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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1877 OF 2025

Aniruddh Nikhil Makhecha ... Petitioner
V/s.
Joint Charity Commissioner-2, Mumbai & Ors. ... Respondents

Mr. Veerendra Tulzapurkar, Senior Advocate with Mr. Chaitanya Chavan i/by Mr. Omkar Nagwekar for the petitioner.

Ms. Savina R. Crasto, AGP for the State.

Mr. Sachin Mandlik with Ms. Yogi Joshi for respondent Nos.2 to 7.

Mr. Atul Damle, Senior Advocate with Jaideep Singh Khattar and Janhavi Kalpesh Pise i/by the Fort Circle Advocates & Solicitors for respondent No.8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 7, 2025

P.C.:

1. The petitioner, by invoking the sacred supervisory jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India, has placed before this Court a challenge to the legality and propriety of the order dated 31st July 2024, passed by the Joint Charity Commissioner-2, Maharashtra State, Mumbai, in Application No.50 of 2024. By virtue of the impugned order, respondent No.2-Trust stands permitted to alienate and dispose of the immovable properties described in the said application. It is urged on behalf of the petitioner that the aforementioned order suffers from grave irregularities and non-application of mind, thereby warranting the indulgence of this Court, in exercise of its supervisory power, to ensure that the statutory object of protecting charitable trusts and their properties is not disregarded.

2. The factual matrix, giving rise to the institution of the present writ petition, may be succinctly noted. The petitioner contends that the trust properties in question form an integral part of the assets of respondent No.2-Trust and that the impugned order, permitting their sale, would operate to the detriment of the trust's beneficiaries and the objectives for which it was established. According to the petitioner, the request to alienate the properties, albeit couched in justifications of impracticability and inaccessibility, merits closer scrutiny to ascertain whether there is any abuse of the provisions of law or compromise of the Trust's paramount philanthropic aims.

3. The record reveals that respondent No.2-Trust, a charitable and public-spirited entity, was created by a Trust Deed dated 21st January 1958 and duly registered in the year 1961 under the auspices of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as "the Act, 1950"). It is common ground that the fundamental objectives of respondent No.2-Trust include the dissemination of education, advancement of medical health facilities, and the promotion of religious and social welfare activities. To advance these benevolent purposes, respondent No.2-

Trust has, over a span of years, garnered several parcels of land, including considerable holdings situated in Thane, more particularly in the village of Vadavli in Owale. It is alleged that, owing to the considerable size and topographical challenges of these properties, they remain largely unutilized, thereby prompting the trustees to consider their potential sale.

4. On 8th July 2024, respondent Nos.2 to 7 jointly presented Application No.50 of 2024 under Section 36(1)(a) of the Act, 1950, before respondent No.1, seeking the sanction of the Joint Charity Commissioner to sell the properties enumerated in paragraph 6 of the application. In substantiation of their plea, the said respondents have contended that the properties in question, being hilly and marshy in character and marked by uneven terrain, are unsuitable for use or development in furtherance of the trust's philanthropic objectives. The respondents have thus espoused that the alienation of these lands would redound to the benefit of the Trust, presumably by enabling it to invest in or acquire more suitable properties or resources that would further advance the Trust's benevolent mandates. Consequently, the petitioner invokes the equitable and supervisory jurisdiction of this Court, beseeching that the order dated 31st July 2024 be quashed and set aside for the ends of justice, and that the trust properties be safeguarded to secure the objects for which respondent No.2-Trust has been established.

5. Upon due consideration of the application preferred by respondent Nos.2 to 7, respondent No.1, vide the impugned order, accorded its sanction for the alienation of the subject properties in favour of respondent No.8 for a total consideration of ₹38,05,00,000/-. The said permission was, however, not unfettered, but circumscribed by regulatory conditions ensuring that the transaction was consummated within a stipulated period of six months from the date of the order. The Joint Charity Commissioner-2, Maharashtra State, Mumbai, while granting such permission, imposed further safeguards governing the manner in which the sale was to be effectuated. Among the conditions imposed, it was explicitly provided that all incidental expenses arising from the execution of the sale deed, including stamp duty and registration charges, shall be borne solely by respondent No.8.

