Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2517 OF 2021
IN
WRIT PETITION NO. 3894 OF 2019

Ganesh Ramchandra Jadhav ... **Applicant**
in the matter between
Govardhan Sanstha (Reg.) Wai, through its Trustees Shivanand L. Chounde & Anr. ... **Petitioners**
V/s.
The State of Maharashtra & Ors. ... **Respondents**

Mr. Venkatesh A. Shastry for the applicant.
Mr. S.H. Kankal, AGP for the State.

CORAM : G.S.KULKARNI, J.
DATE : 7 October, 2021

P.C.:

1. Heard Mr. Shastry, learned counsel for the applicant and Mr.Kankal, learned AGP.

2. This Application was placed for hearing on yesterday's cause list, i.e., 6 October, 2021, however, as none appeared for the parties to the original proceedings (Writ Petition No. 3894 of 2019), hearing of this application was adjourned for today permitting Mr. Shastry, learned counsel for the applicant to serve a fresh notice on the advocate appearing for the parties in the main proceedings. He has, accordingly, served a notice informing of the listing of this Application for today. However, despite such service,

none appears for any of the parties to the writ petition. Accordingly, I have heard Mr. Shastry. The prayers as made in the application are as follows:

> "a) This Hon'ble Court may kindly allow this Application.
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> b) This Hon'ble Court may kindly permit the applicant to withdraw amount of Rs.1 crore deposited vide receipt dated 30th March, 2021 with the registry of this Hon'ble High Court by D.D. No. 020261 drawn on Union Bank of India."

3. The relevant facts are:

The applicant had filed an Intervention Application bearing I.A. (St.) No. 499 of 2021 in the above Writ Petition. In the year 2015, the original petitioners had invited bids for development of land admeasuring 2H 48 Ares in Survey No. 90, Hissa No. 6 at Village Dabewadi, District Satara. Two bids were received by the petitioners. One of the bid was of the applicant and other bidder was respondent no. 3-Mahadeo Shankar Khairmode to the original petition. The petitioner-trust considering these two bids passed a resolution in favour of respondent no. 3 without considering the applicant's offer, which according to the applicant was more beneficial to the trust. A resolution was passed against the applicant on 4 January, 2016, on the basis of which the trust filed application before the learned Charity Commissioner under section

36(1) of the Maharashtra Public Trust Act for grant of approval for the proposed development of the said land, on the terms and conditions of the tender submitted by respondent no. 3-Mahadeo Shankar Khairmode. On such application of the Trust, the Joint Charity Commissioner, Pune passed an order dated 22 October, 2018 in Application No. 3 of 2016 thereby rejecting the said application.

4. Being aggrieved by the said order dated 22 October, 2018 passed by the learned Joint Charity Commissioner, the trust approached this Court in the above Writ Petition. An interim order dated 26 February 2021 was passed by this Court (M.S. Karnik, J.) on the said writ petition, recording that respondent no. 3 had offered a bid price of Rs.46,60,000/-. It was observed that during the course of hearing of the petition, the applicant/ intervener had agreed to offer a sum of Rs.75 lakhs. By further order dated 11 January, 2021 this Court (M.S. Karnik, J.) called upon the applicant/intervenor to take instructions whether they are willing to deposit a sum of Rs. 75 lakhs. Further hearing of the Writ Petition took place on 20 January, 2021 wherein a statement on behalf of the intervenor was made that the intervenor would deposit Rs. 75 lakhs in the registry within a period of two weeks

which was accepted. As the applicant/intervenor could not deposit the amount which a period of two weeks, further extension of one week was granted to the applicant/intervenor to deposit the said amount. However, as the cheque which was submitted by the applicant stood dishonoured. On this backdrop, this Court (M.S. Karnik, J.) had taken up the final hearing on this petition on 26 February, 2021 and while making the following observations in paragraphs 6, 7 and 8, the Court allowed the petition in terms of the orders passed in paragraph 9. The relevant extract of the said order reads as under:

