Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1346 OF 2022

Shri. Ramchandra Dev, Peth
Taluka: Walwa, District : Sangli,
A trust registered under provisions of
Maharashtra Public Trusts Act,
bearing registration No.A/430/Sangli
Through its trustee
Rajaram Shankar Gaikwad
Age : 52 Occu.: Service,
Residing at Islampur, Tal.: Walwa,
Dist.: Sangli. **.. Petitioner**

Versus

The Ld. Joint Charity Commissioner,
Kolhapur Division, Kolhapur. **.. Respondent**

....

- Dr. Uday P. Warunjikar a/w. Ms. Vaishnavi M. Gujarathi, Advocate for the Petitioner
- Mr. A.B. Kadam, AGP for the Respondent - State

....

CORAM : MILIND N. JADHAV, J.

Reserved on : JUNE 16, 2022.
Pronounced on : JULY 14, 2022.

JUDGMENT:

1. By the present Writ Petition, the Petitioner - Trust has prayed the following reliefs:-

> *" a) Be pleased to call for record and proceedings of the order passed by the Ld. Joint Charity Commissioner, Kolhapur in application no. 25 of 2019 under Section 36(1)(a) of the Maharashtra Public trust act and thereby rejecting the said application by an Order dated 15.11.2021.*
>
> *b) Be pleased to quash and set aside the order passed by the Ld. Joint Charity Commissioner, Kolhapur in application*

no. 25 of 2019 under section 36(1)(a) of a the Maharashtra Public Trust act and thereby rejecting the said application by an order dated 15.11.2021."

2. Petitioner is challenging the Order dated 15.11.2021 passed by the learned Joint Charity Commissioner, Kolhapur under the provisions of section 36(1)(a) of the Maharashtra Pubic Trusts Act, 1958 (for short **"the said Act"**) while rejecting Application No. 25 of 2019 for seeking permission to sell property bearing Gat No.798 admeasuring 1.15 hectors / Ares situated in village Peth, taluka Walva, District Sangli (for short **"the said land"**) belonging to the Petitioner. Petitioner has prayed for sale of the said land and for utilizing the sale proceeds for development of Petitioner's temple, renovation, construction of 'bhakta nivas' and marriage hall in the vicinity of its temple.

3. Respondent has argued that the impugned order has been passed after following the due process of law.

4. Such of the relevant facts which are necessary to adjudicate the grievance of the Petitioner are as follows:

4.1. Petitioner is a registered charitable Trust under the provisions of the said Act. Petitioner manages a temple of Lord Rama and which has appurtenant area admeasuring 1644.90 sq. mtrs. The temple is old and requires renovation and redevelopment, the total cost of which is approximately Rs.49,13,000.00.

4.2. Petitioner is owner of a land parcel bearing Gat No. 798 admeasuring 1.15 Hectors / Ares (**"the said land"**). The said land is vacant land and situated at a distance from the temple. Petitioner has decided to sell the said land and raise funds for renovation and redevelopment of its temple, construction of 'bhakta nivas' and 'marriage hall' in the temple premises / appurtenant premises.

4.3. On 19.7.2017, Petitioner published an advertisement in the local newspaper having wide circulation calling for offers/tenders. Four tenders were received, which were opened on 23.10.2017 in the meeting of the trust. The highest tender was accepted and a resolution came to be passed for its acceptance. Accordingly on 05.09.2018, Petitioner made an application to the Respondent for seeking permission under the provisions of section 36(1)(a) of the said Act. Alongwith the application Petitioner produced all relevant documents before the Respondent as required by law.

4.4. In consideration of the application, Respondent directed Petitioner to issue a fresh public sale notice, which was published on 06.02.2020 in two local newspapers.

4.5. In response to the fresh sale notice, two tenders were received, which were opened in the presence of the Respondent. The first offer was for Rs. 44,99,000.00 and the second offer was for Rs. 53,00,000.00. Both bidders were present and told to match the highest offer or increase the same. However, both bidders maintained their respective bids.

