2024:BHC-AUG:8890

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 10451 OF 2015

Shri Pandurang Math Sansthan
At Bokud Jalgaon, Tq. Paithan,
District Aurangabad
Through its Trustee
Subhash Eknathbuwa Gosavi
Age 53 Years, Occu. : Puja Arch
and Agriculture,
R/o Bokud Jalgaon, Tq. Paithan,
District Aurangabad. .. Petitioner

Versus

The Joint Charity Commissioner,
Aurangabad Division, Aurangabad. .. Respondent

Shri Ashwin V. Hon, Advocate for the Petitioner.
Shri V. M. Jaware, A.G.P. for the Respondent sole.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 22.04.2024
JUDGMENT PRONOUNCED ON : 26.04.2024

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. Petitioner is assailing order dated 18.06.2015 passed by the learned Joint Charity Commissioner, Aurangabad, in Enquiry No. 04 of 2014, rejecting application of the petitioner filed U/Sec.

36 of the Maharashtra Public Trust Act (hereinafter referred as to the 'Act' for the sake of brevity and convenience).

3. Petitioner is a trust registered under the Act bearing Registration No. A-1232 dated 28.02.1963. It holds number of agricultural lands and a Math at Bokud Jalgaon, Tq. Paithan, Dist. Aurangabad. It was in need of funds for renovation of temple, construction of Sabha Mandapam, Bhakta Niwas and Compound Wall. It was having lands more than 550 acres. Out of that 92 Acres 08 Guntha land was proposed to be alienated to raise the funds.

4. The trustees passed resolution on 08.02.2014 to sell following lands by securing permission U/Sec. 36 of the Act.

I. Land gut No. 29 adm. 32 Acres 07 Gunthas situated at village Gazipur, Tq. Paithan.

II. Land gut No. 20 adm. 33 Acres 37 Gunthas situated at village Wadgavhan, Tq. Paithan.

III. Land gut No. 32 adm. 26 Acres 04 Guntha situated at village Wadgavhan, Tq. Paithan.

5. In pursuance of the resolution, Enquiry Application No. 04 of 2014 was submitted to the respondent seeking sanction U/Sec. 36 of the Act. It is the case of the petitioner that affidavit in support of application, resolution, statement of accounts from 2010-2011 to 2012-2013, revenue record and copy of Schedule I were placed on record. Translated copy of succession statement

of Maashdar and Muntaqab were also placed on record.

6. The respondent/Joint Charity Commissioner, Aurangabad rejected application by order dated 18.06.2015, which is under challenge. It is held that the lands proposed to be sold are Inam lands. The trustees have no right to alienate the Inam lands. Relevant documents are not produced on record, despite giving opportunity to the petitioner. Income and amount of compensation received by trust due to acquisition of lands have not been disclosed. It is further recorded that there is no necessity to sell the lands of the trust as there is already source of income, which can be utilized for development.

7. Learned counsel for the petitioner submits that the respondent/Joint Charity Commissioner did not grant proper and adequate opportunity to produce relevant documents on record. Only two days time was granted to place documents on record. It is further submitted that all the relevant documents were placed before the respondent including account statement and the balance sheet of preceding years. It is further submitted that it would not be within purview of Section 36 of the Act to substitute opinion and the need of the trustees. He would further submit that Joint Charity Commissioner exceeded in its jurisdiction in considering notional income and potential of the land. He would further submit that it is grave error of jurisdiction to over look the need for development and betterment of the trust.

8. Learned counsel for the petitioner places on record

judgment rendered by the Nagpur Bench of this Court in the matter of **Sai Builder and Developer Vs. Joint Charity Commissioner, Nagpur and another** reported in ***(2022) 6 Mh. L. J. 612*** and the judgment of the Division Bench of this Court in the matter of Sub **Suburban Education Society, Mumbai and another Vs. Charity Commissioner of Maharashtra State, Mumbai and others** reported in ***2004(2) Mh. L. J. 792***.