> "6. When the matter was listed for admission today, Mr. Kapse, learned counsel appearing on behalf of the Intervenor with all humility at his command requested that time to deposit the amount of Rs.75 lakhs be extended and in fact submits that the Bankers cheque is ready to be deposited.
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> 7. Considering that the time was granted on the earlier occasions and in view of the fact that the cheque was dishonoured, I am not inclined to accept the request made by Mr. Kapse. Learned senior advocate further pointed out that even the cheque deposited was not even from the account of the intervener. I restrain from making any further observations.
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> 8. The Respondent no. 3 was called upon in these circumstances to match the offer made by the Intervener. The Respondent no. 3 on instructions submits that he is willing to offer sum of Rs.80 lakhs and submit to the procedure which will now be adopted by the Joint Charity Commissioner for completing the sale. The parties to approach the Joint Charity Commissioner for completion of the sale formalities and procedures. The submissions made by the learned senior advocate deserves to be accepted.
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> 9. Hence, the following order:

"**O R D E R**

(1) The Writ Petition is allowed.

(2) The impugned order is set aside.

(3) Application No. 3 of 2016 before the Joint Charity Commissioner is allowed subject to the payment of Rs.80 lakhs by the respondent no. 3 in terms of further directions as may be issued by the Joint Charity Commissioner.

(4) The parties to appear before the Joint Charity Commissioner on 10.03.2021.

5. The applicant/intervenor, being aggrieved by the order passed by this Court allowing the Writ Petition, approached the Supreme Court in Civil Appeal No. 2748 of 2021 (arising out of Special Leave Petition (C) No. 4969 of 2021). In such proceedings, the Supreme Court passed the order on 18 March, 2021 directing the applicant to deposit an amount of Rs.1 crore in the registry of this Court within a period of two weeks and file an affidavit in regard to the deposit of the said amount. The said order of the Supreme Court was complied by the applicant/intervenor as on 30 March, 2021 the applicant deposited with the registry of this Court an amount of Rs.1 crore. A copy of the receipt issued by the registry is placed on record as Annexure A-2 of this Application. The applicant/intervenor accordingly produced the proof of deposit of such amount before the Supreme Court and in view of such compliance, the Supreme Court by a detailed order dated 19 July,

2021, set aside the orders passed by this Court and restored the Writ Petition to the file of this Court. The following observations of the Supreme Court as contained in paragraphs 18 to 21 of the said order are required to be noted, which reads thus:

> 18. The offer which was made by the second respondent initially was in the amount of Rs 50 lakhs. It was only after the appellant had indicated before the High Court that an amount of Rs 75 lakhs would be offered and failed to do so, that the second respondent stated before the High Court that he was willing to match the offer of the appellant and to go beyond it by an amount of Rs 5 lakhs. At the present time, the appellant has deposited an amount of Rs 1 crore before the High Court of Judicature at Bombay. To accept the bid of the second respondent in the amount of Rs 80 lakhs will deprive the trust of the opportunity of realising the full market value. In this view of the matter, we are of the view that the submission which has been urged on behalf of the appellant is worthy of acceptance. We are unable to subscribe to the submission of the second respondent for the simple reason that the course of dealings would indicate that even the second respondent has progressively enhanced its offers from Rs 50 lakhs to Rs 75 lakhs and, thereafter, to Rs 80 lakhs. Before this Court, Mr Vikas Mishra has now indicated that the second respondent would be willing to match the offer of the appellant of Rs 1 crore. There has undoubtedly been a default on the part of the appellant before the High Court. But the decision of the High Court to award the sale in favour of the second respondent would cause serious jeopardy to the interests of the public charitable trust. The manner in which the second respondent has increased his offer in driblets leads to a reasonable inference that the true value of the property has not been realized. Hence, the order of the High Court to dismiss the petition cannot be sustained. We are not inclined to conduct an auction process within the precincts of this Court and are accordingly of the view that the appropriate direction to be passed would be to require the third respondent to conduct the auction process by inviting fresh bids after a proper valuation and to issue further consequential directions for the submission of a report in the proceedings before the Bombay High Court. We accordingly issue the following directions:
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> > (i) The third respondent shall obtain a fresh valuation report for the property, and shall fix an upset price which shall not, in any circumstances, be less than the amount of Rs 1 crore. The upset price shall be based on the valuation,

subject to the minimum of Rs 1 crore;

