

Urmila Ingale

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

WRIT PETITION NO. 11927 OF 2018

Shri Prakash D.Kambli

....Petitioner

Vs.

Shri Jyotiba Dev Trust
through trustees

1A) Smt.Chandrabhaga Malhari Shete and anr. Respondents

Mr.Balasaheb R.Deshmukh, for the Petitioner.

Mr.Rushikesh C.Barge, for Respondents No.1A to 1C.

Mr.S.H. Kankal, AGP for State.

CORAM : M. S. KARNIK, J.

DATE : 03rd MARCH, 2021

P.C. :

. Heard learned Counsel for the Petitioner.

2. The Petitioner is challenging the impugned order passed by the Joint Charity Commissioner, Pune refusing the application seeking permission to sell the land under Section 36(1) of the Maharashtra Public Trusts Act, 1950 (for short ' the said Act'). Respondent No.1 is a trust. The trust holds land bearing Gat No. 319 admeasuring 0.61 R on which there is a

temple of Jyotiba Dev. In respect of other portion of land, Gat No. 320 admeasuring 1 Hectar and 50 R, it is the contention of the Respondent No.1 - trust that the same is barren land. Learned Counsel for Respondent No.1 - trust submitted that the land cannot be put to any use as there is high tension line passing through the land and even the national highway is cutting the land dividing the same into two portions. He further submitted that there is underpass which cuts across the land in question reducing the potential of the land. In his submission, trust is in need of money to reconstruct the temple and for this purpose, application was made under Section 36 of the said Act.

3. The Petitioner is the highest bidder. Learned Counsel for the Petitioner states that he had bid for Rs. 32 lakhs and pursuant to the valuation of the land shown in the valuation report which was on record, the bid was increased by him to Rs.69,35,000/-.

4. The Joint Charity Commissioner has rejected the application on the ground that the application lacks bonafide. Learned Joint Charity Commissioner was further of the opinion that considering the existing structure of the temple, the

applicant - trust does not require the huge amount and there is no compelling necessity to sell its property.

5. Learned Counsel for the parties invited my attention to the application at Exhibit 'A'. The reasons why the trust is compelled to sell the land are mentioned in the said application. One of the contention of the learned Counsel for Respondent No.1 trust is that portion of the land cannot be sold for the reasons mentioned in paragraph 7 of the application.

6. That the Respondent no.1 - trust is in need of fund for reconstructing the temple has not been doubted by learned Joint Charity Commissioner. The reason why the application is rejected appears to be that there is no justification for selling of the entire Gat No. 320 admeasuring 1 Hectar and 50R. Considering the contention of the trust that it is not possible to sell of portion of land Gat No. 320 for the reasons mentioned in paragraph 7 of the application, this aspect in my opinion requires reconsideration by learned Joint Charity Commissioner.

7. In these circumstances, the impugned order is set aside. The matter is remitted back to learned Joint Charity

Commissioner to consider the application No. 62 of 2015 afresh on merits and in accordance with law. The aspect whether there is no alternative but to sell the entire portion of land may be considered in the light of the application made and the reasons stated therein upon hearing the parties.

8. I may not be understood to have expressed any opinion on merits of the controversy. All contentions are kept open.

9. It is open for the Respondent No.1 Trust to bring to the notice of the learned Joint Charity Commissioner that prices of the land have since increased which aspect also be considered by the learned Joint Charity Commissioner considering the passage of time and it is open for him to pass appropriate orders as interest of trust necessitates. The trust is free to invite the Joint Charity Commissioner's notice to the supplementary reasons and any further reason as regards the necessity to dispose the entire portion of land.

10. Learned Joint Charity Commissioner is requested to decide the application as expeditiously as possible preferably

within a period of four months from today.

11. Parties to appear before the learned Joint Charity Commissioner on 22/03/2021.

12. Writ Petition is disposed of.

(M.S.KARNIK, J.)

Urmila
P.
Ingle
Digitally signed
by Urmila P.
Ingle
Date:
2021.03.03
15:05:18 +0530