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

WRIT PETITION NO. 1164/2021

1] Shri Vilas Anand Kale,
Trustee, Aged about 69 years, Occ. Business,
R/o. "Laxmi Smruti", Ravishankar Shukla
Marg, Civil Lines, Nagpur.

2] Shri Milind Gangadhar Chitnavis,
Managing Trustee, Aged about 58 years,
Occ. Business, R/o. 402, C-Wing, Eden-3
Central Avenue, Hiranandani Garden,
Powai, Mumbai

3] Mrs. Archana Rajaram Dhanwatay,
Trustee, Aged about 72 years, Occ. Business,
R/o. 245-G, Ravishankar Shukla
Marg, Civil Lines, Nagpur.

4] Mrs. Sheila Narayan Ghatate,
Trustee, Aged about 78 years, Occ. Business,
R/o. 901, Asha Deep, 9, Hailey Road,
New Delhi.

5] Mrs. Suniti Vilas Kale,
Trustee, Aged about 63 years, Occ. Business,
R/o. "Laxmi Smruti", Ravishankar Shukla
Marg, Civil Lines, Nagpur.

6] Shri Anjan Yogesh Puri,
Trustee, Aged about 44 years, Occ. Business,
R/o. Dr. Dalal Compound, Katol Road,
Nagpur.

7] Shri Rahul Vilas Kale,
Trustee, Aged about 42 years, Occ. Business,
R/o. "Laxmi Smruti", Ravishankar Shukla
Marg, Civil Lines, Nagpur.

All Trustees of Smt. Sumati D.Pradhan's
Public Trust for Educational, Medical and
Social Welfare Relief, Nagpur. ..**Petitioners**

..versus…

The Joint Charity Commissioner,
Civil Lines, Nagpur ...**Respondent**

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Shri Sunil Manohar, Senior Advocate assisted by Shri Atharv Manohar, Advocate for petitioners
Shri K.L.Dharmadhikari, AGP for Respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 09/09/2021

(Oral Judgment)

Heard Mr. Sunil Manohar learned Senior Counsel for the petitioners and Mr. K.L.Dharmadhikari, learned AGP for the respondent.

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The present petition challenges the judgment dated 20.1.2020 passed by the learned Joint Charity Commissioner, Nagpur, rejecting the Application No. 206/2017, filed under Section 36 (1)(a) of the Maharashtra Public Trust Act, 1950, seeking permission to sell the land of the trust.

4] It is submitted that the trust owns the following immovable properties :

"A] Mouza Wajbodi, Tah. Katol, Distt. Nagpur, Mouza No. 303, Thak No. 412, P.H.No. 57

Survey No.	Area (Hectors)	Area (Acres)	Jama	Right
2	4.00	9.88	70.56	Bhumiswamy
77	14.83	36.65	0.87	Bhumiswamy
100	0.64	1.58	5.25	Bhumiswamy
183	2.63	6.50	2.12	Bhumiswamy
	22.10	54.61	78.80	

B] House property at Village Wajbodi, Tah. Katol, Dist. Nagpur, Ward No.1, House No.23, admeasuring 9463 sq.ft. which is bounded as under;

East	:	Road
West	:	House of Bhagatsingh Thakur
North	:	Road
South	:	Survey No. 2

C] House property at Village Wajbodi, Tah. Katol, Dist. Nagpur, Ward No.1, House No.137, admeasuring 27864 sq.ft. which is bounded as under;

East	:	Road
West	:	House of Pundlik Bhonge
North	:	Agricultural field of Nitin Dongre
South	:	Road",

which are all situated at village Wajbodi, Tq. Katol, Dist. Nagpur, which are agricultural and house properties. By a resolution dated 24.6.2017, the trust resolved to sell the said properties, for the reason that it was very difficult to maintain and protect the same and the trust did not have any budget to engage manpower or to deploy security on a permanent basis. There was also an apprehension of encroachment. The earlier attempts to cultivate the land by letting them to local villagers, had also not fetched substantial income on account of rent or otherwise. It was, therefore, decided that since it was impossible to manage the properties of the trust and since all the trustees were resident of Nagpur and it was not possible for them to time and again visit the properties so as to look after their upkeep and it was resolved to sell off the said properties and invest the sell proceeds out of the same for the objects of the trust.