4.6. In furtherance of sale, on 23.11.2020, Respondent directed that a site inspection of the said land be undertaken.

4.7. On 29.01.2021, site inspection of the said land was conducted and an inspection report was prepared and placed before the Respondent. During inspection, three statements came to be recorded of the local villagers; statement of one Mr. Ramchandra stated that rate of sale of land in the vicinity of the said land would be around Rs.3,00,000/- per guntha; statement of one Mr. Rajaram stated that rate of sale of land in the vicinity of the said land would be around Rs.1,50,000/- per guntha whereas statement of one Mr. Dinkar Kadam stated that rate of sale of land in the vicinity of the said land would be around Rs. 12,00,000/-. It is pertinent to note that save and except the above statements, there was no other material evidence placed on record to justify the purported rate of sale of the land in the vicinity of the said land so as to arrive at the rate recorded as a benchmark for sale of the Petitioner's said land. It is further pertinent to note that Mr. Dinkar Kadam has subsequently filed affidavit on 19.01.2022 withdrawing his earlier statement pertaining to rate quoted for sale of land @ Rs.12,00,000/- per guntha in the vicinity of the said land.

5. In the above backdrop Respondent passed the impugned order dated 15.11.2021, *inter alia*, holding that the said land is likely to fetch Rs. Two to Three Crores and hence the offer of Rs.53,00,000/- received from the highest bidder was low and therefore rejected.

6. Before challenging the impugned order, Petitioner obtained details of comparable sale instances for sale of land parcels in the vicinity of the said land. It one such sale instance obtained by the Petitioner, the sale deed is dated 20.10.2011, wherein land cost is shown as Rs. 11,50,000/- for land admeasuring 11.5 gunthas. In another similar sale deed dated 19.11.2013, the land cost is shown as Rs. 3,20,000/- for land admeasuring 26 gunthas. A third sale deed dated 17.07.2020 is also sought to be relied upon which shows the land cost at Rs. 3,51,000/- for land admeasuring 3 gunthas. However no other details are available on the record of the case pertaining to the above three comparable sale instances in petition. It is the

Petitioner's case that rate of open land in the vicinity of the said land between 2011 and 2020 has more or less remained constant. Petitioner has not touched upon every factor of valuation to determine the market value of the said land. Petitioner has put forth the above evidence to seek acceptance of the offer of Rs. 53,00,000/- received from the highest bidder as fair and reasonable.

7. Mr Warunjikar, learned Advocate for the Petitioner has made the following submissions:

(i) that the impugned order which reasons that the said land would fetch a valuation of Rs. 2 to 3 crores is without any basis, insufficient and without any cogent evidence;

(ii) that the highest offer received for the said land i.e. Rs.53,00,000/- is in consonance with and more than the rate of similarly placed land in the vicinity of the said land;

(iii) that the conclusion arrived at by the Respondent that the market value could be Rs. 2 to 3 crores is merely statements of local persons, once again without any cogent evidence or material being placed on record; that the two bids received pursuant to the public notice issued at the instance of the Respondent contemplate following the due process of law as prescribed by the statue;

(iv) that admittedly the highest offer received for the said property is more than the rate for the said land recorded in the ready reckoner prepared by the Government of Maharashtra.

(v) hence, he submits that the impugned order deserves to be quashed and set aside in the interest of justice and the offer of Rs. 53,00,000/- be accepted for the beneficial interest of the petitioner.

