

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

WRIT PETITION NO.3483 OF 2015

1. Shri Avinash S/o Kishorchand Jaiswal,
Aged 58 years, Occ. Business,
R/o Yashwant Colony, Mohni Nagar,
Nagpur Road, Wardha.
2. Smt. Pratibha W/o Avinash Jaiswal,
Aged 46 years, occ: Household,
R/o Yashwant Colony, Mohni Nagar,
Nagpur Road, Wardha

....PETITIONERS

...VERSUS...

1. Shri Rammandir Deosthan, Pavnar,
Wardha, through Secretary
Mohan S/o Purushottam Kelkar,
Aged 59 years, Occ: Business,
R/o Kapda Line, Socialist Square,
Wardha.
2. Sudhakar S/o Gajanan Deshpande (dead)
R/o in front of Matru Seva Sangh,
Wardha.
3. Sanjay Ratiramji Satdeve,
Aged 36 years, Occ. Business,
R/o Sable Plot, Dhantoli,
Wardha.
4. Vinayak Moreshwar Deshpande,
Aged 63 years, Occ: Pensioner,
R/o Badhe Square, Sawarkar Marg,
Wardha.
5. Mohan S/o Purushottam Kelkar,
Aged 59 years, occ: Business,
R/o Kapda Line, Socialist Square,
Wardha.

6. Trimbak S/o Uddhavrao Deshmukh,
Aged 86 years, Occ. Pensioner,
R/o Office of Vishwa Hindu
Parishad, Dhantoli, Nagpur.
7. Laxman S/o Madhavrao Deshmukh,
Aged 84 years, Occ: Nil,
C/o Adv. H.L. Deshmukh, Sudampuri,
Wardha.
8. Joint Charity Commissioner, Nagpur
Civil Lines, Nagpur.

...RESPONDENTS

Mrs. Radhika Bajaj , Advocate for petitioners.
Shri R.M. Bhangde, Advocate with Shri S.S. Sarda, Advocate for respondent Nos.3&4.
Shri I.J. Damle, Assistant Government Pleader for respondent No.8.

CORAM:- V. M. DESHPANDE, J.
DATED :- JANUARY 19, 2021.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by
consent of learned counsel for the parties.

(2) Heard Mrs. Radhika Bajaj, learned counsel for the
petitioners, Shri R.M. Bhangde, learned counsel with Shri S.S.
Sarda, learned counsel for the respondent Nos.3 and 4 and
Shri I.J. Damle, learned A.G.P. for respondent No.8. Shri S.D.
Abhyankar, learned counsel for respondent No.1 is absent.

(3) The respondent No.2 is no more. The respondent
Nos.5 to 7 are not appearing in this Court though duly served with
notice of final disposal from this Court, which was issued
on 02.09.2015.

(4) This writ petition arises because the petitioners were aggrieved by the order dated 16.05.2015 passed by the learned Joint Charity Commissioner, Nagpur below Exhibit- 20 in application No.1 of 2014 for dismissal of the proceedings i.e. Application No.1 of 2014.

(5) The respondent No.1 is a Trust duly registered under the provisions of Maharashtra Public Trusts Act,1950 (hereinafter referred to as "M.P.T. Act,1950"). The Trust is having various immovable properties in Wardha district.

(6) An application was moved on behalf of the Trust under Section 36(1) of the M.P.T. Act, 1950 before the Joint Charity Commissioner, Nagpur seeking permission to dispose of the Trust's property by executing sale-deed. The proceedings were registered as Application No.2 of 2009. The learned Joint Charity Commissioner vide order dated 25.10.2011 allowed the said proceedings and permitted the Trust to dispose of the property bearing Survey No.302 (new 189) area of 15.19 acre to the present petitioners, subject to decision of the Special Civil Suit No.24 of 2009 pending on the file of learned Civil Judge Senior Division, Wardha.

(7) Trustee – Shri Sudhakar Gajanan Deshpande, who is no more and who is joined as respondent No.2 in this writ petition along with respondent No.3 Shri Sanjay Ratiramji Satdeve, filed an application Section 36(2) of the M.P.T. Act, 1950 before the Joint Charity Commissioner, Nagpur and sought revocation of the permission dated 25.10.2011 in Application No.2 of 2009 permitting the Trust to dispose of the property in favour of the present petitioners. The said application filed under Section 36(2) of the M.P.T. Act, 1950 was registered as Application No.1 of 2014 on the file of the Joint Charity Commissioner, Nagpur. During pendency of the said application, an application for amendment was moved by the applicants in the said proceedings and the said application was allowed by the Joint Charity Commissioner on 16.05.2015.

(8) The present petitioners, who were joined as non-applicant Nos.6 and 7 in application No.1 of 2014, moved an application (Exhibit-20) for dismissal of the said proceedings on the ground that in view of the permission granted to the Trust on 25.10.2011 and the conveyance deed is already executed in their favour. The application was contested and the Joint Charity Commissioner, Nagpur on 16.05.2015 dismissed the application

filed by the non-applicant Nos.6 and 7 in Application No.1 of 2014, that gives cause for them to approach this Court by filing this writ petition.

