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

**LETTERS PATENT APPEAL NO.232 OF 2012 IN**
**WRIT PETITION NO.1131 OF 2012(D)**

Megh Realty and Developers Private Limited,
a Company Registered under the Companies Act, 1956,
through its Director-Shri Omprakash Premdutta Ahuja,
aged about 65 years,
R/o. Sneha Nagar, Wardha,
Tahsil and District Wardha. ....... **APPELLANT**
**(Orig.Petitioner)**

**...V E R S U S...**

1. The learned Joint Charity Commissioner,
Nagpur Region, Nagpur.

2. Shriram Mandir Deosthan Trust,
Wardha, through its President-
Shri Rajendra B. Lule, Advocate,
in front of Indira Market, Malgujaripura,
Wardha.

3. Shri Datta Vithalrao Khalkonikar,
Aged about 55 years, Occupation-Agriculturist,
R/o. Shriniwas Colony, Wardha.

4. Shri Sureshkumar Madanlal Jindal,
Aged about 57 years, Occupation-Business,
R/o. Jindal Bhawan, Sahakar Nagar,
Bhandara. Tahsil and District Bhandara ....... **RESPONDENTS**

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Shri A.A.Naik, Advocate for appellant.
Shri D.P.Thakre, Additional Government Pleader for respondent no.1.
Shri Anand Jaiswal, Senior Advocate with Shri Kaustubh Lule, Advocate for respondent no. 2.
Shri U.P.Dable, Advocate for respondent no.3.
Ms Sheetal Dhawas, Advocate for intervenor.

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**CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.**
**ARGUMENTS WERE HEARD ON : 28/06/2022**
**JUDGMENT IS PRONOUNCED ON : 21/07/2022**

**JUDGMENT (Per A.S.CHANDURKAR, J.)**

In this Letters Patent Appeal filed under Clause 15 of the Letters Patent a challenge is raised to the order dated 03.04.2012 passed by the learned Single Judge in Writ Petition No.1131 of 2012 thereby dismissing the writ petition and refusing to interfere with the order passed by the learned Joint Charity Commissioner, Nagpur dated 27.01.2012 in proceedings under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (for short, the Act of 1950). By that order the learned Joint Charity Commissioner was pleased to reject the application filed by the respondent no.2-Trust seeking permission to alienate its immovable property.

2. The facts relevant for deciding the Letters Patent Appeal are that the respondent no.2-Public Trust is duly registered under the provisions of the Act of 1950. As per Schedule-I of the Act of 1950, it owns field Survey No.124 admeasuring about 7 H 70 R at Mouza - Barbadi Taluka and District Wardha. Since the members of the Trust were of the view that the said land should be utitlized towards proper upkeepment of the Trust, a resolution was passed by a majority of eleven members out of twelve for selling the said land. On 15.02.2008 a public advertisement was published inviting bids for purchasing the said land. Pursuant to that advertisement the Trust received three bids. Since the offers received were not

to the expectation of the trustees, it was resolved to issue another advertisement. Fresh advertisements were issued on 08.03.2008 and 10.03.2008. The appellant herein had offered an amount Rs.6,02,500/- per acre which was subsequently enhanced to Rs.6,10,000/- per acre. Since the amount offered by the appellant was the highest, a resolution was passed accepting that offer and resolving to seek permission of the Joint Charity Commissioner for selling the said land.

3. An application was accordingly moved under Section 36(1)(a) of the Act of 1950 on 17.07.2008. In that application it was stated that the said land was lying fallow and the Trust was not receiving any income from it. Construction of the temple of the Trust was required to be undertaken since it was noticed that proper arrangements of devotees visiting the temple could not be made. With a view to enhance the income of the Trust and to utilize that income for proper maintenance of the temple and provide facilities to the devotees, it was resolved to seek permission of the learned Joint Charity Commissioner. In the proceedings before the learned Joint Charity Commissioner, the President of the Trust examined himself and filed his affidavit. The respondent no.3 herein raised an objection to the aforesaid application by filing such objection on 08.07.2009. The learned Joint Charity Commissioner considered the application and on 15.02.2011 granted permission to sell the said land to the appellant. This order of the learned Joint Charity Commissioner was challenged by the Objector by preferring Writ Petition being No.1801 of 2011. The learned Single Judge while considering the said writ petition noted that the price of the land approximately was

Rs.16,79,600/- per acre in January 2010. It was found that the learned Joint Charity Commissioner had failed to consider this aspect and hence by the judgment dated 08.07.2011 the learned Single Judge was pleased to remand the proceedings for a fresh consideration to the learned Joint Charity Commissioner.

