

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2069 OF 2018

Ramdeobaba Developers and Builders, through its Partners and others
...Versus...
The Joint Charity Commissioner, Civil Lines, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri D.V. Mahajan, Counsel for petitioners
Shri Sanjeev Deshpande, Addl. G.P for respondent no.1 & 2
Ms Radhika Bajaj, Counsel for respondent nos. 4 & 5
Shri R.R. Gour, Counsel for respondent no. 3(A)

CORAM : AVINASH G. GHAROTE, J.
DATE : 04.03.2020

1. Heard learned Counsel for the parties. The present petition challenges the order dated 25.10.2011, passed by the Charity Commissioner, Nagpur in Application No.2/2009, whereby permission u/s 36 (1) of the Maharashtra Public Trusts Act, for sale of the property was granted to the trust, subject to the decision of Special Civil Suit No.24/2009 pending before the Civil Judge, Senior Division, Wardha.

2. The contention of the petitioners is that, on an advertisement being issued calling for tenders for sale of the property of the trust, the petitioners had applied for and their bid being highest, an agreement came to be executed in their favour on 22.03.2006. An application thereafter, was filed before the Charity

Commissioner, for grant of permission u/s 36 (1) of the Maharashtra Public Trusts Act. The Joint Charity Commissioner, by order dated 23.08.2006 granted permission, in Application No.12/2006. One of the conditions, in the permission was that the sale-deed shall be executed within a period of six months from the date of the order.

3. By an application dated 07.06.2007, extension of time was sought at the behest of the petitioners, which was granted vide judgment dated 10.10.2007, by extending the time limit for execution of the sale-deed by eight months, with a clear understanding that if the sale-deed is not executed within the extended time, the sanction order would be treated as cancelled and shall stand ceased and the purchaser would himself remain responsible for the consequences and his earlier deposit would stand seized.

4. As the sale-deed was not executed within aforesaid time, another application for extension of time at the behest of the purchaser was filed on 22.10.2007, which was registered as Misc. Civil Application No.44/2007. The learned Charity Commissioner, considering his earlier judgment dated 10.10.2007, rejected this application by an order dated 03.07.2008. This order of rejection was not challenged.

5. The trust thereafter, issued an advertisement dated 19.10.2008 calling for fresh tenders. It is material to note, that the present petitioners participated in this fresh tender process, in which the bid of the petitioners was of Rs.5,01,000/- per acre as against which the offer of the respondent No.4 and 5 was Rs.11,05,000/- per acre. The bid of the respondent Nos. 4 and 5 was

accordingly accepted. There was an agreement of sale accordingly executed between the trust and the respondent Nos.4 and 5.

6. The trust thereafter, applied to the Charity Commissioner, under Section 36(i)(a) of the Maharashtra Public Trusts Act, for grant of permission, which was registered as Application No.2/2009. The learned Charity Commissioner by judgment dated 25.10.2011 granted permission, subject to decision of Special Civil Suit No.24/2009 pending before the Civil Judge, Senior Division, Wardha.

7. This judgment dated 25.10.2011, was challenged by the present petitioners in this Court by way of Writ Petition No.2215/2012, which came to be dismissed by order dated 17.10.2012 on the ground, that the petitioners had already approached the learned Joint Charity Commissioner, Nagpur, by invoking the powers u/s 36(2) of the Maharashtra Public Trusts Act, and therefore, could not be permitted to take recourse to two remedies at the same time. It is stated by the learned Counsel for the trust, that in fact, the application under Section 36(2) of the Maharashtra Public Trusts Act was not filed by the present petitioners, but by some other persons who are interested in trust. The said application is presently stated to be pending.

8. It is, thus, apparent that the earlier challenge dated 25.10.2011 was rejected for the reasons stated in the order dated 17.10.2012, which was at the instance of the petitioners. That being the position, it was necessary for the petitioners, to have made a disclosure in the present petition regarding the order dated 17.10.2012. The instant petition in fact in para 10 and 15 makes a

reference to Writ Petition No.2215/2012, but does not disclose the order dated 17.10.2012, by which the same came to be dismissed.

9. It is trite that once the earlier petition challenging the judgment dated 25.10.2011, came to be dismissed, for any ground/reason whatsoever, it was necessary for the petitioners to have made a disclosure of the same in the instant petition as is required by the rules in this regard. That apart, once Writ Petition No.2215/2012, challenging the judgment of the Joint Charity Commissioner, Nagpur, dated 25.10.2011 came to be dismissed, it was not permissible for the petitioners to file another petition challenging the same judgment, dated 25.10.2011.

10. In that light of the matter, the petition clearly suffers from suppression of material fact, which has a direct bearing upon the matter in issue and therefore, cannot be entertained on this ground alone. Even otherwise on merits also the offer as made by the petitioner in less than 50% of the offer as received by the trust. The offer of the petitioner therefore, has rightly been rejected. The writ petition is, therefore, dismissed. In the circumstances, there shall be no order as to costs.

JUDGE