IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13234 OF 2022

Sunil Mirpuri @ Swami Yoga Sunil
@ Sadhak Yoga Suneel ... Petitioner
versus
Osho International Foundation and Anr. ... Respondents

Mr. Anil V. Anturkar, Sr. Advocate i/by Mr. Vaibhav Kulkarni for Petitioner.
Mr. S.S.Patwardhan with Mr. S.R.Nargolkar, Mr. Saghir Khan, Mr. Arjun Kadam, for Respondent No.1.
Mr. C.D.Mali, AGP for Respondent No.2.

CORAM: N.J.JAMADAR, J.
DATE : 31 MARCH 2023

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.

2. This Petition assails the order dated 10 October 2022 passed by the learned Joint Charity Commissioner, Pune in Application No.2 of 2021 directing publication of notices inviting bids for the sale of the property of Osho International Foundation Trust, registered under the Maharashtra Public Trust Act, 1950 (the Act of 1950). The said order came to be passed while hearing arguments on an application for intervention(Exhibit 133) submitted by the Petitioner herein.

3. Osho International Foundation, Respondent No.1 Trust has acquired several immovable properties and valuable articles. An Application being Application No.2 of 2021 was preferred by the Respondent No.1 seeking permission to sell a

portion of the property known as 'Restmore' situated at CTS Nos.15 and 16, Koregaon, Pune (Trust Property) for a consideration of Rs.1,07,00,000/-, ascribing certain reasons, which according to Respondent No.1, necessiated the sale of the trust property. The Respondent No.1 claimed that it has entered into a MOU with a prospective purchaser who has agreed to purchase the trust property for an optimum consideration of Rs.107,00,00,000/- and has paid a sum of Rs.50 Crores towards part consideration as and by way of interest free earnest amount.

4. The Petitioner claims to be a follower of Osho and is, thus, a person having interest in the affairs of the trust. The Petitioner asserts the incumbent trustees of the Respondent No.1 Trust have mal-administered the trust and have been unjustifiably alienating or otherwise disposing of the properties of the Trust. The Petitioner, thus, preferred an application praying, inter alia, a direction to the Respondent No.1 Trust to cancel the MOU dated 8 December 2020 executed by and between the Respondent No.1 and the prospective purchaser and refund the earnest money of Rs.50 Crores received from the prospective purchaser.

5. While hearing the said application filed by the Petitioner, by the impugned order the learned Joint Charity Commissioner directed that notices be published in the leading newspapers inviting fresh bids for the purchase of the trust property. The fact that the public notice inviting offers was published in the year 2020, while Covid-19 Pandemic was prevalent, it seems, weighed with the learned

Joint Charity Commissioner to invite fresh bids.

6. Being aggrieved, the Petitioner has invoked the writ jurisdiction of this Court on the ground that the Petitioner's grievance was not in respect of valuation of the trust property, but to the very sale of the trust property. The impugned order, according to the Petitioner, gives an impression that the learned Joint Charity Commissioner has pre-determined the crucial issue of necessity of sale and the inquiry under Section 36 is confined to fetching highest price for the trust property.

7. I have heard Mr. Anturkar, Senior Advocate, appearing for the Petitioner and Mr. Patwardhan, learned Counsel appearing for Respondent No.1 at some length. Perused the material on record.

8. Mr. Anturkar strenuously submitted that the learned Joint Charity Commissioner has completely misconstrued the nature of the Petitioner's objection. The Petitioner has questioned the very decision of the trustees to sell the trust property. By inviting fresh bids, the learned Joint Charity Commissioner, in a sense, side stepped the pivotal issue of necessity of sale. Mr. Anturkar further submitted that a *fait accompli* is presented by the Respondent No.1 by not only executing the MOU but also accepting a huge sum of Rs.50 Crores thereunder. In the face of such a document with an influential prospective purchaser, the exercise of inviting fresh bids would yield no result and has, in fact, not resulted in a single fresh bid. Therefore, according to Mr. Anturkar, the learned Joint Charity Commissioner must first be

directed to decide the question of necessity of sale and only when a finding is recorded that the sale is necessary and in the interest of the trust, take steps to grant permission for sale at the highest price.

9. Mr. Patwardhan countered the submissions on behalf of the Petitioner. It was urged that the Respondent No.1 has offered justification for sale of the trust property. A transparent process was followed to fetch optimum price. The learned Joint Charity Commissioner considered it appropriate to again invite fresh bids to satisfy his conscious and, therefore, such an order is not at all amenable to writ jurisdiction, urged Mr. Patwardhan.

10. I have considered the rival submissions. Evidently, the Petitioner's resistance is not to the sale of the property to a particular purchaser or at a particular price. The Petitioner resists the sale of the property itself.

11. The question as to whether the sale of the property of the public trust is warranted, is the principal question which the Charity Commissioner is required to pose unto himself while deciding an application for grant of permission to sell the property. In fact, such subjective satisfaction that the sale is necessary and in the interest of the trust is the foundational fact. If it is answered in the negative, further inquiry is not warranted. If the learned Charity Commissioner is satisfied that disposal of property is necessary, the inquiry proceeds to finalisation of terms of sale.

12. The provisions contained in Section 36(c) of the Act, 1950 makes this

position abundantly clear. It reads as under :

> **“36. Alienation of immovable property of public trust :**
>
> [(1)] Notwithstanding anything contained in the instrument of trust -
>
> (a)…..
>
> (b)…..
>
> (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, authorise 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.”

13. A plain reading of the aforesaid provision would indicate that the satisfaction that the sale of the property of the trust is in the interest of the trust, is the jurisdictional condition. Once the satisfaction is recorded, inquiry proceeds to the next stage of the terms of the sale which are more beneficial to the trust. The aforesaid two stage inquiry, however, does not necessarily warrant that the same has to be in two distinct proceedings. In an application under Section 36 of the Act, 1950, if evidence is adduced and material is produced on both the points, the learned Charity Commissioner can decide the issues by one and the same order.

14. The submission that the inquiry on the first point should partake the character of determination of a preliminary issue, has the propensity to lead to multiplicity of proceedings with the prospect of challenge to the order of the learned Charity Commissioner at each stage. I am, therefore, inclined to hold that in the facts of the case, the object of incorporating a provision for prior permission of Charity

Commissioner for sale of the property of the trust under Section 36 of the Act, 1950, can be advanced by directing the Joint Charity Commissioner, Pune, to frame and decide a specific point as to whether the sale of the trust property is necessary and in the interest of the trust while finally adjudicating the Application No.2 of 2021 under Section 36 of the Act, 1950.

15. Hence, the following order :

ORDER

(i) The learned Joint Charity Commissioner, Pune, shall frame and determine a specific point as to whether the proposed sale of the trust property is necessary and in the interest of Respondent No.1 Trust while finally adjudicating Application No.2 of 2021 for grant of permission under Section 36 of the Act, 1950.

(ii) The learned Joint Charity Commissioner, Mumbai, shall decide the application without being influenced by any of the observations made hereinabove, on its own merits and in accordance with law, as expeditiously as possible.

(iii) Rule made absolute to the aforesaid extent.

(iv) The Writ Petition stands disposed.

(v) No order as to costs.

(N.J.JAMADAR, J.)