IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.585 OF 2021

Surekha H. Patil]
Aged abut 67, Occ. Business]
Residing at Harshrekha Co-op. Hsg. Soc.]
Tadipita, Hill Road, Sion-Chunabhatti]
Mumbai – 400 022]….. Petitioner.

Versus

1] The Hon'ble Charity Commissioner,]
Maharashtra State, Worli, Mumbai]
]
2] The Hon'ble Joint Charity Commissioner]
Greater Mumbai Region, Mumbai]
Having their offices at 2nd Floor,]
Dharmaday Ayukta Bhavan]
Opposite Garmet House,]
Dr. Annie Besant Road, Worli]
Mumbai, Maharashtra, 400 018.]
]
3] State of Maharashtra]
Govt. Pleader (O.S.), High Court]
Mumbai – 400 038.]
]
4] A. H. Wadia Trust,]
70, Dr. V. B. Gandhi Marg,]
Mumbai – 400 001]

	Through it's Trustees	]
		]
5]	Jehangir A Wadia	]
	Adult, Trustee	]
		]
6]	Muncherji N.M.Cama	]
	Adult, Trustee	]
		]
7]	Adil J. Wadia	]
	Adult, Trustee	]
		]
8]	Sheroo J. Wadia	]
	Adult, Trustee	]
	Res. N.5 to 8 having their address at	]
	70, Dr. V. B. Gandhi Marg,	]
	Mumbai – 400 001.	]
		]
9]	Shilpa C. Tavasalkar	]
	A-1, Verawali CHSL, Hill Road,	]
	Sion-Chunabhatti,	]
	Mumbai – 400 022	]
		]
10]	Raju B. Advani	]
	04, Mohan Mansion,	]
	Gulmohar Road,	]
	Nr. Est. Express Highway	]
	Chunabhatti, Sion	]
	Mumbai – 400 022.	]….. Respondents.

Ms. Sukeshi Bhandari for the Petitioner.
Ms. Uma Palsuledesai, AGP for Respondent Nos.1 to 3-State.
Mr. Atul Daga a/w Mr. Maneesh Trivedi i/by LR & Associates for Respondent Nos. 4 to 8.
Mr. Prerak A. Sharma a/w Mr. Rohit P. Mahadik for Respondent No.9.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 25th April 2023
PRONOUNCED ON : 03rd July 2023

JUDGMENT :

1. The present Writ Petition impugns an order dated 30th November 2017 passed by Respondent No. 2 (The Joint Charity Commissioner, Greater Mumbai) by which Respondent No. 2 has dismissed an Application filed by the Petitioner under Section 36(2) of the Maharashtra Public Trust Act, 1950 ("the said Act").

2. The relevant facts are as follows:-

(i) Respondent No. 4 – A. H. Wadia Trust ("the Trust") is the owner of land bearing Survey No.288 (Part), CTS No.291, admeasuring 1816.80 square meters situated at village Kurla, (Chunabhatti), Taluka Kurla, Mumbai Suburban District ("the said property"). Respondent Nos. 5 to 8 are the Trustees of the Trust. The Petitioner claims to be in adverse possession and occupation of the said land.

(ii) The Trust in or about the year 2005 being desirous of selling the said property on *an as is where is basis* engaged the services of Messers C.D. Vaidya & Co. ("the said valuer"), a Government approved valuer to carry out inspection of the said property and submit a valuation report in respect thereof. The said valuer accordingly submitted a valuation report dated 11th November 2005 valuing the said property at Rs.40,00,000/-.

(iii) The Trustees thereafter passed a resolution authorizing the sale of the said property on *an as is where is basis* in accordance with the provisions of Maharashtra Public Trust Act 1950 (the said Act).

Pursuant to the resolution, the Trust published notices in two newspapers inviting bids/offers for the purposes of the sale of the said property. The public notices *inter-alia* mentioned that the sale was (a) subject to sanction of the Charity Commissioner under Section 36 of the Bombay Public Trust Act, 1950; (b) was on an *as is where is basis* with all encumbrances, encroachments, tenancy, lease and litigations, if any; and (c) subject to sanction under the Urban Land Ceiling Act, 1976.

