Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3511 OF 2020

Shree Brahmanath Devasthan
Unchagaon, Taluka Karveerm District Kolhapur Being a Public Charitable Trust Bearing Registration No.A-48, Kolhapur, Through the Trustee
Shri. Rajendra Shantaram Zurale
Age: 57 years, Occ. Business,
Officer/at: Unchgaon, Taluka Karveer, District Kolhapur
… Petitioner

V/s.

The Joint Charity Commissioner
Kolhapur Region, Kolhapur … Respondent

Mr. Anil Anturkar, Senior Advocate with Mr. Ranjit D. Shinde, for the petitioner.

Mrs. V. R. Raje, AGP for the State/respondent.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2024

ORAL JUDGMENT:

1. The challenge in this writ petition is to the order dated 5th August 2019 rejecting the petitioner's application for permission under section 36(1) of the Maharashtra Public Trust Act, 1950.

2. The petitioner initially applied under section 36(1) of the said Act before the respondent for permission to sell Gat No.351, measuring 42.5 Guntha at village Usgaon, Taluka Karveen District Kolhapur. The respondent rejected the application by order dated 5th February 2015. Aggrieved thereby, the petitioner approached this Court *vide* Writ Petition No.3035 of 2015. This Court, by an order dated 31st March 2016, remanded the proceedings back to the respondent for a decision afresh. Accordingly, respondent invited tenders by publishing them in the daily "Lokmat" and daily "Times of India". However, the respondent by an order dated 6th April 2017 rejected the application.

3. The petitioner, therefore, again filed Writ Petition No.8501 of 2017. This Court, by an order dated 22nd March 2019 directed the respondent to depute an official from his office to inspect the trust property and submit the report. Based on the order, the official of the respondent submitted such a report to the respondent. This Court, by an order dated 11th April 2019, set aside the order by granting liberty to the petitioner to file a fresh application. Accordingly, the petitioner filed Application No.10 of 2019. By the impugned order dated 5th August 2019, the respondent rejected the application seeking permission to sell trust property.

4. On perusal of the impugned order, it appears that the Charity Commissioner recorded a finding that the value of trust property as per government valuation was Rs.1,17,30,000/-. However, the Charity Commissioner based on the possibility of the trust property having the potential to be converted into a non-agricultural purpose formed an opinion that the property may fetch a value of Rs.10 lakh to 20 lakh per Guntha. With the result, the market value of the property may range from 4 crores to 6 crores and, therefore, the amount offered by the prospective purchaser is not in the interest of the trust. Moreover, it is observed that the prospective purchaser has not deposited an earnest amount with the trust. It is also observed that a person named Waigunde is a tenant in the property. It is observed that provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 do not apply to the public trust. It is held that the acceptance of the amount from purchasers before the sale is an illegality that cannot be permitted. The petitioner has, therefore, challenged the order of the Charity Commissioner the present writ petition.

5. Mr. Anturkar, learned senior Advocate on behalf of the petitioner relying on Rules 6 and 24 of the Maharashtra Public Trust Rules, 1951 submitted that an object of the trust cannot be the sole factor while considering the need of trust to sell the trust property. The purpose mentioned in the application is for the renovation of the temple along with all other purposes and, therefore, the Charitable Commissioner could not have rejected the permission based on the factor of the imaginary market value of the property. According to him, the market value was arrived at based on the assumption and presumption of the Charity Commissioner. He submitted that the trust needs the sale of the property and, it is in the interest of the trust, therefore, immediate orders need to be passed.

6. Per contra, the learned AGP for the respondent supported the order by submitting that the Charity Commissioner has rightly rejected the permission by considering the interest of the trust. She submitted that the need pleaded by the petitioner is not in consonance with an object of the trust. In the absence of the constitution, no guidance was available with the Charity Commissioner to ascertain whether the sale was in the interest of the trust.

