2024:BHC-AS:46970

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17186 OF 2024

Shree Gramdevta Mandir Trust,
Shil Through its Auth Trustees
through it's authorized Trustees and Ors. ... Petitioners.
Versus
State of Maharashtra and Anr. ... Respondents.

Ms. Sonal a/w. Mr.Rahul Ranpise and Mr.Sagar Yadav for the Petitioner.
Mr. P.V. Nelson-Rajan, AGP for Respondent Nos.1 and 2-State.

Coram : Sharmila U. Deshmukh, J.
Date : December 03, 2024

P. C. :

1. By this Petition, the challenge is to the judgment and order dated 26th August, 2024 passed by the Charity Commissioner refusing permission under Section 36 of the Maharashtra Public Trusts Act, 1950 [for short, "**Trusts Act**"] to alienate the Trust's property being land Survey Nos.1. 57/2/A, area admeasuring 00-01-30 (H-R Sq.Mt), 2. 57/3A, area admeasuring 00-01-30 (H-R Sq. Mt.), 3. 57/1 area admeasuring 00-00-50 (H-R Sq. Mt.), 4. 57/4, area admeasuring 00-42-50 (H-R. Sq.Mt) situated at Village–Shil, Tal and Dist. Thane totally area admeasuring (H-R-P) 00-45-60 i.e. 4560 Sq.Mt., for the total consideration of Rs.5,50,00,000/- in favour of M/s. Vastu Imperia LLP Partners.

2. The facts of the case are that the Petitioner-Trust is a registered Public Trust and is governed by Scheme approved by the Assistant Charity Commissioner. The object of the Trust is charitable, public utility, usage and educational purpose including providing medical assistance to the needy and poor persons. As the property was lying vacant and there was no income generated from the Trust and the Trust was incurring heavy expenses towards maintenance of the said property. The Trust decided to alienate the property. The Trust duly passed a Resolution resolving to alienate the subject property and for the said purpose to obtain necessary sanction under Section 36 of the Trusts Act from the Charity Commissioner. An advertisement was issued for sale of the property in which the Trust received an offer from one M/s. Vastu Imperia LLP Partners for Rs.5,50,00,000/- which was higher than the valuation report of the Valuer by one Mr.Mahendrakumar Gautam, who had determined the market value at Rs.5,27,21,250/-. Initially, the Charity Commissioner directed the Trust to issue fresh public notice for inviting bids and to submit fresh valuation report from Government approved Valuer. At the time of the physical survey by the Government approved Valuer, it was found that a sizable piece of land is already encroached and there was an apprehension that the remaining portion may also be encroached. The present bidder's i.e. M/s. Vastu Imperia LLP Partners offer is higher than the fresh valuation report of Rs.5,27,21,250/-.

3. Heard Ms. Sonal, learned counsel appearing for the Petitioner and Mr. Nelson-Rajan, learned AGP for the Respondent Nos.1 and 2.

4. Ms. Sonal, learned counsel appearing for the Petitioner would submit that the grounds on which the Charity Commissioner has rejected the Application for sanction is that it is not demonstrated that the funds are required for meeting the objects of the Trust, and that the property can be protected from encroachment by fencing the property. She would submit that the Application has not been construed in the proper perspective as the Application sets out in detail the necessity for the proposed alienation as also the details as to how the alienation is in the interest of the public Trust as the amounts would be utilized for pending construction of temple in the village which is pending since long due to lack of funds. She has taken this Court through the findings of the Charity Commissioner as well as the Application filed and would submit that by the present order by holding that instead of alienating the property, the property can be protected by erecting fence and appointing some watchmen, the Charity Commissioner has in fact substituted its own views for that of the Trust which has been prohibited by settled judgment pronouncements. She submits that the Application makes clear the genuineness of the need and the necessity of the proposed alienation and that the funds which will be acquired by alienation of the said property will be utilized for the objects of the Trust which has not been considered. She would further submit that the protection of the property by fencing the same has, subsequent to the order of the Charity Commissioner, being valued at Rs.58 lakhs, whereas the funds which are available to the Trust are as per the statement of accounts at Rs.98 lakhs. She further submits that though the valuation has been obtained subsequent to the impugned order, the same will demonstrate that the alternate option even if accepted is not viable for functioning of the Trust. In support, she relies upon the following decisions:

(i) ***Vilas Anand Kale vs. Joint Charity Commissioner, Nagpur, [2022(2) Mh.L.J.209]***.

(ii) ***Suburban Education Society, Mumbai vs. Charity Commissioner of Maharashtra State Mumbai, [2004(2) Mh.L.J. 792]***,

(iii) ***Decision of this Court in the Society of the Sacred Heart and Ors. vs. The State of Maharashtra and Ors., passed in Writ Petition No.8407 of 2021.***

5. *Per contra*, learned Assistant Government Pleader would point out that the Charity Commissioner has considered that there is a temple which is approximately 100 years old and therefore, no permission could have been given to sell the said property which includes the temple. He would further submit that though the Application states that huge amount is incurred for maintaining the Trust and for payment of tax, the statement of accounts which is produced on record does not indicate any expenditure towards the property. He submits that in the absence of any need being shown, the learned Charity Commissioner has rightly rejected the Application.