4. After remand, the learned Joint Charity Commissioner heard the parties and recorded a finding that the price of the land as offered by the appellant was the market price when the advertisement was issued in the year 2008. It was however found that the Trust had failed to establish its necessity of alienating the land bearing Survey No.124. Another finding recorded was that the price offered by the respondent no.3 and other bidders except the appellant was not sufficient for granting permission to sell the land. On that count, the application moved by the Trust came to be rejected. This order was challenged by the appellant before the learned Single Judge by filing Writ Petition No. 1131 of 2012. It was held by the learned Single Judge on 03.04.2012 that the satisfaction recorded by the learned Joint Charity Commissioner was based on relevant consideration and the Court could not sit in appeal over the decision of the learned Joint Charity Commissioner on the question whether the need was established or not. On that count, the writ petition came to be dismissed. Being aggrieved the appellant has challenged the aforesaid order.

5. Shri A.A.Naik, learned counsel for the appellant invited attention of the Court to the events that had transpired since moving of the application under

Section 36(1)(a) of the Act of 1950. He submitted that the learned Joint Charity Commissioner had recorded a finding that the price offered by the appellant for purchasing the land in question was based on the market value of the said land in the year 2008. The finding as recorded was not under challenge. The price offered by the respondent nos. 3 and 4 was not higher than what was offered by the appellant. The learned Joint Charity Commissioner however found that there was no necessity for the Trust to alienate the said property. Referring to the affidavit filed on behalf of the Secretary of the Trust dated 25.10.2021 it was submitted that the fact that the Trust was not earning any income from the said property. This aspect was initially stated on 17.07.2008 and even today it was the stand of the trustees that in absence of any income from the said property the Trust had no option to sell the same. An inspection of the temple was undertaken by a registered Architect who had found that the structure was in a dilapidated condition and there was a need for urgent repairs. The land proposed to be sold was surrounded by a huge industry and as it was lying fallow, it was likely to be encroached. It was submitted that as per the ready reckoner the current value of the land was approximately Rs.7,00,000/- per acre and the appellant was willing to offer the price of Rs.22,00,000/- per acre. Inviting attention to the decisions in *Suburban Education Society, Mumbai and anr. vs. Charity Commissioner of Maharashtra State, Mumbai and ors.* ***[2004(2) Mh.L.J.792],*** *Bara Imam Masjid Trust and ors. vs. Charity Commissioner, Maharashtra State and ors.* ***[2006(1) Mh.L.J. 809]*** as well as the judgment of the Full Bench in *Sailesh Developers and another vs Joint Charity Commissioner, Maharashtra and ors.* ***[2007(3) Mh.l.J.***

***717]***, it was submitted that this Court could consider the need put-forth by the Trust and after satisfying itself could pass appropriate orders. The learned counsel submitted that pursuant to law as laid down by the Honourable Supreme Court in *Cyrus Rustom Patel vs. Charity Commissioner, Maharashtra State and ors.* ***[(2018) 14 SCC 761],*** a fresh public notice had been issued inviting bids from the general public. The price offered by the appellant even thereafter was the highest. He also referred to the decision in *Vilas Anand Kale and ors. vs. Joint Charity Commissioner, Nagpur* ***[2022(2) Mh.L.J. 209]*** and submitted that there was no reason to deny permission to the Trust to alienate the aforesaid land. As regards the objection raised by the respondent no.3, it was submitted that by the impugned order passed by the learned Joint Charity Commissioner a finding had been recorded that the amount offered by the respondent no.3 was inadequate. In these facts, it was not open for the respondent no.3 to oppose the alienation of the said land since the said respondent had also responded to the advertisement as issued initially by submitting his bid. Since the learned Single Judge failed to consider the need for alienation in the context of interest of the Trust, the impugned order was liable to be set aside and the permission as sought ought to be granted.