5] It is also submitted that a valuation report was duly obtained in respect of the fair market value, which has been stated to be Rs, 1,86,03,000/- in the valuation report by the registered Valuer Shri S.H.Gondane, dated 6.11.2017. It is further submitted that the valuation of the trust property, as per the Ready Recknor available was Rs.1,33,12,200/- as indicated by the Valuation Certificate placed on record vide Documents at page Nos. 87 & 88 of the record. It is submitted that in pursuance to the above valuation, the trust had already floated a tender, in which a highest offer of Rs. 2,02,00,000/- had been received by the trust, in view of which the application under Section 36(1)(a) of the MPT Act was made.

6] It is submitted that on 28.8.2018, the learned Joint Charity Commissioner, Nagpur, was pleased to dismiss the application, being aggrieved by which the Trust had filed Writ Petition No. 1244/2019, wherein by an order dated 25.5.2019, the order of the Joint Charity Commissioner, dated 28.8.2018, was set aside and the matter was remanded back for fresh consideration. The matter thereafter was heard by the learned Charity Commissioner, who by the impugned order, dated 20.01.2020, had rejected the application, which is challenged in the present petition.

7] Mr. Manohar, learned Senior Counsel contends that the impugned order does not consider the basic parameters, on which the permission ought to be granted. He contends that the need of the trust to sell the properties, also has to be viewed keeping into consideration the difficulties faced in managing the properties as well as generating any income from the same. The learned Senior Counsel contends that when in a given case management of the properties considering its distance and absence of income are continuous, then the need to dispose of the properties clearly becomes manifest and in the interest of the trust, which has no other source of income. He further contends that since the said properties were not generating any income since long, the objects of the trust, have remained to be fulfilled. He contends that the requisite permission ought to have been granted to sell the properties so that the consideration received therefrom would be utilized and applied for furthering the aims and objects of the trust. He contends that the learned Joint Charity Commissioner, has failed to consider that the income shown in the audit reports of the trust was on account of the amount deposited by the proposed purchasers which was in turn invested in a fixed deposit carrying interest and therefore, could not be said as annual income being received by the Trust on account of utilization of the property of the trust. He further contends that merely because the details of the deposits were not stated in the application, that by itself would not entitle the learned Joint Charity Commissioner to draw an inference that there was suppression of material fact, as the same was clearly disclosed in the additional submissions at Exh. 39 filed on behalf of the trust. He therefore contends that merely on this fictitious ground the permission could not have been rejected.

8] It is further contended that the finding by the learned Charity Commissioner that there was no clear picture as to what were the plans and projects which the trust wanted to undertake would also not be a ground to disentitle the trust from selling the properties, as it is only upon receipt of the funds that any concrete plans could be made for the furtherance of the aims and objects of the trust. Learned Senior Counsel therefore contends that the impugned order is required to be quashed and set aside and the permission needs to be granted. Reliance is placed upon ***Suburban Education Society, Mumbai vrs. Charity Commissioner of Maharashtra State, Mumbai and others, 2004 (2) Mh.L.J. 792*** (paras 12, 16); ***Bara Imam Masjid Trust and others vrs. Charity Commissioner, Maharashtra State and others 2006 (1) Mh.L.J. 809*** (paras 8, and 9) and ***Cyrus Rustom Patel***

vrs. Charity Commissioner, Maharashtra State and others (2018) 14 SCC 761 (para 26).

9] Learned AGP Mr. Dharmadhikari submits that there is no concluded scheme placed on record to indicate the mode of investment of the funds which may be generated by sale of the properties of the trust. He further places reliance upon ***Ramchandra va Shri Maroti Sansthan, Ridhora vrs. Joint Charity Commissioner, Amravati***, **Writ Petition No. 62/2018**, decided on 11.2.2021, to contend that the land could have been put to agricultural use for generating income, even though the earlier attempts may have not generated any substantial income, as such efforts could be made again. He also places reliance upon ***Terna Public Charitable Trust / Joint Charity Commissioner and ors, 2011 (2) Mh. L.J. 879***.