6. To counter the said submission, learned counsel appearing for the Petitioner would submit that the reference to the temple of 100 years old is in the context of the registration of Trust as Shri Ramdevta Mandir Trust as a public Trust and the property which is sought to be alienated is one of the other properties of the Trust and not the property on which the temple is situated. She would further submit that though one of the grounds taken for seeking sanction were the expenses incurred, the same has not been pressed and the only grounds which are now pressed is regards the meager income of the Trust from the available sources for meeting the objects of the Trust and the property lying unused and uncultivated.

7. Considered the submissions and perused the records.

8. Before proceeding to the facts of the case, it would be apposite to refer to the parameters of the inquiry contemplated while adjudicating an Application under Section 36 of the Trusts Act as laid down by this Court in the case of ***Vilas Anand Kale*** (supra). The learned Single Judge has laid down that the material factors which are required to be considered while adjudicating an Application filed under Section 36 of the Trusts Act are: *(a)* the need as felt and determined by the Trust, *(b)* whether such need is genuine considering the financial position of Trust, its holding, the income derived from the same, the resources available and *(c)* whether such alienation is for protection and advancements of the aims and objects of the Trust. As far as the need and genuineness of alienation is concerned, the factors which have been laid down in the said decision would squarely apply to the facts of the present case. The learned Single Judge has held that the management and control to the Trust property becoming impractical, the possibility of encroachment, the property being incapable of generating income are some of the material factors which may be considered while determining the need and the genuineness.

9. In the present case, the Application filed by the Petitioner specifically pleads that the Trust property cannot be utilised without developing the same and the Trust does not have the necessary infrastructure and manpower to develop the property and the apprehension is expressed as regards the potential risk of encroachment and trespass which cannot be said to be without foundation especially where there is a huge tract of land lying vacant. The said need which has been set out in the Application when considered against the factors which were laid down by the learned Single Judge in the case of ***Vilas Anand Kale*** (supra), the genuineness of the need stands established. The need as felt and determined by the Trust has to be tested. The Trust has come with a case that it is owner of tract of land, which it is incapable of developing due to its limited resources and which has the possibility of being encroached upon. The Trust has also stressed upon the meager income of the Trust and utilisation of funds to achieve objects of the Trust. The inquiry is limited whether there is need to alienate and whether it is in interest of the Trust. The Charity Commissioner has rejected the application on the ground that the Trust has not undertaken development work of the property. The precise reason set out by the Trust is the inadequacy of resources which has not been considered. The other ground is that the Trust has not shown how the objects will be achieved by alienating the property. In the application, the Trust has set out in detail the manner in which the sale proceeds will be utilised for objects of the Trust.

10. Although it has been held by the Charity Commissioner that in order to prevent the encroachment, the property can be fenced and protected by appointing a security guards, the prohibitory cost for the same has not been considered by the Charity Commissioner. The prohibitory cost which would be incurred for the protection of the property is certainly not in interest of the Trust. The findings of the Charity Commissioner that the alternate option in order to prevent the encroachment is to fence the property would run contrary to the law which has been laid down by this Court in the case of ***Suburban Education Society*** (supra), wherein this Court has held that the Charity Commissioner is not supposed to substitute its own ideas and views *vis-à-vis* the functioning of the Trust. In the said decision, it was also held that the Charity Commissioner is required to consider whether the Trust has a genuine need and whether the property is being sold in the interest of the Trust. As far as the genuineness of the need is concerned, the factors which have been laid down in the case of ***Vilas Anand Kale*** (supra) are satisfied in the present case and therefore, the need and its genuineness cannot be questioned. As to whether the alienation is in the interest of the Trust, it is undisputed that as far as the valuation is concerned, the property is being sold at a bid which is higher than the valuation report and therefore, it cannot be said that the property is being sold at an undervalued price. The Trust would only benefit by the sale of the property. The Application states that the Trust has a very meager income from its sources and that being so, considering that objects of the Trust are required to be met out of the income of the Trust, the alienation of the property would supplement the income of the Trust which can be utilised for achieving the Trust's object and therefore the alienation is in interest of the Trust.

11. Perusal of the order of the Charity Commissioner would indicate that the Charity Commissioner has failed to consider that one of the reasons for seeking alienation is the meager income from other sources and the property remaining uncultivated and unused, the alienation whereof, would in fact benefit the Trust. The Charity Commissioner has also failed to take into consideration the proposed utilisation from the alienation which is to be kept in fixed deposit for generating the regular income and remaining amount to be utilised for construction of temples in village which is pending since long due to lack of funds.

12. In view of the above and considering the extent of inquiry being confined to whether there is genuineness in the need of selling its property and whether the sale in the interest of the Trust, the material factors have not been considered by the Charity Commissioner vitiating the impugned order. In light of the above, Petition succeeds. The impugned order dated 26th August, 2024 is hereby quashed and set aside. Resultantly, the relief sought in C.C.No.115 of 2023 is allowed.

[Sharmila U. Deshmukh, J.]