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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5655 OF 2023

Dilip Bhagwatlal Dalal and Another … Petitioners
Vs.
The State of Maharashtra and Others … Respondents

Mr. Ashok Tukaram Gade a/w. Ms. Riya John for the Petitioners.
Mr. Vishwajeet Mohite for Respondent No. 4.
Ms. M. S. Bane, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 21st FEBRUARY 2024

P.C.

1. Considering the controversy involved in the matter by consent of the parties, petition is taken up for final disposal at admission stage.

2. This petition challenges order dated 21st March 2022 passed by respondent no. 3 – The Joint Charity Commissioner-I, Greater Mumbai Region, Mumbai rejecting the petitioners' application under section 36(1)(a) of the Maharashtra Public Trust Act, 1950 ("MPT Act").

3. Learned counsel for the petitioners submitted that the petitioners application is essentially rejected on the ground that clause (8) of the Trust Deed mentions that the property of the trust will not be sold. He submitted that the petitioners have raised specific grounds in their application for seeking permission. He pointed out the specific reasons mentioned in the application which is annexed at page 90 of the petition, relied on paragraph 4 of the application, which in detail explains the reasons for the trust to sell their property. He submits that in fact the reasons mentioned in the application are regarding the fulfillment and satisfaction of the objects of the trust.

4. He further submitted that the learned Charity Commissioner has not taken into consideration the specific reasons mentioned in the application. He raised objection to the observation made in the impugned order that there are amounts lying in the FDR of the said trust and hence in case of emergency the trust would be in a position to utilise that income for carrying out repairs and renovation of dharmshala belonging to the trust.

5. In response to the said observations, learned counsel for the

petitioners relied upon the additional affidavit filed on behalf of the petitioners clarifying that the amounts lying in the FDR are the amounts received from respondent no. 4 towards the proposed sale of the trust property. He submits that in the event permission is not granted to the petitioners and the sale deed is not executed, the petitioner-trust will have to return the said amount to respondent no. 4. He therefore submitted that the learned Charity Commissioner has erroneously referred to the said amounts and held it as one of the grounds to reject the application.

6. Learned AGP submitted that the impugned order records reasons for refusing permission. She submitted that once there was a clause in the Trust Deed and when the petitioners failed to give satisfactory reasons for the sale of the trust property, the learned Charity Commissioner has rightly rejected the application.

7. Learned counsel for respondent no. 4 supports the submissions made on behalf of the petitioners. He submits that respondent no. 4 has already paid substantial amount in the year 2019, hence the matter may be remanded back to the Charity Commissioner for

deciding the application afresh by taking into consideration the submissions made on behalf of the petitioners.

8. I have considered the submissions made by the parties. I have perused the record. So far as the reasons recorded by the learned Charity Commissioner that since there is a specific clause in the Trust Deed that the trust property could not be sold is not in accordance with the provisions of Section 36 of the MPT Act. The provision of Section 36 starts with a non-obstante clause that, nothwithstanding anything contained in the instrument of the trust, the property cannot be transferred without prior sanction of the Charity Commissioner.

9. Perusal of the provision of Section 36 clearly indicates that irrespective of any clause in the trust deed, the application can be considered by the Charity Commissioner for permission to sell the property, if the parameters as stated in Section 36 are complied with.

10. In the event the petitioner satisfies the reasonable grounds in support of the permission sought for sale of the property, the same is required to be considered by the Charity Commissioner by taking into consideration the objects of the trust. What is required to be seen is

whether the sale of the property as claimed by the trust is in the interest of the trust and supports the objects of the trust.

11. With respect to the second reason referred to by the Charity Commissioner that the amount is lying in the FDR of the Trust is completely contrary to the record. The petitioners have rightly relied upon the additional affidavit and pointed out that the amounts lying in the FDR of the account of the trust is the amount received towards the proposed sale price paid by respondent no. 4. Thus, learned counsel for the petitioners is right in submitting that the said amount does not belong to the trust which can be a ground to refuse permission.

12. Perusal of the reasons recorded by the learned Charity Commissioner does not indicate that all the grounds raised by the petitioners in the application filed under Section 36(1)(a) of the MPT Act are properly appreciated by the learned Charity Commissioner.

13. With reference to the valuation of the property and the market rate referred to in the impugned order learned counsel for the petitioners does not dispute that the procedure required for arriving at a fair value of the property shall be complied with by the petitioners.

He submits that revaluation of the property for finding out the fair market value of the trust property shall be undertaken by the petitioners. Hence, the reasons pleaded by the petitioners in the application for permission under Section 36 of the MPT Act, needs to be re-examined by keeping in mind the interest, benefit and protection of the objects of the trust.

14. In view of the aforesaid reasons, the petition is partly allowed by passing the following order :

(i) The impugned order dated 21st March 2022 passed by the Joint Charity Commissioner-I, Maharashtra State, Mumbai in Application No. 46 of 2020 is quashed and set aside.

(ii) The Application No. 46 of 2020 is restored to the file of the Joint Charity Commissioner- I, Maharashtra State, Mumbai for deciding it afresh.

(iii) Petitioner is at liberty to place on record the current market value of the Trust property, by submitting recent valuation report.

(iv) The concerned, learned Joint Charity Commissioner-I, to decide the application afresh in accordance with law.

(v) It is clarified that the application to be decided uninfluenced by the reasons recorded in the impugned order.

(vi) Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]