(9) Initially, in this writ petition, notice was issued on 24.06.2015. On 02.09.2015, notice for final disposal was issued making it clear that if in spite of service of notice the respondents fail to appear in the matter, the Court shall proceed to decide the matter on its own merits without issuing any fresh notice. While issuing the said notice, this Court has observed the proceedings under Section 36(2) of the M.P.T. Act, 1950 was filed by deceased respondent Nos.2 and 3, may go on but no final order shall be passed therein.

(10) This writ petition came up for hearing on 10.08.2016. After hearing the parties to this writ petition it was found that the issue involved in this writ petition needs consideration by the Larger Bench. This Court (Coram: A.S. Chandurkar, J.) in the order dated 16.09.2016 formulated the following question:

“Whether the power of revocation of sanction under Section 36(2) of the Maharashtra Public Trusts Act, 1950 on the ground that such sanction was obtained by fraud or misrepresentation or by concealing

material facts can be exercised even after execution of the sale-deed on the basis of such sanction under Section 36(1)(a) of the said Act”

(11) Thereafter, the question that was formulated was considered by Full Bench vide its judgment dated 27.04.2020 and in paragraph No.26, observed as under:

“26. In view of the aforesaid position of law, we answer the question referred to us as under :

(I) The power of revocation of sanction under Section 36(2) of the Maharashtra Public Trusts Act, 1950 on the ground that such sanction was obtained by fraud or misrepresentation or by concealing the facts, material for the purpose of giving sanction can be exercised even after the execution of a sale-deed or the multiple sale-deeds on the basis of the sanction granted under Section 36(1)(a) of the said Act.

(II) We overrule the two decisions – (i) Shri Mahadeo Deosthan, Wadali and others v. Joint Charity Commissioner, Nagpur and others, reported in 1989 Mh.L.J. 269, and (ii) Dr. Sam Sarosh Bhacca and others v. P.V. Kakde, Joint Charity Commissioner and others, reported in (1994) 96 Bom. LR 714, delivered by different Division Benches of this Court and all other decisions delivered by different Single Benches of

this Court, including the cases of - (I) Fatmabai B.Bachooali v. State of Maharashtra and others, reported in 1991 (1) Bom.C.R. 1, (ii) Arole Construction Pvt. Ltd. v. Shaikh Sadullah Shahabuddin Peerzade and others, reported in 2014 (4) Bom.C.R. 289, and (iii) Shri Motilal Girdharilal Sharma and others v. Shri Dattatray Bandu Jagtap and others, reported in 2006(2) ALL MR 121, following the view taken in Shri Mahadeo Deosthan's case, cited supra.

(III) Having answered the reference, we make it expressly clear that we have not examined the issue of remedies and defences available to the bona fide purchasers for valuable consideration without notice after the order of sanction is revoked under Section 36(2) of the said Act was passed and we leave it open to be agitated in appropriate proceedings.

(IV) We direct the Registry to place the matter before the appropriate Bench for disposal in accordance with law."

(12) In view of the aforesaid, now this writ petition is before this Court.

(13) As per the contentions of the petitioners, in the writ petition, before the matter was referred to the Larger Bench, the

position was that once the permission is granted by the Joint Charity Commissioner under Section 36(1) of the M.P.T. Act, an application for revocation of such a permission is not maintainable. The verdict of the Larger Bench rules that the application for revocation of the permission is maintainable in spite of execution of the sale-deed. In view of the said authoritative pronouncement from the Larger Bench the application filed by the present petitioners before the Joint Charity Commissioner for dismissal of the revocation proceedings was rightly rejected by the learned Joint Charity Commissioner by the impugned order dated 16.05.2015.

(14) The application filed by the deceased respondent Nos.2 and 3 in this writ petition for revocation of the permission granted by the Joint Charity Commissioner on 25.10.2011 is still pending on the file of learned Joint Charity Commissioner, Nagpur vide Application No.1 of 2014. Therefore, in the light of law laid down by the Full Bench, the Joint Charity Commissioner will have to decide the said application on its own merits.

(15) In view of above, I pass the following order.

- i) The writ petition is dismissed by upholding the order

dated 16.05.2015 passed by learned Joint Charity Commissioner, Nagpur dismissing the Application No.1 of 2014 (Exhibit-20) filed on behalf of the present petitioners.

ii) The Joint Charity Commissioner, Nagpur is hereby directed to decide the Application No.1 of 2014 pending on its file for revocation of sale permission dated 25.10.2011, in accordance with law, by giving opportunity of hearing to the parties to the said application.

iii) The parties to this writ petition are directed to appear before the Joint Charity Commissioner, Nagpur in Application No.1 of 2014 on 03.02.2021.

iv) On their appearance, learned Joint Charity Commissioner after giving them opportunity of hearing shall pass order, in accordance with law on the said application including permission to the parties to adduce evidence within a period of one year from 03.02.2021.

Rule is discharged. No order as to costs.

JUDGE

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