9. Per contra, learned Assistant Government Pleader supports impugned order. He would submit that all the lands held by the trust are Inam lands. The lands proposed to be sold are undisputedly inam lands, which cannot be alienated by implication of Section 6 of the Hyderabad Atiyat Enquiries Act, 1952. The petitioner failed to disclose relevant facts during the course of enquiry. He would submit that a possible and reasonable view has been taken by the respondent by impugned order.

10. I have considered rival submissions of both the sides. It is not disputed that petitioner-trust is occupant and holder of number of agricultural lands in Paithan taluka including three lands which are proposed to be sold. These lands are trust properties recorded in Schedule – I. Petitioner placed on record statement of account for the years 2010-2011 to 2012-2013. Besides that plan of proposed construction and estimate were also placed on record. Petitioner was granted time for placing certain more documents on record on 16.06.2015. Matter was

further considered on 18.06.2015 when impugned order was passed.

11. It transpires from record that lands comprising in gut Nos. 29, 20 and 32 are inam lands. The trustees passed resolution on 08.02.2014, in which lands held by the trust are described to be inam lands. This is further corroborated by the affidavit filed in support of application U/Sec. 36 of the Act. There are Muntaqab and succession statement of Maashdar to indicate that lands are inam lands. The revenue record indicates that the lands proposed to be sold are Class II inam lands. If this is the situation, then there is substance in the submissions of the learned A. G. P. that alienation of the inam lands is prohibited by Section 6 of the Hyderabad Atiyat Enquiries Act, 1952. As per Sec. 29 of the Maharashtra Land Revenue Code, Class II lands are non transferable.

12. The respondent while conducting an enquiry U/Sec. 36 of the Act is empowered to look into all the relevant factors for granting sanction to alienation of the trust property. Total holding of the trust, location of the lands and its nature would be relevant factors. The petitioner should have disclosed the quantum of compensation received after acquisition of the lands held by the trust. Income from the lands of the trust and utilization have not been candidly disclosed by the petitioner.

13. Respondent is justified in recording findings that petitioner failed to disclose relevant material. It would be within

jurisdiction of the respondent to examine need of the petitioner trust to alienate its lands. I am of the considered view that there is no perversity or illegality in the impugned order.

14. The grievance of the petitioner is that adequate opportunity was not given by the respondent/Joint Charity Commissioner. During the course of hearing matter was deferred and reconsidered after two days so as to enable the petitioner to place documents on record. Even if it is presumed that inadequate time was given, it has not been demonstrated by the petitioner that, it could secure relevant documents and the information after the time granted to it. Nothing is brought to the notice of this Court that the petitioner is armed with the relevant information which is having bearing on the merits of the matter.

15. Learned counsel for the petitioner seeks reliance on the judgment of the learned Single Judge of Nagpur Bench in the matter of **Sai Builder and Developer Vs. Joint Charity Commissioner, Nagpur and another** (supra). I have gone through the relevant paragraph Nos. 14 to 18. In that matter sanction was refused on the ground that sanctioned map of proposed construction of temple was not produced, tender notice was not sufficiently made public and audit reports for the specific years before filing of application were not produced. Following are the conclusions drawn by the learned Single Judge in para Nos. 19 and 20 of the judgment.

"(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."

16. Another judgment of the Division Bench of this Court cited by the petitioner in the matter of **Suburban Education Society, Mumbai and another Vs. Charity Commissioner of Maharashtra State, Mumbai and others** (supra). Its para No. 16 was already taken into account in the above referred judgment. The principle laid down by the Division Bench cannot be disputed.

17. Charity Commissioner has very limited scope while conducting enquiry U/Sec. 36 of the Act. He is required to consider as to whether the trust has genuine need for the purpose of selling of its immovable property and as to whether property is being sold in the interest of the trust and its beneficiaries. Applying same parameters to the case in hand, I find that need of the petitioner trust cannot be disputed, but selling of the properties would not be in the interest of the trust. There is reason to infer that trust has sources to raise funds, rather than to sell lands.

17. For the reasons stated above, I do not find any substance in writ petition. Writ petition is, therefore, dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

bsb/April 24