6. Shri Anand Jaiswal, learned Senior Advocate for the respondent no.2-Public Trust at the outset submitted that the order impugned in the Letters Patent Appeal was passed on 03.04.2012 by the learned Single Judge and the present appeal has been filed on 04.05.2012. Since the trustees had also intended to challenge the order passed by the learned Single Judge on finding that such

challenge was already raised by the appellant, a separate Letters Patent Appeal was not preferred. He submitted that the Trust had retained the amount received by it from the appellant though the said amount was directed to be returned with interest by the learned Joint Charity Commissioner. Since the Trust was also aggrieved by the order dated 03.04.2012 that amount was not returned to the appellant but was retained by the Trust. He therefore submitted that even as respondent no.2 in the Letters Patent Appeal, the trustees representing the Trust were supporting the case of the appellant. In furtherance thereof it was submitted that majority of the trustees had passed a resolution on 18.10.2021 resolving to accept the offer made by the appellant of Rs.22,00,000/- per acre for the said land. It was then submitted that one of the reasons which led to the learned Joint Charity Commissioner refusing to grant permission to alienate the said property was the failure to submit audited accounts of the Trust. That lacuna had now been removed and the audited statements for the last five years were placed on record. Perusal of the same indicated that the financial position of the Trust was not satisfactory and there was no income from the land in question. Moreover, the requirements of Rule 24 of the Maharashtra Public Trusts Rules, 1951 (for short, the Rules of 1951) had been complied with and hence there would now be no impediment in considering the offer as made by the appellant. Reference was also made to a sketch map indicating location of the said land and it was submitted that field Survey No.124 was landlocked and surrounded by other lands owned by the appellant. For that reason, no other party was interested in offering any bid for the said land. The 7/12 extracts on record also indicated that the land was lying fallow. On these counts, it was submitted that the Trust through its trustees was desirous of alienating the land in question in the best interest of the Trust.

7. Shri U.P.Dable, learned counsel for the respondent no.3 supported the order passed by the learned Single Judge. According to him, it was rightly found by the learned Joint Charity Commissioner that without complying with legal requirements as contemplated by Section 36(1) of the Act of 1950 and Rule 24 of the Rules of 1951, the permission as sought was rightly refused. Since no satisfaction was recorded by the learned Joint Charity Commissioner, the learned Single Judge had rightly not interfered with that order. The respondent No.3 was also a trustee and was interested in safeguarding the interest of the Trust. The land in question could be put to better use so as to protect the property of the Trust and hence no interference with the impugned order was called for.

Civil Application (Z) No.30 of 2021 has been filed by an applicant seeking permission to intervene in the proceedings. According to the said applicant pursuant to the public notice that was published on 02.11.2021 the applicant had shown interest in purchasing the said land. The said applicant was inclined to offer a higher amount than what was offered by the appellant. By the communication dated 12.12.2021 this aspect was informed to the trustees while offering a sum of Rs.50,00,000/- per acre for the said land. An amount of Rs.5,00,000/- was sought to be deposited alongwith that communication. Since the said applicant could not inspect the land in question, it was stated that the earnest money would be paid after inspection would be completed.

8. We have in the aforesaid backdrop heard the learned counsel for the parties as well as the intervener. We have also perused the documentary material placed on record. Before considering the rival submissions, it would be necessary to refer to some orders passed during the pendency of the appeal in the light of the fact that the application seeking permission under Section 36(1)(a) of the Act of 1950 was made on behalf of the Trust on 17.07.2008 and the Letters Patent Appeal has been pending since the year 2012. On 25.10.2021 while hearing the appeal, the following order was passed:

> *"The present appeal arises out of an order passed by the learned Joint Charity Commissioner in proceedings under Section 36 of the Maharashtra Public Trusts Act, 1950 (for short, 'the said Act'). The learned Joint Charity Commissioner was pleased to reject the application filed by the Public Trust for alienation of land bearing Survey No.124 admeasuring 7 Hectares 70 Ares. The learned Single Judge has affirmed the said order.*
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> *An affidavit has been filed on behalf of the Public Trust in which it has been stated that the present appellant has offered an amount of Rs. Twenty-Two lakhs per acre for the aforesaid land. It is further stated that other surrounding lands already belong to the appellant. The Trust has indicated its consent for alienating the aforesaid land in favour of the appellant.*
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> *Considering the fact that the present proceedings arise under Section 36 of the said Act, it would be necessary to give publicity to the offer made by the appellant. This would enable any party interested in offering more amount for the aforesaid land to the Public Trust to make its offer. Accordingly the respondent no.2-Public Trust shall publish a notice in two newspapers, one in a local newspaper having circulation in the district of Wardha and another in a national newspaper stating therein that the land admeasuring 7 Hectares 70 Ares from Survey No.124 is proposed to be alienated in favour of the appellant at Rs.Twenty-Two lakhs per acre. Time of fifteen days be given for inviting any better offer. The appellant undertakes*

> *to bear expenses of the aforesaid notices. The Secretary of the Trust shall file an affidavit of compliance and shall also state the response to the said public notices by the returnable date.*
>
> *To consider the response to the said notices, put up for further consideration on **22.11.2021**."*

In compliance with that order, a public advertisement was issued inviting interested parties to submit their bids to the trustees. Thereafter on 22.11.2021 the following order was passed:

> "*Pursuant to the order dated 25.10.2021 an affidavit has been filed on behalf of the Secretary of the respondent no.2-Trust in which it has been stated that an advertisement indicating the intention to alienate the land of the Trust was published in two newspapers as directed. On completion of time limit of fifteen days, no offer has been received by the Trust.*
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> *We have perused the said affidavit and we have been taken through the decision in Vilas Anand Kale and others vs. Joint Charity Commissioner, 2021 SCC Online Bom 3054. The learned Senior Advocate representing the Trust seeks time of one week to place on record further affidavit on behalf of the Secretary to indicate the manner in which the proceeds from the sale of the land, if permitted, would be utilized.*
>
> *Stand over to 29.11.2021".*

After the said order was passed the trustees held a meeting on 25.10.2021 and passed Resolution No.3 indicating the manner in which the amounts received on the sale of the aforesaid land were to be utilized. Hence on 29.11.2021 the following order was passed:

> "*Pursuant to the order dated 22/11/2021, an affidavit by the Secretary of the respondent No.2-Trust is placed on record. A reference in that affidavit has been made to the resolutions passed by the Trust in their meeting held on 25/10/2021. As per resolution No.3, of the approximately 50% of the amount that would be received from the proposed*

*sale of its land, the Trust intends to purchase Government Bonds. The remaining amount is proposed to be utilised for investments in immovable assets.*

*Civil Application No.30/2021 has been moved seeking permission to intervene in the present proceedings as the applicant is also interested in purchasing the land of the Trust in view of the advertisement dated 02/11/2021. In paragraph 5 of the application it is stated that the applicant found it difficult to reach the land in question bearing Survey No.124 so as to inspect the same. Further in paragraph 6 it is stated that the applicant is interested in offering a higher amount than what has been offered by the appellant.*

*Shri K. R. Lule, learned counsel for the Trust submits that the applicant would be shown the portion of Survey No.124 which is proposed to be sold on 01/12/2021 when the applicant or his representative could remain present. The applicant shall accordingly inspect the said property on 01/12/2021 and make its offer to the Trust by 03/12/2021.*

*Put up for further consideration on 06/12/2021".*

9. On 06.12.2021 directions were issued by this Court to enable the intervener to inspect the suit property alongwith the respondent no.3. The trustees were directed to facilitate such inspection. Thereafter on 14.02.2022 the appellant as well as the intervener having submitted their offers were directed to deposit 50% of the amount as offered by them within a period of four weeks. The order dated 14.02.2022 reads as under:

"*Pursuant to the order dated 06.12.2021 affidavit has been filed by the Secretary of the respondent No.2-Trust. In that affidavit reference is made to a communication dated 12.12.2021 that has been submitted by the intervener, who has filed Civil Application No. 30 of 2021. The intervener has sought to offer an amount of Rs. Fifty Lakhs per acre for purchasing the property of the Trust. The appellant has offered an amount of Rs.Twenty-Two lakhs per acre for purchasing the land of the Trust as recorded in the earlier order. The Trust owns land admeasuring 7 Hectares 70 Ares. It has passed a*