(iv) In response to the above notices, the Trust received only one bid/offer for an amount of Rs. 7,11,000/- from one M/s. Shah Associates. Since the offer was way below the valuation, the Trust issued fresh public on 23.03.2007 in two newspapers calling for and inviting bids/offers for the purposes of the sale of the said property. The terms and conditions of the sale were made available at the office of the Advocates for the Trust. The terms and conditions of sale provided that the offerors were required to *inter-alia* unconditionally accept the terms and conditions of sale as also submit by way on an earnest money deposit 35% of the bid/offer amount .

(v) Pursuant to the second public notice, two bids/offers were received, both dated 20th April, 2007. The first bid/offer received was from Respondent No. 9 and was for an amount of Rs. 44,10,000/- and the second bid/offer was received from the Petitioner which was for an amount of Rs. 29,01,000/-.

(vi) Since the offer received from Respondent No.9 was the only offer above the ascertained value, and was complete in all respects, the Trustees accordingly passed a Resolution dated 27th April, 2007 accepting the offer given by Respondent No.9. It was also resolved that an application be made under Section 36 of the said Act seeking sanction for sale of the said property in favour of Respondent No.9. The Advocates for the Trust by their letter dated 3rd May 2007 informed the Petitioner that the offer given by the Petitioner was rejected.

(vii) Accordingly, the Trust filed an application under Section 36(1) of the said Act being Application No. J-4/70/2008 dated 28th July 2007 seeking sanction for sale of the said property under Section 36 property in favour of Respondent No. 9. The said Application came to be allowed by the Respondent No. 2 vide his Order dated 18th July 2009. The sanction was granted in favour of Respondent No. 9 for consideration amount of Rs. 52,92,000/-. Thereafter, the entire consideration was received by the Trust, on or before 16th September 2009.

(viii) The execution of the Conveyance Deed remained to be executed within the time period stipulated as per the order of sanction dated18th July 2009. Respondent No.9 had addressed a letter dated 23rd November 2010 to the Trust and a Miscellaneous Application was filed bearing No.12 of 2011 dated 18th February,2011 seeking extension of time for execution of the Conveyance in favour of Respondent No.9. The said Miscellaneous Application came to be allowed by an Order dated 17.10.2011.

(ix) The Petitioner thereafter in May 2012 filed an Application under Section 36 (2) of the said Act seeking revocation of the said sanction on the grounds more particularly set out in the said Application. The said Application was rejected on 30th November 2017. It is this order, which is challenged in the present Writ Petition, which was filed in the year 2021.

Submissions of Ms. Bhandari on behalf of the Petitioner.

3. The real and only contention of Ms. Bhandari was that the sanction of Respondent No. 2 was obtained by practicing a fraud upon

Respondent No.2. She submitted that the Trust had suppressed from Respondent No.2 the fact that the said land had been declared a slum and thus on this basis alone the sanction ought to be revoked and the Impugned Order was required to be set aside. She submitted that this was a material fact since the same would have a bearing on the value of the said property. Learned counsel submitted that once land had been declared as a slum valuation thereof would have to be as per Guideline No. 26 of the Annual Statement of Rate (ASR) published by the Government. She submitted that on this basis alone the order granting sanction was bad in law. In support of her contention, she placed reliance upon the judgement in the case of ***Messers Shree Krishna Realtors vs The Chief Controlling Revenue Authority & Ors***.[1]. Learned Counsel then submitted that under Section 36 (1) of the said Act a duty is cast upon the Charity Commissioner to secure the interest of the Trust and given that in the present case the land had been incorrectly valued, the best interest of the Trust was therefore not secured.

1 Writ Petition No. 2453 of 2021 Judgement dated 1st August, 2022

4. Learned Counsel then submitted that the fact that Respondent No.9 and Respondent No.10 had entered into a Development Agreement two years prior to the order of sanction being passed was itself a factor which was material and one which had also not been disclosed to Respondent No. 2. She submitted that this also amounted to concealment of material facts on which the sanction was liable to be set aside. In support of her contention, she placed reliance upon a judgment of this Court in the case of ***N.D. Construction & Ors vs. State of Maharashtra & Ors.***[2].