8. ***PER CONTRA,*** Mr. Kadam, learned AGP appearing for the Respondent has invited my attention to the affidavit-in-reply dated 21.02.2022 filed by Shashikant L. Herlekar, Joint Charity Commissioner, Kolhapur and contended as follows:

(i) that the impugned order has been passed in the interest of justice and for better management of the Petitioner trust;

(ii) that the said land being a "highway touch land", its market value is higher than the highest bid received in response to the public advertisement;

(iii) that the Petitioner-trust has already sold a portion of its land and realized Rs. 4,00,000/- therefrom which is kept in fixed deposit and the same can be utilized by the trust for redevelopment work;

(iv) that as per the spot visit survey and inspection report prepared by the Assistant Charity Commissioner-Sangli, the overall cost of the said land is Rs. 2 to 3 crores based on statements given by local residents and thus it would not be in the interest of justice to agree to sale of the said land on the basis of the offer received;

(v) hence, he has prayed for dismissal of the Writ Petition.

9. I have heard both the learned Advocates appearing for the respective parties at length and perused the records and proceedings in the Writ Petition. Submissions made are on pleaded lines.

10. Before I advert to determining and adjudicating the issue at hand, it would be useful to refer to the statutory provisions of Section 36 contained in Chapter V-A of the of the Maharashtra Pubic Trusts Act, 1958.

11. We are concerned with alienation of immovable property of Public Trust. Section 36 of the said Act reads thus:

> ***"36. Alienation of immovable property of public trust -***
>
> [(1)] *[Notwithstanding anything contained in the instrument of trust—]*
>
> *(a) no sale, exchange or gift of any immovable property, and*
>
> *(b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building, belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. [Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;*
>
> *(c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorize any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.*
>
> *[Provided that, the Charity Commissioner may, before the transaction for which previous sanction is given under clause (a), (b) or (c) is completed, modify the conditions imposed thereunder, as he deems fit:*
>
> *Provided further that, if such condition is of time-limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.].*
>
> *[(1A) The Charity Commissioner shall not sanction any lease for a period exceeding thirty years under this Act.].*
>
> *(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) on the ground that such sanction was obtained by fraud or mis-representation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction*

for the recovery of the property.

[Provided that, no sanction shall be revoked under this section after the execution of the conveyance except on the ground that such sanction was obtained by fraud practiced upon the Charity Commissioner before the grant of such sanction.].

(3) No sanction shall be revoked under this section unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show-cause why the sanction should not be revoked.

(4) If, in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable effort or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.]

[(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a bona fide purchaser for value, the Charity Commissioner may grant ex-post-facto sanction to the 5[transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017], if he is satisfied that,—

(a) there was an emergent situation which warranted such transfer,
(b) there was compelling necessity for the said transfer,
(c) the transfer was necessary in the interest of trust,
(d) the property was transferred for consideration which was not less than prevalent market value of the property so transferred, to be certified by the expert,
(e) there was reasonable effort on the part of trustees to secure the best price,
(f) the trustees actions, during the course of the entire transaction, were bonafide and they have not derived any benefit, either pecuniary or otherwise, out of the said transaction, and (
g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force.] "

12. From the above provision, it is seen that the Respondent can grant permission for alienation / sale of the trust property, if he is satisfied that such alienation is necessary in the interest and benefit of the trust or for the protection of trust. While doing so the Respondent is also empowered to give directions to ensure that the transaction of the alienation is beneficial to the trust and its beneficiaries. What is important to be noted is that any such transaction is to be in the best interest of the trust which encompasses within itself the aspect to the property fetching the best market value.

