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

**WRIT PETITION NO. 62 OF 2018**

**PETITIONERS:** **1** Shri Ramchandra Va Shri Maroti Sansthan, Ridhora, Tq. Balapur, Dist. Akola, bearing P.T.R. NO. A-190/Akola, through its Trustee Pradeep Rangrao Deshmukh, aged 52 years, Occ. Agriculturist, R/o. Rang-Suman, Ridhora, Tq. Balapur, Dist. Akola.

2 Divakar Sadashivrao Deshmukh, aged 61 years, Occ. Service, R/o. Ridhora, Tq. Balapur, Dist. Akola.

**...VERSUS...**

**RESPONDENT**: Joint Charity Commissioner, Amravati Division Amravati, Tq. and Dist. Amravati.

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Shri A.R.Deshpande, Advocate with Mr. Z.Z.Haq, Advocate for petitioners.
Mr. N.R.Patil, AGP for respondent.

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**CORAM : AVINASH G. GHAROTE, J.**
**DATE : 11/02/2021.**

1] Heard Shri A.R.Deshpande, learned advocate for petitioners and Shri N.R.Patil, learned AGP for 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 order dated 18.7.2017 passed by the Joint Charity Commissioner, Amravati, whereby the application under Section 36 (1) of the Bombay Public Trust Act, seeking permission to sell Survey No. 208/3, admeasuring 2.85 hectares, as filed by the petitioner, has been rejected.

4] It is strenuously urged that the trust does not have any appropriate funds to meet the day to day expenses and expenses for other purposes of the trust. It is submitted that the trust is owning 30 acres of land at village Ridhora and to meet the expenses of the trust, it is necessary to sell the above land. In fact, the trust has already entered into an agreement to sell the above land with Jayant Suryakant Padgilwar and Dhananjay Vishwanath Tayade on 14.12.2015 for a consideration of Rs.58,00,000/-, out of which the trust has received a part consideration of Rs. 14,50,000/-. It is submitted that the consideration under the agreement dated 14.12.2015 was the proper consideration as per the market value of the property in the year 2015 and therefore, considering the need of the trust, the permission ought to have been granted. The Audit

Report, as on 31.3.2015, is pressed into service to support the submission that the income of the trust is insufficient for the expenses of the trust.

5] Perusal of the impugned order shows that on an earlier occasion, a similar application was filed by the trust bearing No. 13/2013 for a permission to sale Survey No. 89/2, admeasuring 1.15 hectares on the ground of renovation of temple, which came to be rejected by the Joint Charity Commissioner on 21.10.2016. Though it is submitted that the said order was challenged and consequently was set aside and permission was granted by this Court, nothing substantiating the same has been placed on record. That apart, it has not been averred as to what efforts the trust has undertaken to generate income from the lands held by the trust, all of which are agricultural lands as indicated from Mutation Register at page 71. When the trust has ownership and possession of agricultural lands to the extent of 30 acres, it is inconceivable that the same would not generate any income, if put to agricultural use. It is not a position that they are unable to be cultivated. In fact, the audit report itself indicates that at some point of time they were put to agricultural use and agricultural income was derived from the same.

6] This being the position, one cannot understand the logic behind the intention to sell the land owned by the trust in bits and pieces, without making any efforts to generate agricultural income from the same. If this modus operandi is permitted, the trust would be left with no land at all at one point of time. Though the impugned order indicates that the valuation of the property agreed to be sold in the year 2017 was Rs.1,73,08,000/- and the consideration for which it was agreed to be sold was Rs. 58,00,000/- only, however, as pointed out by Mr. Deshpande, the market valuation as per the Ready-reckner in the year 2015 was Rs. 43,63,000/-, for which reliance is placed upon the certificate as issued by the Sub Registrar, Balapaur, which is at page 69 of the record. The efficacy of the valuation, in my considered opinion, is a separate issue altogether and would crop up only in case if the permission is to be granted.

7] There is one more factor, which militates against the grant of permission. The audited balance-sheet for the year 2013 placed on record by the petitioner, shows a loan of Rs.2,54,500/- given in the previous year and a further loan of Rs.50,000/- given in the current year of 2013 by the petitioner to Mr. Pradeep Deshmukh. The balance in the Bank for this year is shown as Rs.17,33,256.65. In the audited balance-sheet placed on record by the petitioner itself for the year ending 31.03.2014, loans and advances to the tune of Rs.15,63,000/- have been shown to have been given to Sanjay Deshmukh, Pravin Deshmukh, Sangram P. Deshmukh, Yashwant P. Deshmukh and Dinkarrao Deshmukh. The audited balance-sheet as on 31.03.2014, shows the balance in the bank as Rs.4372/-, which is obviously due to the loan advanced by the petitioner Trust to the above persons. Nothing is pleaded in the application under Section 36 of the Maharashtra Public Trusts Act about the recovery of this amount. This clearly indicates that though the petitioner - Trust had funds, the same, have been loaned off to the persons named above for reasons best known. It is not the business of the petitioner to advance loans to third persons. On the one hand the petitioner – Trust, advances loans to the tune of Rs.15,63,000/- and on the other hand, raises a claim that it has no sufficient funds, for maintenance of the temple. This is another reason, why the application under

Section 36 of the Maharashtra Public Trusts Act as filed by the petitioner ought not to be granted. A perusal of the balance-sheets as placed on record, for the years 2013 and 2014, indicates that the expenses required for the day-to-day activities of the Trust are not much, and could easily be met from the funds which were at the disposal of the Trust. That apart, the balance-sheets further substantiate that the agricultural lands have been permitted to lay fallow, without putting them to any use. The petitioner-Trust would do well, to put the agricultural lands to use, so as to generate income and also to take steps to recover the loans and advances as made by it, which would immediately put it into surplus funds. It clearly appears that the Joint Charity Commissioner, Amravati while passing the impugned order, has not applied his mind to the position as reflected from the audited balance-sheets, for had he done so, an enquiry into the matter, would have immediately been ordered by him.

8] For all the above reasons, I do not see any infirmity in the order as passed by the Joint Charity Commissioner, Amravati, rejecting the application under Section 36 (1) of the Maharashtra

Public Trusts Act. The writ petition is therefore devoid of any merits and is dismissed. No costs.

**<u>JUDGE</u>**

Rvjalit

Rajesh Jalit

Digitally signed by Rajesh Jalit
Date: 2021.02.15 17:48:44 +0530