> *resolution on 25.11.2021 indicating the manner in which the sale proceeds are to be utilised by it if permission to alienate the property is granted.*
>
> *With a view to gauge the bonafides of the appellant as well as the intervener they are directed to deposit 50 % of the amount as quoted by them in this Court within a period of four weeks from today. In the meanwhile, the Trust shall place on record its audited statements for the last five years.*
>
> *Stand over four weeks".*

The appellant deposited an amount of 2,10,00,000/- in this Court on 09.03.2022. The intervener however failed to deposit any amount and hence a further time of one week was granted to the intervener to indicate his *bonafides.* Accordingly, on 14.03.2022 the following order was passed:

> *"By the order dated 14.02.2022, with a view to assess the bonafides of the appellant as well as the intervener, they were directed to deposit 50% of the amount quoted by them in this Court. In terms of that order, the appellant has deposited an amount of Rs.2,10,00,000/- on 09.03.2022. The intervener, however, has till today not deposited any amount. Further opportunity of one week is granted to the intervener to indicate his bonafides in pursuance of the order dated 14.02.2022. An additional affidavit has been filed by the Secretary of the Trust stating therein that the audited reports from the years 2016-17 to 2020-21 have been placed on record. A statement be made as to whether this audited reports have been filed in the office of the Joint Charity Commissioner.*
>
> *Stand over to 21st March, 2022".*

Despite grant of such time, the intervener failed to deposit 50% of the amount offered by him. Hence on 31.03.2022 the following order was passed:

> *"By the order dated 14th March, 2022 at the request of the intervener time of one week had been granted to enable the intervener to deposit 50% of the amount quoted. Though the period of one week has passed, the intervener has not deposited 50% of amount as quoted by him. There is no appearance on behalf of the intervener.*

*The learned counsel for the respondent no.2 has placed on record an affidavit in which it has been stated that the audit reports for the preceding five years from 2016-17 to 2020-21 have been submitted in the Office of the Joint Charity Commissioner on 19.03.2022 through online mode.*

*Stand over to 4th April, 2022 for further consideration".*

It is in the light of these events that the learned counsel for the parties have been heard in the Letters Patent Appeal.

10. At the outset, we may note that the Public Trust had on 17.07.2008 moved an application seeking permission to alienate its property under Section 36(1) (a) of the Act of 1950. Such permission was initially granted on 15.02.2011 but that was set aside in Writ Petition No.1801 of 2011 that was preferred by the respondent no.3 herein. After the proceedings were remanded for a fresh consideration, the learned Joint Charity Commissioner refused to grant permission principally on the ground that the Trust had failed to make out a case of necessity for selling its land. As regards the amount offered by the present appellant, it was held that the said amount was higher than the prevailing market rate in the year 2008. In the writ petition preferred by the appellant assailing that order, the learned Single Judge refused to interfere with the satisfaction as recorded by the learned Joint Charity Commissioner. In this appeal preferred by the highest bidder the Public Trust has joined cause and has urged through its trustees that it was still desirous of alienating its land for enhancing the income of the Public Trust and putting its assets to better use. The Letters Patent Appeal was filed in the year 2012 and when it was taken up for hearing, the trustees by majority have passed

another resolution on 18.10.2021 resolving to reiterate the desire to alienate its assets. The proceedings having been remanded once and the period of almost ten years having elapsed with the pendency of the Letters Patent Appeal, it was found reasonable to consider whether the need for alienating the Trust property was subsisting even at this point of time. Though the order passed by the learned Single Judge has been impugned by one of the bidders, the trustees by subsequently passing a resolution have reiterated the intention to alienate the property of the Trust since according to them the need for doing so persists. It is in this view of the matter that the Court deems it appropriate to consider the prayers as made by the trustees seeking permission to alienate its property under Section 36(1)(a) of the Act of 1950.