7. I have heard both sides and carefully scrutinized the materials on record. For adjudicating issue involved, it is necessary to set out the relevant provisions of the Maharashtra Public Trusts Act, 1950 and the Maharashtra Public Trusts Rules, 1951 which are as under:

> **"Section 36. Alienation of immovable property of public trust.—**
>
> (1) [Notwithstanding anything contained in the instrument of trust—]
>
> (a) no sale, exchange or gift of any immovable property, and (b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building,belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. [Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, <u>regard being had to the interest, benefit or protection of the trust</u>; (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 <u>such conditions as he may think fit to impose</u>, regard being had to the interest or benefit or protection of the trust.
>
> [**Provided** that, the Charity Commissioner may, before

the transaction for which previous sanction is given under clause (a), (b) or (c) is completed, modify the conditions imposed thereunder, as he deems fit:

[**Provided further** that, if such condition is of time-limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.].

(1A) …………………………..

(3) ……………………………..

(4) ……………………………..

(5) ………………………...

"**6. Application for registration of a public trusts under section 18.-**

(1) The application for registration of a public trust, in addition to the particulars specified in clauses (i) to (vii) of sub-section (c) of section 18, shall contain the following particulars :

(a) Particulars of documents creating the trusts.

(b) Particulars other than documents about the creation or origin of the trust.

(c) Objects of the trust.

(d) Sources of income of the trust.

(e) Particulars of encumbrances, if any, on trust property.

(f) Particulars of the scheme, if any relating to the trust.

(g) Particulars of title deeds pertaining to trust property and the names of trustees in possession thereof.

The Charity Commissioner may, however, direct that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified by him.

(2) ....

(3) The application in addition to a copy of the instrument of trust, shall be accompanied by a copy of the scheme, if any, in operation in regard to the public trust.

(4) ....

(5) ....

(6) ....

(7) ....

24. Applications under section 36 for sanction of alienation.—

(1) Every application for sanction of an alienation shall contain information inter alia on the following points:

(i) whether the instrument of trust contains any directions as to

alienation of immovable property;

(ii) what is the necessity for proposed alienation;

(iii) how the proposed alienation is in the interest of the public trust; and

(iv) in the case of a proposed lease, the terms of the past leases, if any, such application shall be accompanied, as far as practicable, by a valuation report of an expert.

(2) The Charity Commissioner, before according or refusing sanction, may make such inquiry as he may deem necessary.

> (3) In according sanction, the Charity Commissioner may impose such conditions or give such directions as he may deem fit.”

8. On perusal of the scheme of the said Act, it appears that the Maharashtra Public Trusts Act, 1950 impose restrictions for sale, mortgage, exchange, lease etc. of immovable properties of public trust. From Section 36 of the Maharashtra Public Trusts Act, it is apparent that the sale, exchange or gift of any immovable property or lease, extending beyond ten years in the case of agricultural land, or for a period exceeding three years in the case of non-agricultural land or a building, belonging to a public trust shall not be valid without previous sanction of the Charity Commissioner. It is also open to the Charity Commissioner, in the exercise of the power of Section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of Section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to sub-serve the interest, benefit, and protection of the Trust and its property.

9. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three factors i.e. (i) the interest, (ii) benefit, and (iii) protection of the Trust. The expression that sanction may be accorded 'subject to such conditions as Charity Commissioner may think fit' under Section 31(1)(b) and Section 36(1)(c), the Charity Commissioner has to be objectively satisfied that property should be disposed of in the interest of the public trust. While considering the fact of the benefit of the trust, the Charity Commissioner is duty-bound to adjudicate that sale of the trust property is in the interest and for the benefit of public trust. The expression 'in the interest of trust' and 'for the benefit of trust' under Section 36 of the said Act takes within its fold a sale in consonance with the object and purpose for which the trust was established. Such a sale should be necessary and expedient for the administration of the trust, which may include situations like incurring debts and borrowing money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The common law in this regard requires that the extent of the property subjected to sale or encumbrance should not be beyond the limit sufficient to meet the necessity. The trustees are not entitled to sell trust property to invest the price to bring income larger than that derived from the property itself. If the constitution of the trust exists, purposes permissible under the constitution need to be considered while adjudicating the interest of the trust.

