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

WRIT PETITION NO. 2825 OF 2020

M/s. Sai Builder and Developer through its Partner, Shri Deepak Gangadhar Mandaokar, Aged about 43 years, Occupation : Business, R/o. Pasahan Chowk, Hawaldar Pura, Wardha, Tah. And Dist. Wardha.	**.. Petitioner**

Versus

1. Joint Charity Commissioner, Nagpur, Tah.and Dist. : Nagpur 2. Vitthal Rukhmai Deosthan Trust, Registration No. A441 At Pipri, Taq. Wardha, Dist. Wardha, Through its Trustee, Shri Vinayak Sadashivrao Meghe	**.. Respondents**

AND
WRIT PETITION NO. 2516 OF 2020

Vitthal Rukhmai Deosthan Trust, Registration No. A-441(W), At Pipri (Meghe), Taq. & Dist. Wardha, Through it’s President Shri Vinayak Sadashivrao Meghe, aged about 64 years, Occ.: Retired, R/o. Borgaon (Meghe), Tq. and Dist. Wardha.	**.. Petitioner**

Versus

1. The Learned Joint Charity Commissioner, Behind General Post Office, Civil Lines, Nagpur 2. M/s. Sai Builders and Developer through its Partner, Shri Deepak Gangadharrao Mandavkar, Aged about 43 years, Occupation : Business, R/o. Pashan Chowk, Hawaldar Pura, Wardha, Tah. And Dist. Wardha.	**.. Respondents**

Mr. A.D. Mohgaonkar, Advocate for petitioner in WP No.2825/2020 and respondent No.2 in WP No.2516/2020.
Ms. T.H. Khan, A.G.P. for respondent No.1 in both petitions.
Mr. A.P. Thakre, Advocate for respondent No.2 in WP No.2825/2020 and petitioner in WP No.2516/2020.

CORAM : MANISH PITALE, J.
RESERVED ON : 05/07/2022
PRONOUNCED ON : 07/07/2022

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the rival parties.

(2) A Trust and a highest bidder in a project for renovation of a temple managed by the Trust, are before this Court challenging order dated 06.03.2020 passed by the Joint Charity Commissioner, Nagpur, whereby an application filed by the Trust under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as 'the said Act') was dismissed.

(3) The petitioner in Writ Petition No.2516/2020 is the Trust called 'Vitthal Rukhmai Deosthan Trust', Pipri (Meghe), Tah. & District Wardha, which manages a temple about 56 years old. Since, the temple is in dilapidated condition, the said Trust decided to renovate the same. On 11.07.2014, the Executive Committee of the Trust held a meeting and passed a resolution for undertaking renovation of the temple and for obtaining estimate for the renovation/reconstruction plan. Thereupon, on 04.08.2014, the Executive Committee of the Trust unanimously resolved to sell property of the Trust located in Gat No.289/01, admeasuring 3.706 acres at Mouza Pipri (Meghe), Tah. & Dist. Wardha, in order to raise funds for undertaking the project of renovation of the temple. Pursuant thereto, on 18.09.2014, tenders were published in two newspapers i.e. “Jana Madhyam” and “Shramik Sangharsh”, circulated in Wardha.

(4) There were four bidders who came forward in response to the said tender notices and in a meeting held on 27.09.2014, the Trust decided to accept the highest bid offered by M/s.Sai Builders and Developers i.e. the petitioner in Writ Petition No.2825/2020. As per the highest bid of the said petitioner-developer at Rs. 54,00,000/- per acre, the total consideration came to Rs. 2,00,15,000/-, out of which Rs.30,11,000/- was paid by the said petitioner to the Trust as earnest money and the transaction was made subject to permission to be granted by the respondent – Joint Charity Commissioner under Section 36(1)(a) of the said Act.