(ii) The third respondent shall invite fresh bids by publishing an advertisement in at least two widely circulated local newspapers for the sale of the property;

(iii) Both the appellant and the second respondent shall be at liberty to submit their fresh bids, which shall be considered by the third respondent together with all other bids which are received;

(iv) The third respondent shall, upon the bids so received, submit a report to the High Court of Judicature at Bombay, which shall consider the report while passing such final directions as are necessary in the writ petition;

(v) Consequently, the impugned order of the High Court dated 26 February 2021 dismissing the petition shall stand set aside. The writ petition, being Writ Petition No 3894 of 2019, shall hence stand restored to the file of the High Court. The High Court shall upon the receipt of the report of the third respondent take an appropriate view and decide upon the merits of the petition in respect of which all the rights and contentions of the parties on all aspects are kept open; and

(vi) The amount of Rs 1 crore which has been deposited with the Bombay High Court by the appellant, shall be invested in a Fixed Deposit of a nationalized bank to be renewed periodically during the pendency of the writ petition and shall abide by such further directions as may be issued by the High Court. In the event that the appellant desires to bid for the property at the auction, it would be open to him to move a Civil Application before the High Court to adjust the amount of Rs 1 crore deposited in pursuance of the order of this Court towards the bid.

19. We clarify that there was no challenge before this Court in regard to the findings on the aspect of legal necessity in selling the subject property, as a consequence of which, the present order shall not disturb the findings of the High Court in that regard. The third respondent shall act immediately on the receipt of a certified copy of this order and endeavour to complete the process on or before 31 December 2021.

20. The appeal is accordingly allowed in the above terms.

21. Pending applications, if any, stand disposed of.”

6. Mr. Shastry has argued that the applicant is now not in a financial position to continue with his interest in the bids so invited, as also he is not interested in the fresh exercise which would be now undertaken as directed by the Supreme Court. Mr. Shastry submits that the applicant, therefore, intends to withdraw the amount of Rs.1 crore as deposited in this Court on 30 March, 2021.

7. Mr. Shastry submits that there is no embargo whatsoever under any order for the applicant to withdraw the said amount. He submits that also for the reason that the applicant is no more in a financial position to participate in the fresh bids, the applicant be permitted to withdraw the amounts so deposited. He submits that the proceedings before the Supreme Court stands disposed of and the amounts so deposited is subject to the orders now to be passed by this Court in the pending Writ Petition.

8. Learned AGP has also not disputed as to what has been contended by the applicant, he submits that there can be objection if the amount so deposited is returned to the applicant. In any event, the applicant is not originally a party to the writ petition, he had intervened in the Writ Petition on the earlier occasion as

noted above and being aggrieved by the final order passed in the Writ Petition had approached the Supreme Court. There is no opposition to this application from the parites to the Writ Petition. Learned AGP would also contend that it cannot be that the applicant is forced to participate in the fresh tender/bids being invited.

9. In the above circumstances, in my opinion, if the applicant is not willing to participate in the fresh bids in any manner directly or indirectly, that would now be called as directed by the Supreme Court, the applicant then is entitled to return of the amount of Rs.1 crore as deposited in this Court on 30 March, 2021.

10. Although this application has been served on the parties to the writ petition, i.e., the petitioner as also respondent no. 2, none of them are represented despite notices. There is also no written opposition to this application in any manner. The application is allowed in terms of prayer clause (B), which reads thus:

> "B) This Hon'ble Court may kindly permit the applicant to withdraw amount of Rs.1 crore deposited vide receipt dated 30 March, 2021 with the registry of this Hon'ble Court by D.D No. 020261 drawn on Union Bank of India."

11. Necessary steps be taken by the Registry within a period of

two weeks from the day this order is available to the parties, on presentation of the authenticated copy of this order.

12. Needless to observe that all the contentions of the parties on the original proceedings are expressly kept open.

13. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)