10. The assets and properties of the public trust vest in its trustees, they hold trust property in a beneficial capacity for the benefit of the beneficiaries of the trust. They hold property for giving effect to the object of the trust. The trustees are not expected to deal with the property as if it is their private property. The trustees hold the power to dispose of the property entrusted to their management to be exercised sparingly and cautiously. The trustees themselves have to manage the trust property, prudently, for the benefit of the beneficiaries of the trust. They stand in a fiduciary position. As a general rule, immovable trust properties entrusted to the trustees are, by their very nature inalienable. It is legal and proper for trustees to deal with trust property to give effect to the objects of the trust. The power, however, to incur such debts must be measured by the existing necessity for incurring them. It is permissible for trustees to incur debts and borrow money on a mortgage of the property to keep up the religious worship and for the benefit and preservation of the property.

11. On perusal of the impugned order, it appears that the fair market value arrived at by the Joint Charity Commissioner was based on presumptions and assumptions. The accepted mode of arriving at fair market value is the sale deeds of nearby properties having similar advantages and disadvantages. In the absence of such sale deeds, the Joint Charity Commissioner is not powerless to adjudicate on fair market value by permitting the parties to the proceedings to place on record material to indicate the fair market value of the property.

12. In the facts of the case, it appears that the Charity Commissioner presumed conversion of the trust property to be a potential non-agricultural property and by applying provisions of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001, the Charity Commissioner arrived on the conclusion that the fair market value range between 4 crores to 8 crores. An inquiry carried out by the Charity Commissioner ought to have been passed on the factors present on the date of its adjudication. The relevant factor would be the willing purchaser offering price taking into consideration the advantages and disadvantages of the property. In an agreement entered into by the trust, the short parties are not enforceable and are not relevant to the decision on the point of market value of the property.

13. While deciding an application for permission to sell trust property, the Joint Charity Commissioner must conclude the following points: i) the need for the trust to sell the properties, ii) whether it is in the interest and benefit of the trust, iii) whether it is necessary and expedient to sale the property. On arriving at such conclusions, the Joint Charity Commissioner need to consider the fair market value of the property by following transparent procedures including conducting auction sales. The parameters laid down by the Full Bench of this Court in the case of **Sailesh Developers and Another Vs. Joint Charity Commissioner, Maharashtra and Others**., reported in 2007 (3) Mh.L.J. 717 needs to be considered by the Charity Commissioner which includes public advertisement to invite bidders or interested parties as auction sale ensures transparent mode arriving at fair market value of the property.

14. In the facts of the case, the need pleaded by the petitioner includes renovation of the temple along with all other purposes set out in the application. For adjudication as to whether the temple needs renovation, the Charity Commissioner must appoint a Competent Officer along with an expert in the field such as an architect or structural engineer to visit the temple site and submit its report as to whether the temple requires renovation. Based on such report and other factors referred to above, the Charity Commissioner must conclude the need for the trust to sell the trust property and whether such a sale is in the interest and benefit of the public trust.

15. If the Charity Commissioner concludes that such trust is in need and it is in the interest of the public trust to sell the property, he shall follow the transparent procedure such as publishing notice of the auction sale in the local Newspaper like daily 'Pudhari' having the largest circulation in the area where the trust property is situated.

16. For the aforesaid reasons stated, the impugned order deserves to be set aside and the matter needs to be remanded back to the Charity Commissioner for adjudication afresh based on the factors referred above. Hence, following order:

a) The impugned order passed by the Charity Commissioner dated 5 August 2019 in Application No.10 of 2019 is quashed and set aside.

b) Proceedings are remanded back to the Joint Commissioner, Kolhapur for adjudication afresh.

c) It will be open for the petitioner to amend the Application seeking permission if he so desires.

d) The petitioner shall appear before the Joint Charity Commissioner on 18 March 2024. The Charity Commissioner shall within four weeks from the date of appearance of the parties appoint the Competent Officer along with the Architect or

Structural Engineer for inspection of the temple to decide whether it needs renovation and based on such report, the Charity Commissioner shall adjudicate on the point as to whether such sale is in the interest or for the benefit of the trust.

e) Considering the pendency of this writ petition and the date of the initial application was of the year 2012, the Charity Commissioner shall pass the appropriate final order on the application or amended application of the petitioner within three months from the date of appearance of the parties.

17. The writ petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)