11. When the order passed by the learned Joint Charity Commissioner on 27.01.2012 is perused, it becomes clear that the appellant herein was the highest bidder having offered an amount of 6,02,500/- per acre. The amount offered by the respondent no.3 and other bidders was found to be lower than the bid submitted by the appellant. A finding was recorded by the learned Joint Charity Commissioner that when the initial public notice was issued on 08.03.2008 the price offered by the appellant was the highest and that it could be said to be the market price at that point of time. The learned Joint Charity Commissioner however found that the material produced by the trustees to indicate the necessity for alienating the trust property was not made out. The trustees had not placed on record audited statements and returns of the Trust. The manner in which the

consideration received would be utilised was not indicated. Since the balance sheet was also not available, the learned Joint Charity Commissioner recorded a finding that the trustees had failed to make out a case of necessity for alienating its property. A finding was also recorded in paragraph 21 of the order that the objection raised by the respondent no.3 to the alienation was an afterthought since he was also a trustee and had not objected to the resolution resolving to alienate the Trust's property. The learned Single Judge did not interfere with said satisfaction as recorded.

12. The Full Bench of this Court in *Sailesh Developers and another* (supra) considered the following questions that were referred to it:

> *"(i) Whether the power vesting in the Charity Commissioner under Section 36 of the Bombay Public Trusts Act, 1950 is confined to grant or refusal of sanction to a particular sale transaction which the trustees propose to make or it extends to compelling trustees to sell or transfer the property to another party who participates in the proceedings under Section 36 and gives his offer?*
>
> *(ii) Whether the party who comes forward to submit his offer directly before the Charity Commissioner in a pending application under Section 36 of the said Act of 1950 has locus standi to challenge the order passed in a proceeding under Section 36?*

After considering the legal position, the Full Bench answered the aforesaid questions as under:

> "30.. Hence, we answer the questions referred to our decision as under:
>
> *(i) The power vesting in the Charity Commissioner under Section 36 of the Bombay Public Trusts Act, 1950 is not confined merely to grant or refusal of sanction to a particular*

> *sale transaction in respect of which sanction is sought under Section 36 of the said Act. 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. Hence we declare that the decision of the Division Bench of this Court in the case of M/s. Jigna Construction Co. Mumbai vs. State of Maharashtra and others does not lay down correct law".*
>
> *(ii) The party who comes forward and submits his offer directly before the Charity Commissioner and complies with other requirements as may be laid down by the Charity Commissioner in a pending application under Section 36 of the said Act of 1950 has a locus standi to challenge the final order passed in a proceeding under Section 36. However, the scope of the challenge will be limited as indicated in paragraph 29 above."*

13. It is thus clear from the aforesaid decision that even during the pendency of the proceedings under Section 36(1) of the Act of 1950 offers can be invited from the members of the public with a view to ensure that the property of the trust can be alienated at the best price possible. Reference is also required to be made to the judgment of the Honourable Supreme Court in *Cyrus Rustom Patel* (supra) where in paragraph 26 it has been held as under:

> "26. *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. The expression that sanction may be accorded subject to such conditions as the Charity Commissioner may think fit under Section 31(1)(b) and Section 36(1)(c). 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. 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".*

From the aforesaid it is clear that the paramount consideration in such matters is the interest, benefit and protection of the Trust. The original proceedings having been initiated under Section 36(1) (a) of the Act of 1950 and the present proceedings having arisen from the order passed by the learned Joint Charity Commissioner, there is no reason for this Court not to examine what is best in the larger interests of the Trust. The triple requirements as regards interest, benefit and protection of the Trust can even now be considered especially when the Trust has reiterated its intention of alienating its property through majority of its trustees.

14. Thus keeping in mind this legal position the Court in the present appeal had permitted the Trust to again publish a notice in two newspapers, one having circulation in the District of Wardha and another in national newspaper indicating its intention to alienate the land in question. As noted above, the appellant pursuant to that public notice offered price of Rs.22,00,000/- per acre. We may note that as per ready reckoner for the year 2021-22 the value of field Survey No.124 has been shown to be Rs.17,29,920/- per hectare which approximately