(5) In this backdrop, on 21.10.2014, the Trust moved the said application. The Joint Charity Commissioner asked for a valuation report. Accordingly, the Trust submitted the valuation report dated

17.10.2017, issued by the Joint Sub-Registrar, Wardha, and as per the Ready Reckoner the value was shown as Rs.1,19,37,500/-. On 09.11.2017, the Joint Charity Commissioner passed an order directing the Trust to submit documents demonstrating that it was a Class-I occupant of the property in question and thereafter to issue fresh advertisements in two newspapers stating that it was a Class-I occupant of the said property. This was on the basis that when the tender notices were published by way of advertisement by the Trust, it was a Class – II occupant.

(6) At this stage, the petitioner – developer in Writ Petition No.2825/2020, filed application for intervention before the Joint Charity Commissioner as it was an interested party in the said proceedings. The said application was allowed and thereafter, the petitioner – developer filed an application before the Joint Charity Commissioner, for recalling the order dated 09.11.2017. The said application was dismissed by an order dated 12.09.2018. Being aggrieved by the orders dated 09.11.2017 and 12.09.2018, passed by the Joint Charity Commissioner, the petitioner – developer filed Writ Petition No.2384/2019, before this Court. By order dated 11.12.2019, the said petition was allowed and the impugned order was quashed and set aside. The Joint Charity Commissioner was directed to proceed to decide the application filed under Section 36(1)(a) of the said Act, within a period of three months from the date of the order.

(7) Pursuant thereto, the Joint Charity Commissioner heard the petitioner - Trust as well as the petitioner – developer and by the impugned judgment and order dated 06.03.2020, dismissed the application under the aforesaid provision. Aggrieved by the same, the petitioners have filed the present writ petitions wherein notices were issued and the petitions were taken up for hearing.

(8) Mr. Mohgaonkar, learned counsel appearing for the petitioner – developer in Writ Petition No.2825/2020 submitted that the Joint Charity Commissioner erred in dismissing the application and the reasons stated in the impugned order were all unsustainable. It was emphasized that the bid offered by the petitioner was not only the highest bid, but it was much more than the valuation placed on record by the petitioner – Trust and also the valuation given by a Government approved valuer at Rs.1,66,50,000/-. Despite the aforesaid facts placed on record, according to the learned counsel for the petitioner – developer, the Joint Charity Commissioner, dismissed the application on frivolous grounds, as a consequence of which, the project of renovation of dilapidated temple has been unnecessarily delayed.

(9) Reliance was placed on judgment of the Division Bench of this Court in the case of ***Suburban Education Society, Mumbai and anr. Vs. Charity Commissioner of Maharashtra State, Mumbai and Ors. 2004***

(2) Mh.L.J. 792, wherein it was held that the Charity Commissioner has to enquire into the genuine need of the Trust and whether the property in question is being sold in the interest of the Trust and its beneficiaries.

(10) Mr. A.P. Thakre, learned counsel appearing for the petitioner – Trust in Writ Petition No.2516/2020, supported the contentions raised on behalf of the petitioner – developer and additionally submitted that all the requirements to demonstrate that the ingredients of Section 36(1)(a) of the said Act were satisfied, were placed on record before the Joint Charity Commissioner. It was submitted that merely because the tender notices were published in two Marathi newspapers instead of one Marathi and one English newspaper, it could not be said that there had been any major deviation from the norms. As regards audit reports of the relevant years, it was submitted that the same were placed by a separate application before the Joint Charity Commissioner, which was ignored. It was submitted that the highest bid offered by the petitioner – developer ought to have been permitted to be accepted, so that the renovation of the temple could be undertaken at the earliest.

(11) On the other hand, Ms. T.H. Khan, learned Assistant Government Pleader appearing for respondent – Joint Charity Commissioner, submitted that cogent reasons were stated in the impugned judgment and order, while dismissing the application filed by the petitioner – Trust. It was submitted that the Charity Commissioner being the custodian of the properties of the Trust, was enjoined to ensure that all the requirements of the Act were satisfied before such permissions could be granted for disposing of Trust properties. It was further submitted that there was a fundamental defect in the procedure adopted by the petitioner – Trust in the present case, inasmuch as application under Section 36(1)(a) of the said Act was moved after the process of inviting bids was undertaken and the petitioner – developer was selected as the highest bidder. It was submitted that the petitioner – Trust ought to have first sought permission from the Joint Charity Commissioner and then the process should have been initiated. For the said proposition, the learned AGP relied upon the judgment and order of this Court in the case of *Central Hindu Military Social Education Society Vs. the Joint Charity Commissioner, Nashik and Ors.*, and connected petitions (judgment and order dated 22.10.2018 passed in Writ Petition No.6743/2007).