13. In the backdrop if the above statutory provision it is seen in the present case that the Respondent has passed the impugned order rejecting the application of the Petitioner on the ground that the said land would fetch a return of approximately of Rs. 2 to 3 crores as against the highest offer of Rs. 53,00,000/-. Reading of the impugned order reveals that there is no satisfaction recorded of the Respondent to arrive at the aforesaid value of approximately Rs. 2 to 3 crores on the basis of cogent material. Respondent has mechanically observed that the value of the said land is approximately Rs. 2 to 3 crores. This has in fact been observed and concluded on the basis of recording of some oral statements from the local residents/villagers. For arriving at the valuation of any property, under the principles of valuation of immovable property, there are prescribed methods to be adopted. The most fundamental method is the comparable sales method wherein identically situated / placed immovable properties within proximity of time and proximity of distance from the said land are compared on the basis of positive and negative factors and the market value is arrived at by making positive addition or negating deduction to the value of the property under comparison to arrive at the market value. Another method of alienation is by publishing a tender notice for sale of the said property in the public domain and once bids are received, then compare the bids with the value recorded in the basic valuation register i.e. the ready reckoner prepared by the State certifying valuation of the immovable property for a particular area or the reserve or upset price. It is pleaded by the Petitioner that admittedly the highest bid received pursuant to public advertisement for sale of the said property i.e. Rs. 53,00,000/- is higher than the market value of the said land prescribed in the Ready-Reckoner prepared by the State. This itself is the benchmark for consideration of satisfaction of the Respondent while granting the application under Section 36(1)(a) of the said Act.

14. However, if the Respondent is of the opinion that the said land would fetch approximately Rs. 2 to 3 crores, then it is incumbent upon Respondent to justify and record his satisfaction for such high valuation on the basis of comparable sale instances, material evidence on any of the methods of valuation as prescribed to determining the price of the said land.

15. In the present case Petitioner - Trust was directed by Respondent to give public advertisement for inviting fresh tender from prospective purchasers; after this exercise was carried out Respondent directed the Assistant Charity Commissioner to inspect and file inspection report. The first requirement is duly complied by the Petitioner as directed by the Respondent. The second exercise carried out by the Assistant Charity Commissioner of preparing the inspection report, which is considered by the Respondent for rejecting the Application of the Petitioner is, *prime facie,* insufficient and inadequate on the face of record. It is pertinent to note that merely recording of oral statements of local resident villagers if the market value of similarly placed land parcels like the said land is not adequate proof of determination of market value of the said land. Such oral statements which have been recorded by the Assistant Charity Commissioner and as can be seen are completely at variance with each other; the statements cannot be countenanced primarily because they do not refer to the market value of any specific immovable property and are made in general. In fact such oral statements can never be considered to be in the interest of the Petitioner Trust. The Petitioner has adhered to the directions of the Respondent; called for sealed tenders; the tenders were opened before the Respondent and the highest bidder has offered Rupees Rs. 53,00,000/- for the said land. It is also seen that the highest bid offer of Rs. 53,00,000/- received for the said land is higher than the ready-reckoner value of the said land. This aspect significantly tilts the case in favour of the Petitioner. The affidavit-in-reply also does not inspire any confidence that the market value could be Rs. 2 to 3 crores. It is bereft of any details and material particulars. It is also not the case of the Respondent that the Petitioner does not require the sale proceeds for any beneficial interest of the trust. Further, it is also not denied by the Respondent that the market value in the ready reckoner pertaining to the said land is less than the value of the highest bid received pursuant to public notice. In fact the application made by the Petitioner - Trust is on the basis that substantial beneficial interest would be met with from the sale proceeds of the Petitioner's said land. Admittedly, the Petitioner has only an amount of Rs. 4,00,000/- which is wholly inadequate to meet its beneficial interest. Therefore the impugned order dated 15.11.2021 is unsustainable in law and deserves to be interfered with.

16. In view of the above discussion and findings, the impugned order is quashed and set aside. Respondent is directed to accept the highest bid of Rs. 53,00,000/- received from the highest bidder for the said land and complete the procedure for sale of the said land within eight weeks or earlier in accordance with law. Petitioner is directed to co-operate with the Respondent in completion of the sale.

17. Parties to act on an authenticated copy of this order duly authenticated by the Court Associate / Sheristedar.

18. The Writ Petition stands disposed of in the above terms.

[MILIND N. JADHAV, J.]

AJAY TRAMBAK UGALMUGALE
Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2022.07.14 14:21:19 +0530