comes to Rs.7,00,000/- per acre. Another offer received was from the applicant seeking intervention. The said applicant sought to offer an amount of Rs.50,00,000/- per acre for the said land. Keeping these offers in mind, the appellant as well as the intervener were directed to deposit 50% of the amount offered to show their bonafides. While the appellant deposited 50% of the amount offered which was Rs.2,10,00,000/-, the intervener despite grant of sufficient time failed to deposit any amount in this Court. He tendered a cheque of Rs.5,00,000/- to the trustees of the Trust which they did not encash for the reason that it was not equivalent to 50% of the amount offered. It is thus clear that in response to the public notice as issued on 02.11.2021 in daily 'Loksatta' having circulation in the district of Wardha and in 'Indian Express,' a national newspaper on 02.11.2021 it is only the appellant who responded to the same and offered an amount of Rs.22,00,000/- per acre. The trustees have placed on record the ready reckoner prepared by the Department of Registration and Stamps, Government of Maharashtra for the year 2021-22. The market value of Survey No.124 therein is indicated at Rs.7,00,000/- per acre approximately. It is true that the ready reckoner cannot be the sole basis for indicating the actual market value of the land and that it is prepared only for the purposes of levying stamp duty on the sale/mortgage of such land. Nevertheless, the rate quoted therein could be an indicator of the approximate value of the land. Since the appellant has submitted its bid pursuant to two public notices and that there has been no other response to the said public notices, we are satisfied that the amount of Rs.22,00,000/- per acre offered by the appellant is a fair offer indicating the value of the said land. For this very land, the learned Joint Charity Commissioner has recorded a finding that the price offered of Rs.6,10,000/- per acre in 2008 was a fair offer. The intervener has failed to deposit 50% of the amount offered despite grant of opportunity.

15. Coming to the consideration of the aspect of the interest and benefit of the Trust to alienate its property, it can be seen that from the balance sheet and audited statements for the last five years from 2016-17 to 2020-21 there is no income received from the said property. The income from the rent is shown to be Rs.35,000/- for the financial year ending on 31.03.2021. The audited statements for the previous five years have been placed on record in this Court as directed since it was found by the learned Joint Charity Commissioner that the trustees had failed to place on record the audited statements alongwith the balance sheet before it. From the map placed on record, it is clear that Survey No.124 belonging to the Trust is surrounded by Survey Nos. 112, 121, 122, 123, 125 and 127 which belong to the appellant. The trustees have stated that its land is surrounded from all sides by the property owned by the appellant and it has no income from the said land. The property is incapable of generating income and is found to be financially unviable. There is also a likelihood of encroachment being committed on the land since the same is lying fallow. The aspect of protecting the Trust property also thus arises. It is further seen that the temple owned by the Trust was inspected by an Architect in October, 2021 and as per his report substantial work would be required to be undertaken to strengthen the structure. Thereafter an estimate has been placed on record to indicate expenses towards making construction on the

first floor of the said temple. This is with a view to provide various facilities to devotees who would visit the temple. We find that the trustees by majority have passed a resolution on 18.10.2021 proposing to accept the offer made by the appellant. The audited statements for the last five years alongwith balance sheet and revenue records indicate that the land in question has been lying fallow and does not provide any source of income to the Trust. On the contrary, the Trust desires to provide better facilities for devotees at the temple by undertaking construction on the first floor after making necessary repairs to the structure on the ground floor. The apprehension of encroachment being committed on the land lying fallow also cannot be ruled out. In the light of this material on record which was lacking before the learned Joint Charity Commissioner, we find that the aspect of need, benefit and protection of the Trust to alienate its land and then utilise the proceeds for providing better facilities at the temple for its devotees stands satisfied.

With the passage of time the amount offered for the said land from Rs.6,10,000/- per acre has now been enhanced to Rs.22,00,000/- per acre. The appreciation in the value of the land is reasonable considering the fact that it is land locked from all sides. In absence of any contrary material on record to indicate any malafide on the part of the trustees, there is no doubt about the genuineness of the need as made out which is supported by the documentary material in the form of balance sheet and audited statements. We thus find that instead of permitting the land to lie fallow and unviable, the interest of the Trust would be served by permitting it to alienate the same and thereafter utilize the proceeds from such sale for better and efficient management as well as administration of the other assets of the Trust in the form of the temple. It is thus held that the trustees have made out a case indicating the need to permit them to alienate Survey No.124 belonging to the Trust for proper utilisation of the other assets under Section 36(1)(a) of the Act of 1950.