5. Ms. Bhandari, then submitted that another factor on which the sanction was liable to be set aside was that the valuation report on the basis of which the sale of the said property was sanctioned was of the year 2005 whereas the sale had been sanctioned in the year 2009. She submitted that it was incumbent upon Respondent No.2 to have called for a fresh valuation report of the year 2009 given the manner in which property prices in the city

2 *2012 (1) BCR 241*

of Mumbai escalate.

6. Learned Counsel then also submitted that the manner in which the Petitioner's offer was rejected on an outright basis and that too without assigning any reason whatsoever was itself a suspicious circumstance. She then submitted that the Trustees had falsely contended before both Respondent No. 2 as also this Court that the Petitioner's offer was rejected since the Petitioner had not accepted the terms and conditions of the said offer.

7. Learned Counsel then pointed out that despite the fact that sanction for entering into a Deed of Conveyance was granted on 18th July 2009 and last the extension of 6 months was granted on 17th October 2011, no Deed of Conveyance was executed for more than 10 years from the date of sanction. She submitted that Deed of Conveyance now relied upon as having been executed in the year 2019 is a void document. She then submitted that though the submissions had been made regarding the fact that the Deed of Conveyance

had been pending for adjudication and the same had not been adjudicated upon in view of the pendency of Revision Application being filed by Respondent No.9 was unsupported by any material. In any event and without prejudice she submitted that the fact that the Deed of Conveyance which continued to be unregistered and was disclosed at a belated stage was nothing more than an eyewash to mislead this Court.

8. Learned Counsel, then in the alternative and without prejudice to the aforesaid submissions, submitted that even assuming that the Deed of Conveyance had been executed, the same could be revoked by this Court if it was found that the same was obtained by misrepresentation and concealment of facts. In support of her contention, she placed reliance upon a decision of the Division Bench of this Court in the case of ***Avinash Kishorechand Jaiswal vs. Rammandi Deosthan Pavnar & ors***[3]. in which the Full Bench was pleased to hold as follows :-

3 *2020 (3) ALL MR 349*

> *"The power of revocation of sanction under section 36(2) of MPT Act on the ground that such sanction was obtained by fraud or mis-representation or by concealing facts, material for the purpose of giving sanction could be exercised even after execution of a sale-deed or multiple sale-deeds on basis of sanction granted under section 36(1)(a) of MPT Act."*

In view thereof, Learned Counsel submitted that the sanction of Respondent No.2 having been obtained by misrepresentation and concealment of material facts was liable to be set aside and the present Writ Petition ought to be allowed.

Submissions of Mr. Atul Daga, on behalf of Respondent Nos.4 to 8.

9. Mr. Daga learned counsel at the outset submitted that the present Writ Petition ought to be dismissed based on the Petitioners conduct alone. In support of his contention, he pointed out the following, viz.

i. That the Petitioner was always aware that the said property was declared a slum which fact had been suppressed by the Petitioner in the present Writ Petition.

ii. That despite being aware this, contention was never raised by the Petitioner either in the Application seeking revocation as also in the present Writ Petition and the same has only been orally canvassed.

iii. That the Petitioner had deliberately suppressed the Affidavit in Reply filed by the Trust to the said Application for revocation from which it was clear that the offer made by the Petitioner, apart from being substantially lower than the offer made by Respondent No.9, was also an incomplete offer inasmuch as the Petitioner had not (a) unconditionally accepted the terms and conditions of the sale and (b) the Petitioner had not submitted the requisite earnest money deposit along with the bid/offer.