(12) Heard the learned counsel for the rival parties and perused the material on record. Before dealing with the contentions raised by the rival parties on the specific reasons stated in the impugned order while dismissing the application of the petitioner – Trust, it would be appropriate to consider the contentions raised by the learned AGP that there was the aforesaid fundamental defect in the procedure adopted by the petitioner – Trust while seeking to dispose of Trust property, in order to raise funds for renovation of the temple.

(13) Section 36(1)(a) of the said Act specifically provides that there can be no sale of any immovable property belonging to a Trust, unless the Charity Commissioner is satisfied that such immovable property is being disposed of in the interest of the public Trust by imposing such conditions as necessary to protect the interest or benefit of the Trust. The learned AGP placed much emphasis on the words "previous sanction" of the Charity Commissioner to contend that in the present case, before initiating the process of issuance of advertisements inviting bids and selecting the highest bidder, the petitioner – Trust ought to have applied under the said provision before the Joint Charity Commissioner. Having applied after completing the process of inviting bids and selecting the highest bidder, according to the learned AGP, the petitioner – Trust had undertaken a flawed procedure, which vitiated the entire proceedings. Reliance was placed on the aforesaid judgment of this Court in the case of the *Central Hindu Military Social Education Society Vs. The Joint Charity Commissioner and anr. (supra)*.

(14) A perusal of the aforesaid judgment would show that this Court, after referring to Section 36(1)(a) of the said Act, emphasized upon the necessity for a transparent process to be undertaken while disposing of Trust property. In the facts of the said case, it was found that the Trust therein had neither invited tenders nor held public auction, but a private party was straightaway chosen to negotiate and the transaction was completed. After having undertaken such a transaction, the Trust had applied before the Joint Charity Commissioner for sanction. The Joint Charity Commissioner in the said case refused to grant *post facto* sanction, primarily on the ground that no tenders were invited by the Trust and that the entire procedure adopted in the said case was found to be unsustainable. It is in the context of the such facts, that this Court in the aforesaid judgment emphasized upon the necessity for transparency in the process of disposing of Trust property and in that regard, it was held that *post facto* sanction could not have been granted and that the Joint Charity Commissioner in the said case was justified in rejecting the application. While considering earlier judgments of this Court, it was emphasized that the words “previous sanction” clearly contemplate obtaining sanction from the Charity Commissioner before completing the transaction.

(15) This Court is of the opinion that the said judgment would not assist the learned AGP in contending that there was a fundamental flaw in the manner in which the petitioner – Trust had approached the Joint Charity Commissioner under Section 36(1)(a) of the said Act. In the present case, the petitioner – Trust did not complete the transaction when it approached the Joint Charity Commissioner under the said provision. The entire transaction with the petitioner - developer was specifically subject to sanction to be granted by the Joint Charity Commissioner under Section 36(1)(a) of the said Act. This does not mean that the petitioner – Trust could not have initiated the process of inviting bids for choosing the highest bidder, as long as the process could be demonstrated to be transparent and in the interest of the Trust. Therefore, it cannot be said that the procedure adopted by the petitioner – Trust was defective. Even otherwise, the said judgment of this Court in the case of *Central Hindu Military Social Education Society (supra)* was delivered on 22.10.2008 and thereafter, by amendment brought into effect with effect from 10.02.2017, Sub-Section (5) has been added to Section 36 of the said Act, which provides for *ex-post facto* sanction to transfer of Trust property by the Charity Commissioner. The factors indicated in the said provision include satisfaction of the Charity Commissioner that the property was transferred for consideration not less than prevalent market value of the property. Therefore, there is no substance in the said contention raised by the learned AGP.