16. Since a case has been made out for permitting the trustees to alienate its assets, it would be necessary to specify the manner in which the sale proceeds would be utilised. Keeping that aspect in mind the Secretary of the Trust had been directed to indicate the manner in which the sale proceeds would be utilised by the trustees. The Secretary of the Trust has on 29.11.2021 filed an affidavit indicating the manner in which the amount received would be utilized. It has been stated therein as under:

> *"3.1] The area of the land to be sold is 7.70 Hectares i.e. 19.027 Acres. The applicant has offered a price @ Rs.22 Lakhs per acre which amount comes to Rs.4,18,59,400/-. This sale consideration which the Respondent no.2 Trust will receive would be utilised for the betterment of the Trust in utmost transparent manner.*
>
> *3.2] The trustees agree to invest the 50% amount with the Govt. security bonds/schemes and also FDRs of Nationalised Bank which will fetch maximum interest rate. It is further submitted that the principal amount will not be touched except in case of urgent necessity. The daily and routine expenses will be borne from the interest amount received, monthly/quarterly/yearly, as the case may be.*
>
> *3.3] It is submitted that now-a-days concept of agricultural tourism is taking a shape where land is being developed and the place is rented for a day for various*

*activities such as playing, gardening, bullock card ride, actual farming under supervision, etc. The Trust has also plan to purchase a land nearby Wardha town and to develop the said land to promote such activity. It is submitted that in the said land the Trust has also a plan to develop Ved-Pathshala, Goshala also. The amount of rent received from this activity is to be utilised for the trust.*

*3.4] It is submitted that the building of the Mandir is an old construction and it needs urgent repairing. Therefore, some amount will be utilized for the construction and redevelopment of the Mandir.*

*3.5] The trust has plan to construct a community hall and some rooms which will be used as Bhakt-Nivas and a centre for socio-cultural-religious events.*

The aforesaid statements as made indicating the activities to be undertaken pursuant to receiving the sale consideration are accepted and the trustees would be bound to utilise the sale proceeds in the manner stated hereinabove.

17. In the light of these developments we find that a case has been made out to permit the trustees to alienate field Survey No.124 under Section 36 (1) (a) of the Act of 1950. Since such a case has been made out, the order dated 03.04.2012 of the learned Single Judge in Writ Petition No.1131 of 2012 is set aside. The application moved by the trustees dated 17.07.2008 seeking permission to alienate Survey No.124 is allowed. The trustees on Schedule I of the public trust register are permitted to sell Survey No.124 admeasuring 7 H 70 R or 19 Acres 027 Gunthas to the appellant for consideration at Rs.22,00,000/- per acre. The 50% amount deposited by the appellant in this Court with accrued interest is

permitted to be transferred in the account of the Trust and the balance amount of consideration shall be paid by the appellant within a period of four weeks from today. Thereafter the trustees of the Trust would act in accordance with the statements made in paragraphs 3.1 to 3.5 of the affidavit of the Secretary dated 29.11.2021. The trustees shall after a period of six months from today submit a report in the Office of the Joint Charity Commissioner, Nagpur indicating the steps taken in compliance with the aforesaid directions and the learned Joint Charity Commissioner would be free to issue such ancillary directions as are warranted in the facts of the case and dependent upon the requirements of the Trust. The cheque for the amount of Rs.5,00,000/- that was deposited by the applicant in Civil Application No.30 of 2021 which has not been encashed would stand cancelled at the behest of the said applicant.

The Letters Patent Appeal is allowed in aforesaid terms with no order as to costs.

Civil Application No.30 of 2021 stands also disposed of.

At this stage the learned counsel for the respondent no.3 prays that the effect and operation of the judgment be stayed for a period of six weeks from today. The learned counsel for the appellant submits that since the period of four weeks has been granted to the appellant to pay the balance amount of consideration, there was no reason to grant any further time.

In the facts of the case, it is directed that the judgment shall operate after a period of four weeks from today.

**(URMILA JOSHI-PHALKE, J.)** **(A.S.CHANDURKAR, J.)**



*Andurkar..*