10] In ***Suburban Education Society*** (supra), this court while considering scope and ambit of Section 36(1) of the Maharashtra Public Trust Act, has held as under :

> "12. From the perusal of the above section, it is clear that the Charity Commissioner is empowered to scrutinize any application for sale or transfer of the immovable property which is owned by the Trust <u>in order to ensure that the property is being sold for an adequate consideration and that the money is going to be utilised for fulfilling the aims and objects of the Trust and is not likely to be frittered away by the Trustees</u>. The Apex Court as also this Court has time and again held that the <u>Charity Commissioner should consider the need of the Trust and grant permission wherever the property of the Trust is being sold after following proper procedure so that the market value of the said property is received by the Trust</u>.
> ...
>
> 16. .... In our view the said observation made by the Charity Commissioner is absolutely unfounded inasmuch

> as the scope of authority which is exercised by the Charity Commissioner under Section 36(1)(a) is very limited. The Charity Commissioner in the first place is required to consider whether the Trust has a genuine need for the purpose of selling its immovable property and secondly whether the said property is being sold in the interest of the Trust and its beneficiaries. The Charity Commissioner is not supposed to substitute his own ideas and views vis-a-vis the functioning of the Trust. ...."

The learned Division Bench also relied upon **Madhukar Sunderlal Sheth and others vrs. S.K.Laul and others, 1993 Mh.LJ. 1107** and **Arunodaya Prefab vrs. M.D. Kambli and others, 1979 Mh.L.J. 104**.

11] In **Bara Imam Masjid Trust** (Supra), while considering the role of the Charity Commissioner in the matter of granting or rejecting permission under Section 36(1) of the Act, it has been held thus -

> "9. .... In my opinion, if the trust has taken the decision that they want to dispose of the property and enhance their objects by fulfilling more and other objects of the trust then in that event it is neither in the jurisdiction of the Charity Commissioner nor of this Court to substitute the decision of the said trust and go behind it. I am also of the further opinion that essentially it is the trustees who are supposed to determine how best they would and they can deal with the assets of the trust and that is for the benefits of the trust. The power conferred under Section 36(1) on the Charity Commissioner is to ascertain whether the property is sold in the interest of the trust and whether it is sold at the best price available to the trust. The Charity Commissioner cannot go into the validity of the decision whether the property should be rightly decided to be sold or not. In my opinion, the finding of fact whether it is in the interest of the trust or not to sell the property, the decision of the Charity Commissioner must be objective and based on material placed before him. The Charity Commissioner has only considered that it is not for a compelling need by holding that it seems that the trustees are interested in disposing of the property for their own personal benefits because they are likely to get a

> share of the said amount to themselves under the scheme which has been sanctioned by the Charity Commissioner. I am of the opinion that these are not the grounds on which the decision of the trustees to sell the property can be interfered with and/or set aside by the Charity Commissioner in exercise of jurisdiction under section 36(1) of the said Act........."

12] Further in **Cyrus Rustom Patel** (supra), the Hon'ble Apex Court laid down the consideration upon which the permission under Section 36 of the MPT Act has to be granted in the following words;

> "26. <u>The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. "the interest, benefit, and protection" of the Trust</u>. The expression that sanction may be accorded subject to such condition as the Charity Commissioner may think fit under Section 31(1)(b) and Section 36(1)(c). <u>The Charity Commissioner has to be objectively satisfied that the property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account the aforesaid triple classic requirements</u>. It is also open to the Charity Commissioner, in exercise of power of Section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of Section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to subserve the interest, benefit and protection of the Trust and its property".

13] It is thus apparent, that while considering an application under Section 36 of the MPT Act, the following factors are material :

a) the need as felt and determined by the trust;

b) whether such need is genuine, considering the financial position of the trust, its holdings, the income derived from the same, the resources available;

c) whether the alienation would be in the interest and for the benefit of the trust;

d) whether such alienation is for the protection and advancement of the aims and objects of the trust;

In considering and determining the existence of the above factors, the learned Charity Commissioner has to be objectively satisfied that the property should be disposed of in the interest of public trust and in doing so, he has a right to impose such conditions as he may think fit, taking into account the aforesaid requirements. In doing so the power of the Charity Commissioner extends to inviting offers from the members of the public and directing the trustees to sell or transfer the trust property to a person whose bid or quotation is the best having regard to the interest, benefit or protection of the trust [see ***shailesh Developers / Jt. Charity Commissioner , 2007(3) Mh. L.J. 717 (FB)***]. The Charity Commissioner in order to ensure that the funds so generated by sale, will be used for the benefit and purpose of the trust can also impose conditions as to its investment and use.

