section 36 of the Act for the latter's permission for the proposed sale. By his impugned order, the Charity Commissioner refused to grant the permission. That is how the Petitioner trust has approached this Court challenging the impugned order passed by the Charity Commissioner.

4. It is apparent from the impugned order that the reasons cited by the Charity Commissioner are two fold. Firstly, it has been noted by the Charity Commissioner that because of the metro line passing through the subject plot, as of now, the plot was in an undevelopable condition; in any event, any development of the subject plot would require an NOC from MMRDA for redevelopment which was likely to come with conditions. The Charity Commissioner was, accordingly, of the view that it would be risky to arrive at any MOU or

contract of development. The second reason cited by the Charity Commissioner for denying permission to the Petitioner trust is that the tenant were not parties to the proposed MOU and that the facts of the case indicated that the interest of the tenants deserved to be protected. In the absence of the tenants, the Charity Commissioner was of the view that their interest would be a hurdle in protecting the interest of the trust.

4. None of the two reasons cited by the learned Charity Commissioner is valid. So far as the metro line is concerned, the MOU between the parties did envisage the risk of the metro line and, accordingly, had made suitable provisions. The sale was conditional upon either deletion of the subject plot from the proposal of metro line or an appropriate NOC from MMRDA for development of the plot consistent with the metro project. The MOU provided for the responsibility of the purchaser to obtain either such deletion or NOC and the sale did hinge on such compliance. Besides, it does transpire, and it is not disputed, that the proposal of passing of the metro line through the subject plot has since been dropped by the authorities and, as of now, the subject plot is not affected by the metro line. Incidentally, this development is termed by learned AGP, appearing for the State, as something against the Petitioner trust. It is submitted that the Petitioner trust never pointed out this aspect to the Charity Commissioner and in as much as this aspect has a material bearing on the controversy before the learned Charity Commissioner, the Petitioner was at fault and the petition could not be entertained. As we have noted above, the MOU itself contemplates the possibility of the plot being released from the

proposal of metro line. The consideration provided for in the MOU was premised on this condition and if this condition is satisfied, there is all the more reason why the proposal must go through.

5. So far as the tenants are concerned, we are at the stage of the MOU. Detailed documentation will follow the MOU. It is pertinent to note that the tenants themselves have brought this development proposal and it is at their instance that the proposal has been entertained by the Petitioner trust. The tenants, not being party to the MOU, therefore, cannot be said to be a hindrance or lacuna, which should vitiate the MOU or invite rejection from the Charity Commissioner.

6. Accordingly, none of the reasons cited by the learned Charity Commissioner has any material bearing on the controversy. The impugned order, thus, deserves to be quashed and set aside and the permission deserves to be accorded to the Petitioner trust for the proposed sale.

7. Rule is, accordingly, made absolute and the writ petition is allowed in terms of prayer clauses (b) and (c), which are quoted below :

(b) A writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the case and, after going into the legality, validity and propriety thereof, quashing and setting aside the impugned order dated

16 August 2019 (Exhibit “A” to the petition);

(c) For a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India granting sanction under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 for sale/redevelopment of the said property in pursuance of the Memorandum of Understanding dated 28 March 2016 (Exhibit “O” to this petition) and directing Respondent No.1 to record such sanction in the file of the Petitioner maintained by Respondent No.1.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2020.03.02
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(S.C. GUPTE, J.)