10. Mr. Daga then without prejudice to the above submitted that the

Petitioner having unconditionally taken part in the said bid/offer was estopped from now impugning the same. In support of his contention, he placed reliance upon the following judgments,

(i) *Omprakash Shukla vs. Akhilesh Kumar Shukla* [4]

(ii) *Madanlal vs. State of J. & K.*[5]

(iii) *Huda Farhan Aghadi vs. Charity Commissioner*[6]

(iv) *Rosmerta Technologies Ltd. vs. State of Goa*[7]

(v) *Renaissance Distilleries & Breweries vs. Government of NCT of Delhi*[8]

11. Learned Counsel then submitted that there had been no fraud and/or misrepresentation on the part of the Trust or the Trustees in seeking sanction of Respondent No.2 for the sale of the said property in favour of Respondent No.9. In support of his contention he invited my attention to the Valuation Report dated 11th November 2005 and pointed out therefrom that under the caption *"Description of the Property"* it is clearly mentioned that the

4 *1986 (Supp.) SCC 285*

5 *(1995) 3 SCC 486*

6 *Order dated 18/10/2016 in Writ Petition No.5987/2016*

7 *2014 SCC Online Bom 891*

8 *2007 SCC Online Del 1134*

property comprises of an open plot of land with number of encroachments thereon. He then submitted that the contention that the said property had been incorrectly valued or that Respondent No.2 had not factored in that the same was belied from the plain reading of para-26 of the impugned order where Respondent No.2 had specifically considered and dealt with this issue. He then pointed out that the public notices issued also *inter-alia* clearly mentioned that the sale was (a) subject to sanction of the Charity Commissioner under Section 36 of the Maharashtra Public Trust Act 1950; (b) on as is, where is basis, with all encumbrances, encroachments, tenancy, lease and litigations if any, etc; and (c) subject to sanction under the Urban Land Ceiling Act, 1976 ("the ULC Act"). He then pointed out that in two rounds of inviting offers, the highest offer was that of Respondent No.9 and it was the only offer which was above the price indicated in the valuation report. He submitted that not only was the Petitioner's offer substantially below the price mentioned in the valuation report but also that the Petitioner had neither unconditionally accepted the terms and conditions nor had the Petitioner submitted the earnest money deposit amount. He thus submitted that the Petitioners bid/offer was not a valid bid/offer at all.

12. Learned Counsel then submitted that since the offer received from Respondent No.9 was the highest offer and above the price indicated in the valuation report, the same was accepted by the Trustees vide their Resolution dated 27th April 2007. Learned Counsel took pains to point out that the Trust vide its letter dated 3rd May 2007 had informed the Petitioner of the fact that the Petitioner's offer had been rejected which the Petitioner neither questioned nor offered to increase the bid/offer of Rs. 29,01,000/-. Learned Counsel submitted that it was in the backdrop of the aforesaid facts, the Trust had sought the sanction for sale of the said property in favour of Respondent No. 9 which sanction had been granted only after Respondent No.9 was made to increase her offer to Rs.52,92,000/- since the Trust had duly complied with all the provisions of the said Act.

13. Learned Counsel then submitted that Respondent No.9 had infact on or before 16th September 2009 had made payment of the entire consideration amount and thus the Trust had received the entire sale consideration on or before 16th September 2009. Learned Counsel submitted that thereafter time to execute the Deed of Conveyance within stipulated period mentioned in the order dated 18th July 2009 had been sought for by the Trust at the request of Respondent No.9. He thus submitted that no prejudice whatsoever was caused to the Trust.

14. He then submitted that the Petitioner's contention that the balance consideration had not been received from Respondent No.9 but had been received from a third party was also entirely baseless and without any merit. Learned Counsel pointed out that the entire consideration had been received by the Trust by way of Pay Orders/Demand Drafts from only Respondent No. 9 and not from any third party as alleged. He submitted that in any event, the contention taken that the payment was received from a third party was purely

in the nature of conjecture and surmise and there was no basis for the same. He submitted that the said contention had been adequately dealt with and rejected by Respondent No.2 in the Impugned Order. He submitted that the privity of contract was only between the Trust and Respondent No.9. He submitted that the Trust having received the entire consideration in the year 2009 itself which was well before the Application for revocation was filed, it was immaterial that Respondent No. 9 had dealings with Respondent No. 10. He submitted that what had to be seen was that there was no prejudice and or loss caused to the Trust that's all. He, submitted that in the facts of the present case there was no loss to the Trust and there was no concealment of facts on the part of the Trust and/or its Trustees from Respondent No.2 and thus the question of the sanction having been obtained by fraud and/or misrepresentation did not arise.

15. Learned Counsel then submitted that the Petitioner had even after receipt of the letter dated 3rd May 2007 never bothered to make any inquiries with the Trust and/or the Advocate of the Trust in respect of the said property.

He submitted that it was only for the first time, in June 2012 which was after a period of 5 years from the date on which the Petitioner's bid was rejected, that the Application for revocation came to be filed. He took pains to point out that no reason whatsoever had been given as to why the Petitioner had waited for a period of 5 long years before moving the Application for revocation. He submitted that there was not even the remotest explanation for this delay was given. He submitted that it was a settled law that a party who sleeps over its rights is not entitled to any discretionary relief.

16. Learned Counsel then pointed out that the Petitioner had for the first time in the present Writ proceedings sought to place on record the Valuation Report dated 22nd December 2017 which was valued the said property at a sum of Rs.23,94,40,000/-. He pointed out that the Petitioner had never bothered to place reliance upon this valuation report or any other valuation report before the Charity Commissioner in revocation proceedings. He, therefore, submitted that such conduct of the Petitioner was only to defeat

and delay the sanction validly granted by raising false, frivolous and untenable contentions. Learned Counsel then pointed out that the Petitioner had also during the course of the present proceedings placed on record another valuation report which valued the said property at Rs.7,94,88,000/-. He submitted that the 2nd valuation report contradicted the 1st valuation report which was the basis on which the present Petition had been filed. He therefore submitted that the conduct of the Petitioner was completely lacking in bonafides as the Petitioner was producing a valuation report to suit its own convenience and not to reflect true valuation of the said property.

17. Learned Counsel then pointed out that though the Petitioner had in the Application for revocation stated that the Petitioner was willing to pay market rate as per the year 2012, the Petitioner had infact never taken any steps to act upon the same which just showed malafide intention of the Petitioner to merely offer a higher price without taking any steps to infact pay the same since the Petitioner was in possession of the said property.

18. For all the aforesaid reasons, Learned Counsel submitted that the Impugned Order was correctly passed, and the present Writ Petition ought to be dismissed with costs.

Submissions of Mr. Prerak Sharma on behalf of Respondent No.9

19. Mr. Sharma, Learned Counsel for Respondent No.9, adopted the submissions advanced by Mr. Daga. He additionally pointed out that the public notices issued by the Trust and pointed out that the Petitioner had not complied with the terms and conditions thereof inasmuch as the Petitioner at the time of submitting the bid/offer did not deposit an amount of 30% of the offer as earnest money. He submitted that the offer made by the Petitioner was infact defective and not in accordance with the public notices. He, therefore, submitted that infact the Petitioner had not made any offer in law. He then submitted that the Trust had correctly rejected the offer of the Petitioner by

recording the reasons as was evident in the Impugned Order which in paragraph 24 *inter-alia* recorded as follows: -

> *"Further, from the record and proceeding, it also appears that the applicant has not submitted terms & conditions as mentioned in public notice dated 23/3/2007. Further it appears that due to non submissions of signed terms and conditions by applicant, the trustees of trust rejected the offer. The copy of letter dated 3/7/2007 reveals that the opponent No.1 trust has communicated the rejection of said offer to applicant. Therefore, the allegation of the applicant that the opponent No.1 trust is having their hand gloved with the opponent No.2 and the entire sale proceeding is arbitrary in nature are not proper."*

20. Learned Counsel then submitted that the Petitioner had approached the Court after an inordinate long delay, in which time valuable rights had accrued in favour of Respondent No.9. He pointed out that on 21st June 2019 a Deed of Conveyance had been duly executed in favour of

Respondent No.9, and therefore, valuable rights had accrued in favour of Respondent No.9. He also pointed out that the Petition filed had been previously dismissed on 20th February 2019 and was subsequently restored to file. He thus pointed out that the Petitioner had not been diligent in prosecuting the present Writ Petition and the same therefore required to be dismissed with costs.

21. I have heard learned counsel, considered the rival contentions as also the case law cited and after a careful consideration of the same, have no hesitation in holding that the present Writ Petition deserves to be dismissed for the following reasons, viz.

A. The main ground on which the Petitioner has impugned the order is that the said property was declared a slum which fact was suppressed from Respondent No.2. While the Petitioner has effectively premised its entire challenge in the present Petition, on this ground there is not a whisper of the same to be found either in the Application for revocation as also in the present Writ Petition. While the Petitioner has, in paragraph 3 of the Application for revocation, taken a ground of fraud and misrepresentation, the same is not in the context of the valution of the said property being improper or suppression of the fact that the said property was declared a slum which fact had been suppressed by the Trust. Even the present Writ Petition is silent on both these aspects and the only ground of challenge on the aspect of declaration of the said property being a slum is to be found in Ground (i) of the Writ Petition which reads thus :-

> *"(i) That the Respondent No.2 erred in ignoring the aspect of declaration of slum by Government of Maharashtra.*

However, a perusal of the Impugned Order shows that Respondent No.2 has elaborately in paragraph 26 of the Impugned Order dealt with the fact that the said property was encroached, while rejecting the Application for revocation. Thus, the Petitioner has for the first time after a period of14 years from the date of Petitioner's submitting her bid/offer has raised the contention of improper valuation. There is not a whisper much less any explanation in the present Writ Petition as to why this ground though available was never taken before Respondent No.2 nor is there any explanation as to why the same has now been urged after an inordinately long delay. Thus, to fault an order on the basis of a ground that was admittedly never taken, though available to the Petitioner, and that too after an inordinate delay, in the facts of the present case, to my mind, would be wholly inequitable.

B. Perhaps the reason why this contention was never raised in the Application for Revocation is because the Petitioner was always aware of this fact as has been demonstrated by the Trust. Additionally, there is no explanation as to why the Petitioner being aware of this fact chose to suppress the same in the present Writ Petition. The record reflects that not only, was the Petitioner aware that the land was declared a slum, but the Petitioner also unconditionally submitted her bid on this basis and with this knowledge. Therefore to now permit the Petitioner, who admittedly claims to be in adverse possession of the said property, to impugn an order based on a ground that was always available to the Petitioner and within the knowledge of the Petitioner and which was deliberately not taken and then suppressed in the Writ Petition would in my view amount to an abuse of the process of this Court in its jurisdiction under Article 226 of the Constitution of India.

C. Additionally, there is a categorical finding in the impugned Order that the Petitioner's bid/offer had been rejected since the same was an incomplete offer as the Petitioner (i) had not accepted the terms and conditions of the sale by singing the same and (ii) had not submitted the earnest money deposit along with the bid/offer. This categorical finding has not been challenged in the Writ Petition nor has the Petitioner been able to demonstrate how this finding is incorrect. On the contrary, the Petitioner has suppressed from this Court the relevant record before the Charity Commissioner which the Petitioner ought to have disclosed when invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Petitioner having suppressed the record as also the fact that it was always within the knowledge of the Petitioner that the land was declared as a slum, in my view, dis-entitles the Petitioner to seek any discretionary relief from this Court.

D. Another aspect on which the present Writ Petition deserves to be dismissed is on the ground of delay. The Petitioner had admittedly submitted her bid/offer in the year 2007 and the same was also rejected in the same year. Respondent No. 2 thereafter granted sanction to the Trust for the said Sale in the year 2009. The Petitioner thereafter filed the Application for revocation in the year 2012 i.e., five years after rejection of the Petitioners bid/offer. The impugned order was then passed in the year 2017 and the present Writ Petition was filed in the year 2021 which is again about four years after the passing of the impugned order and in which the Petitioner has as I have already noted for the first time has taken the contention of valuation. Thus, there has been delay at every stage of the proceedings. By the present Petition, the Petitioner has for the first time taken a contention which was never raised at the time of submission of the bid nor in the Application for revocation. There is not even the hint of an explanation as to why the Petitioner has not taken this contention earlier nor any explanation as to why the same is taken for the first time in the present Writ Petition or to explain the delay.

E. Even the Petitioner's contention that the valuation report was of the year 2005 whereas the sanction granted was of the year 2009 is untenable. The Petitioner's contention that the Respondent No.2 ought to have called for a fresh valuation report is untenable since the Application seeking sanction was filed by the Trust in the year 2007 and the sanction was granted in the year 2009 after the offer of Respondent No.9 was increased from Rs.44,10,000/- to Rs.52,92,000/-. It cannot be lost sight of that the sanction was granted after Respondent No.2 had called for fresh bids since the sole bid submitted pursuant to the 1st public notice was way below the value of the property as stated in the valuation report. It cannot also be lost sight of that the Petitioner, who submitted her bid/offer pursuant to the 2nd public notice, submitted an offer which was below the value of the property and did not once thereafter offered to raise the said bid/offer. Given these facts there is in my view no inordinate delay so as to call for a fresh valuation report especially since Respondent No.2 had confirmed the sale only after the bid amount submitted by Respondent No.9 was increased.

F. Reliance placed by the Petitioner upon the judgment of this Court in the case of ***Messers Shree Krishna Realtors*** (supra) is also wholly inapplicable to the facts of the present case. The challenge in the case of ***Messers Shree Krishna Realtors*** (supra) was in respect of the demand for the deficit stamp duty based on a Deed of Conveyance which contemplated a slum redevelopment scheme of the land in question. It was in these circumstances that Guideline No. 26 of the ASR was made applicable which Guideline reads thus:-

"26 : Issues to be considered for valuation while

registering/adjudicating instrument of development agreement in respect of slum rehabilitation scheme:-

a) Value of the constructed area to be received by the land owner as per the Annual Statement of Rates applicable for new construction + monetary and other consideration, the aggregate thereof;

b) Value of the constructed area/carpet area to be received by the developer at the land rates as per ASR less cost of construction for the construction of slum rehabilitation OR 50% value of the whole land at land rate of ASR, whichever is higher;

OF the above value (a) and (b) whichever is higher should be considered as market value for levying stamp duty."

In the present case not even an attempt has been made by the Learned

Counsel for the Petitioner to point out that the Agreement in question is for a slum rehabilitation scheme. Not a single clause of Deed of Conveyance was shown to me which would bear out this position. Therefore, the said judgment is not applicable in the facts of the present case since the property in the present case is sold simply on *an as is where is basis*. Also, it is useful to note that in the said case there was no challenge to the sanction of the sale by the Charity Commissioner even though the property in question was sold under the price fixed by the valuer.

G. Similarly, the judgment in the case of ***N. D. Construction*** (supra) is also entirely inapplicable to the facts of the present case. The Impugned Order categorically records as follows, vis.:-

> *"**28.** The applicant has not shown any proof in respect of the opponent No.3 has given amount to trust on behalf of opponent No.2 and opponent No. 1 & 2 have created third party right on the property in question and the Advocate of trust*

had insisted to her to place offer in person without sealed envelope. Therefore, the said allegations cannot be considered."

There is nothing in the present Writ Petition which so much as even attempts to convert the above findings. Nothing was placed on record before Respondent No. 2 or this Court to demonstrate that Respondent No. 9 had created third party rights as was the case in ***N. D. Construction.*** Thus the submissions in this regard are entirely baseless and unsubstantiated.

H. Insofar as reliance upon the judgement in the case of ***Avinash Kishorechand Jaiswal*** (supra) is concerned, there can be no quarrel with the proposition laid down therein. However, in the present case given the findings above, I find that no case has been made out to revoke the sanction granted. The record sets outs that the said property was sold only after two rounds of bids were invited. Respondent No. 2 granted sanction after making Respondent No. 9 enhance the bid/offer to Rs. 52,92,000/-- from the amount of Rs. 44,10,000/- initially submitted. Trust has received the entire consideration amount in the year 2009 itself from Respondent No.9. However, in the present case the valuation report, public notice and sanction of sale of the said property were all on *an as is where is basis*. The Impugned Order specifically records that the same was encroached upon and thus that fact was well known to all.. In the present case in my view there is no case made out for revocation under Section 36(2) of the said Act.

22. For all these reasons the present Writ Petition is accordingly dismissed.

(ARIF S. DOCTOR, J.)