14] While determining the need and its genuineness, the following factors may be considered :

a) the management and control of the trust properties has become impractical, considering its location;

b) impossibility of the trustees to ensure protection of the properties on account of their being resident of some place other than where the properties are situated;

c) possibility of encroachment, which may lead to litigation for recovery of possession;

d) property being already encroached;

e) property being in a dilapidated condition, incapable of being repaired and the trust having no funds for its reconstruction or repairs;

f) the property is incapable of generating income; or this has been explored earlier and found to be financially un-viable;

g) there is no other source of income for the trust which can be used for fulfilling the object of the trust;

Rule 24 of the Bombay Public Trust Rules, 1952, also enumerates the examination of the necessity for the alienation of the property and the factors to be considered, while granting permission.

The above factors by any means are not the only parameters, and the decision per se has to be on a case to case basis, based upon the fact situation brought on record.

15] In view of the above position, when the record is examined, it clearly indicates as is spelt out from the affidavit dated 6.11.2019 by one of the Trustees that it has become impossible for the trust to manage the agricultural land and the house properties as the same is situated around 50 kms. from Nagpur, the nearest Railway Station being Katol which again is at a distance of around 10 kms. from Wajbodi where the property is situated. None of the trustees reside at Wajbodi or Katol, all reside at Nagpur. The earlier attempt to give the land on Theka in order to derive the income therefrom in the year 2014-15 for which a sum of Rs. 1,03,000 was received has also been brought on record. The failure of subsequent attempts, since 2015 onwards to generate any rental income from the said properties has also been stated therein, which practice was also discontinued in view of the apprehension that the land was attempted to be encroached by the relatives and friends of the persons to whom it was given on rent. The affidavit of one Suresh Shrinath Tajne as well as Kalpana Suresh Tajne substantiate this apprehension. It is thus in light of the above situation, considering the valuation certificates in respect of the said lands placed on record and the offer which was received, which is much more than the Ready Recknor price or the valuation made by the registered Valuer, that the learned Joint Charity Commissioner ought to have considered the application, which has not been so done. Thus the need as expressed appears to be genuine.

16] The apprehension on behalf of the learned AGP that the funds to be so received due to sale of the properties may not be utilized for the objects of the society, without there being anything indicating otherwise, is merely an apprehension which is unfounded as of now. This is clearly also not justified in view of the undertaking as contained in para 5 of the affidavit dated 3.9.2021, placed on record by the petitioners, which is reproduced as under :

> "5. The Petitioners undertake that the corpus of Rs.2,02,00,000/- which is to be invested in Government Bonds or Government Securities shall be kept untouched and intact, and shall not be spent except without the express consent of the learned Joint Charity Commissioner."

The willingness as expressed from the undertaking not to deal with the consideration to be received on account of sale of the properties, to keep it invested in Government funds and securities and to utilize the same, only with the express consent of the learned Joint Charity Commissioner, in my considered opinion, would address the said apprehension adequately.

17] The position as fell for consideration in **Shri Ramnchandra va Shri Maroti Samsthan** (Supra) relied upon by learned AGP, which has been rendered by me, was quite different than what is extant in the present matter. In **Shri Ramnchandra va Shri Maroti Samsthan** (Supra), the property was agreed to be sold at a consideration which was far less than the valuation of the property, as was found therein. That apart, the trust had sufficient funds as indicated by the balance in the bank account, as well as the balance sheet indicated the trust having advanced loans to third persons, in which situation, it was found that the trust had sufficient income including deposits and funds in the banks, due to which the rejection of the permission was upheld.

18] In ***Terna Public Charitable Trust*** (supra) the need was found to be not genuine, as the sale was sought to be done at a price less than the market value, the trust was in very good financial condition as it was found to be running engineering and medical colleges, the property was granted on lease to the trust by CIDCO at concessional rates only because the trust had showed its willingness to run a charitable hospital for the poor persons from the society from the nearly localities. These factors are absent in the present case as discussed above.

19] Thus, in view of the above discussion, the impugned order dated 20.1.2020 is hereby quashed and set aside, the application under Section 36(1)(a) of the MPT Act, as filed by the petitioners trust is hereby allowed, subject to the condition that the entire proceeds from sale of the said properties of the trust shall be invested in Government Bonds and Securities and shall not be spent without the consent of the Joint Charity Charity Commissioner.

20] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit