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

WRIT PETITION NO. 3581 OF 2023

Dinesh Rupchandji Diwan and anr__ Vs. __Joint Charity Commissioner and anr

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. U.J.Deshpande, Advocate for petitioners
Ms. T.H.Khan, AGP for respondent no.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/06/2023

1] Heard Mr. Deshpande, learned counsel for the petitioners. Ms. Khan, learned AGP appears for respondent no.1.

2] The present petitioners are the prospective purchasers, who had entered into an agreement with the respondent no.2 on 5.11.2011 for purchase of the property of the trust having Gat No. 516, admeasuring 2 acres, situated at Mouza Valgaon, Tq. and Dist Amravati, for total consideration of Rs. 52,00,000/-. After the agreement was entered into, an application was filed by the respondent no.2 under Section 36(1) of the Maharashtra Public Trust Act (for short "The MPT Act") before the Joint Charity Commissioner, seeking approval to the aforesaid transaction.

3] After an enquiry under Section 36 by the judgment dated 7.8.2019, the learned Joint Charity Commissioner dismissed the application on the ground that on earlier 12 occasions, sanction was granted to the trust to sell other properties and though these properties were sold, there was nothing on record to indicate how and in what manner the sale consideration from the aforesaid sale proceeds was utilized for furthering the aims and objects of the trust or for protecting the properties of the trust.

4] The respondent no.2 trust has not filed any petition challenging this judgment passed by the Joint Charity Commissioner refusing to grant permission. It is the petitioners who were the prospective purchasers under the agreement dated 5.11.2011, who are questioning the said judgment dated 7.8.2019.

5] Mr. Deshpande, learned counsel for the petitioners submits that once the trust resolves to sell the property, the role of the Charity Commissioner is that of a rubber stamp who has no other option than to approve such sale. The only extent to which he can interfere, is the quantum of sale consideration. It is also contended that in case the Joint Charity Commissioner was not satisfied with the value in the agreement of sale, it was permissible for the Joint Charity Commissioner to conduct a public auction, for which reliance is placed upon the judgment of the Full Bench in **Sailesh Developers vrs Joint Charity Commissioner, 2007(3) Mh.L.J 717** and **Meharwan Homi Irani vrs. Charity Commissioner, (2001) 5 SCC 305**. He further submits that in such a case what is necessary is for the enquiry to be conducted under Rule 7 of the MPT Rules which according to him has not been conducted. He therefore submits that the impugned order is required to be quashed and set aside and the application is liable to be allowed or in the alternative, the matter is required to be remanded back to the learned Charity Commissioner.

6] Ms. Khan, learned AGP supports the impugned judgment.

7] In so far as the contention that the Joint Charity Commissioner acting under Section 36 of the MPT Act is concerned, acts as a mere rubber stamp. I am unable to accept this submission, for the reason that Section 36(1)(c) of the MPT Act mandates that it is only after the satisfaction of the Charity Commissioner that the property of the trust is required to be disposed of in the interest of the trust, that a permission is to be granted. Thus the satisfaction of the Charity Commissioner regarding the existence of the interest of the trust in the disposal of the property is paramount. The satisfaction, has to be necessarily based upon the material which is placed before him and any summary enquiry as is contemplated by Rule 7 of the MPT Rules. That the satisfaction of the Charity Commissioner is necessary, is also spelt out from what has been held by the learned Full Bench in **Shailesh Developers** (supra), when it specifically held as under:

> "28. .... Before passing an order of sanction or authorisation, the Charity Commissioner has to be satisfied that the trust property is required to be alienated. Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary in the interest of the trust or for the benefit of the trust or for the protection of the trust, it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to grant sanction to a particular proposal of the trustees or to reject it. It is the duty of the Charity Commissioner to ensure that the transaction of alienation is beneficial to the trust and its beneficiaries.

.... When the Charity Commissioner is satisfied that trust property needs to be alienated and when he finds that the offer received by the trustees may not be the best offer, he can always direct that bids be invited by a public notice.
.... The trustees hold the property for the benefit of the beneficiaries and therefore once they express desire to alienate the property, it is obvious that Charity Commissioner can always impose condition while granting sanction that the property shall be sold or transferred to a person who has come with an offer which is the best offer in the interests of the trust. The Section gives a power to the Charity Commissioner to impose conditions and the said conditions will include a requirement of selling or transferring or alienating the trust property to a purchaser who has offered the best deal having regard to the interest and benefit of the beneficiaries and the protection of the trust.

8] The very fact that Section 36 of the MPT Act is enacted for the protection of charities indicates the above position to be extant. Thus the contention that while acting under Section 36 of the MPT Act, the Charity Commissioner acts as rubber stamp and has no other option than to approve the transaction is clearly not something which is spelt out from the language of Section 36 of the MPT Act and therefore has to be rejected.

9] In so far as the enquiry under Rule 7 of the MPT Rules is concerned, it is a summary enquiry and it is for the trust to place material before the Charity Commissioner in order for the Charity Commissioner to record satisfaction regarding the interest of the trust being subserved. Nothing has been brought to my notice to indicate that no enquiry was conducted and opportunity was not given. That apart, in the present matter, it has come on record that atleast on 12 earlier occasions, the permission under Section 36 of the MPT Act was sought, was granted and the application does not say anything about the utilization of these funds from those transactions altogether. The report of the Inspector dated 12.09.2016 (pg.43) records the position that the consideration from the earlier sale transactions was available in the account of the respondent no.2 trust. That being the position, there was clearly no necessity of any funds to the respondent no.2 for the aims and objects of the trust, as sufficient funds were available. The impugned order also records that instead of adopting the settled mode of calling bids by public auction, what has been done is a private agreement with the present petitioners which was also not the accepted norms.

10] Be that as it may, since the basic requirement for grant of approval, namely the satisfaction of the Charity Commissioner was not on record, on account of the material placed before him and the report of the Inspector records 'funds available with the respondent no.2 trust', nothing is spelt out as to how and in what manner the interest of the trust would be subserved by sale of the property. It has also come on record that the trust is managed by a single person, who is the sole hereditary trustee viz. Anantprasad Laxminivas Ganeriwal and therefore the requirement of establishing the satisfaction of the Charity Commissioner under Section 36 of the MPT Act also assumes importance.

11] There cannot be any dispute with the propositions as laid down in **Shailesh Builders** and **Mehrwan Homi Irani** (supra), which hold that the power of the Charity Commissioner is not confined merely to grant or refusal of sanction, but extends to inviting offers from public and directing the trustees to sell and transfer the property to a person whose bid or quotation is the best having regard to the interest, benefit or protection of the trust. Rather on the contrary they spell out that the interest, benefit or protection of the trust are factors which are to be necessarily considered by the Charity Commissioner while considering an application for grant of approval under Section 36(1) of the MPT Act. In that light of the matter, considering what has been discussed above, I do not see any reason to interfere in the impugned judgment for the reason that there is nothing on record to indicate the interest of the trust is being protected by the proposed sale transaction. The petition is therefore dismissed. No costs.

JUDGE

Rvjalit