(16) Insofar as the reasons recorded in the impugned order passed by the Joint Charity Commissioner, while dismissing the application filed by the petitioner – Trust are concerned, it is found that all three reasons are not sustainable. The first reason recorded in the impugned order was that the petitioner – Trust did not submit a sanctioned map of the proposed construction of the temple. The material on record shows that the petitioner – Trust had indeed engaged the services of an Architect Engineer who prepared a map of the proposed construction with a construction plan and estimate towards total costs. The question of placing sanctioned map on record would not arise for the reason that the stage for obtaining sanction for such a map would arrive only after due permission was obtained from the Charity Commissioner, whereby funds would be generated from the transaction for further steps to be taken towards sanctioning of the map and undertaking construction of the temple. Therefore, there is no substance in the said reason recorded by the Joint Charity Commissioner.

(17) The second reason recorded in the impugned order was that the petitioner – Trust failed to publish tender notice inviting bids in one English and one Marathi newspaper having wide circulation in Wardha and its adjoining districts. The record shows that the petitioner – Trust had issued advertisements in two Marathi newspaper having circulation in District Wardha on 18.09.2014 and 19.09.2014. There were four bids received in response to such notices and the highest bidder i.e. the petitioner – developer was finally selected. There was no material to record to demonstrate that absence of publication of such notice in English newspaper had resulted in lack of competitive bidding. There is no specific rule requiring publication of such notices in an English newspaper also. Even otherwise, the proposed reconstruction/renovation of the temple is in a place called Mouza Pipri (Meghe) Tah. & Dist. Wardha and so long as the notices were duly published in Marathi newspapers having circulation in the vicinity, including District-Wardha, no fault could be found on that ground in the procedure adopted by the petitioner – Trust. Therefore, this reason is also found to be unsustainable.

(18) The third reason recorded in the impugned order was the absence of audit reports for specific years before filing of the application under Section 36(1)(a) of the said Act. The petitioner – Trust has brought to the notice of this Court that the said audit reports were placed on record by way of a separate application before the Joint Charity Commissioner. Therefore, even this reason is found to be without any substance. Even otherwise, the learned counsel for the petitioner – Trust produced latest audit reports of the petitioner – Trust to show to this Court that all the requirements of law were being regularly complied with by the Trust and that the Trust was *bonafide* seeking to dispose of the said property in the interest of the Trust for reconstruction/renovation of the dilapidated temple.

(19) The learned counsel appearing for the petitioner – developer is justified in relying upon Division Bench judgment of this Court in the case of *Suburban Education Society, Mumbai and anr.(supra)* wherein it has been held as follows:

> *"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".*

(20) Thus, it becomes clear that the Charity Commissioner is supposed to verify as to whether the need projected by the Trust for selling its immovable property is genuine or not and that the Trust property is being sold in the interest of the Trust and its beneficiaries. Applying the said standards, to the application filed by the petitioner – Trust under Section 36(1)(a) of the said Act in the present case, this Court is satisfied that the Joint Charity Commissioner erred in dismissing the application filed by the petitioner – Trust.

(21) This is particularly in the backdrop of the fact that the highest bid submitted by the petitioner – developer was much higher than the valuation report for the said property submitted by the Joint Sub-Registrar of

Wardha as the Ready Reckoner showed the value of Rs.1,19,37,500/- while the government approved valuer stated it to be Rs.1,66,50,000/- and the bid of the petitioner – developer was Rs.2,00,15,000/-. Hence, this Court is satisfied that in the present case, the application submitted by the petitioner – Trust ought to have been allowed. Accordingly, the writ petitions are allowed. The impugned judgment and order dated 06.03.2020, passed by the Joint Charity Commissioner, is quashed and set aside. The application filed by the petitioner – Trust under Section 36(1)(a) of the aforesaid Act stands allowed.

(22) Rule made absolute in the above terms.

(23) Pending applications, if any, stand disposed of.

[MANISH PITALE J.]

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