6. Furthermore, the proceeds of the transaction were directed to be secured in a fixed deposit account maintained in a nationalized bank, for a long-term duration, ensuring that the corpus generated from the sale remains intact and is exclusively utilized for furthering the charitable objectives of respondent No.2-Trust. In addition, stringent restrictions were imposed to prevent any arbitrary depletion or encumbrance of the said funds, including a categorical prohibition against the withdrawal or utilization of the fixed deposit without the prior sanction of the Charity Commissioner. It was further mandated that no encumbrance, including the availing of loans, could be created against the said fixed deposit, thereby preserving the financial integrity of the Trust and safeguarding the endowment for the benefit of its beneficiaries.

7. Aggrieved by the impugned order, and espousing the contention that the permission granted for the alienation of Trust properties is in flagrant derogation of the principles governing the administration of charitable trusts, the petitioner, asserting his locus as a former trustee, has instituted the present writ petition under Article 227 of the Constitution of India, seeking judicial intervention to annul the impugned order and to preempt any irreversible consequences that may ensue from its implementation.

8. Mr. Tulzapurkar, learned Senior Advocate appearing for the petitioner, assailed the impugned order with vehemence, urging that respondent No.1 failed to undertake a dispassionate and comprehensive adjudication of the true market valuation of the subject properties. He drew the attention of this Court to the valuation certificate issued by Span Arch dated 22nd May 2024 and pointed out several infirmities in the manner in which the valuation was undertaken. He submitted that the valuer's report suffered from a lack of precision, particularly in delineating the extent of land falling within green zones and economic zones, thereby creating ambiguity in assessing the real market potential of the land.

9. The learned Senior Advocate further pointed out that the valuer's report vaguely suggested that certain plots fell within a forest zone, and based on these factors, the valuer arbitrarily assigned negative weightages—30% for green zone restrictions, 20% for pending litigation, and 20% for lands covered by protected tenants under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act. Consequently, he contended that a total negative weightage of 50% was applied to the Ready Reckoner value, which was assessed at ₹7600 per square metre, thereby reducing the effective valuation to ₹3800 per square metre. He further emphasized that the valuer accounted for Transferable Development Rights (TDR) generated for the surrendered area, amounting to 4170 square metres, and, based on these calculations, ultimately concluded that the market value of the five plots stood at ₹95,10,000/-. The learned Senior Advocate urged that such a valuation methodology was neither rational nor reflective of the true commercial worth of the properties, and respondent No.1, while granting permission, failed to take into account the actual market dynamics.

10. In furtherance of his challenge, learned Senior Advocate Mr. Tulzapurkar contended that the entire tender process suffered from serious legal infirmities and procedural lapses. He submitted that the successful bidder, respondent No.8, failed to satisfy the prescribed eligibility criteria, particularly in relation to the stipulated net worth requirement. He further contended that an associate entity was erroneously considered for qualification purposes, despite not meeting the requisite financial strength, thereby vitiating the selection process

11. More particularly, the learned Senior Advocate pointed out that the bank guarantee furnished by the successful bidder, amounting to ₹125 crores, was issued by a non-banking financial company (NBFC) whose own net worth was merely ₹3 crores, thereby raising serious questions about the financial viability of respondent No.8 in honouring its obligations. He further emphasized that the entire process was conducted with undue haste, without affording adequate opportunity for wider participation or competitive bidding, thereby raising doubts as to the bona fides of the transaction.

12. Per contra, Mr. Damle, learned Senior Advocate appearing for respondent No.8, sought to defend the impugned order with equal conviction. He submitted that the properties in question were characterized by hilly and marshy terrain, further compounded by encroachments by antisocial elements, thereby rendering them unsuitable for any productive use. He contended that substantial expenditure would be required for maintaining and securing the property, thereby justifying the decision to sell the same in the larger interests of the Trust.

13. The learned Senior Advocate emphasized that the income derived from the transaction was not being dissipated but was being legally appropriated in a manner conducive to the objects of the Trust. He further submitted that the decision to alienate the properties was taken in consultation with the Auditor and Legal Consultant of the Trust, ensuring due diligence in the process. On the issue of valuation, he submitted that an independent assessment pegged the market value of the properties at ₹33,68,80,000/-, and the consideration finalized in the sale transaction was in consonance with the same. He, therefore, urged that the petitioner's challenge was devoid of merit.

14. Mr. Mandlik, learned Advocate appearing for respondent Nos.2 to 7, supported the submissions advanced on behalf of respondent No.8 and sought to justify the impugned order. He contended that the Trust was grappling with financial constraints, as was evident from the income tax records, which reflected operational losses. He submitted that the procedural requirements of publishing notices and inviting tenders were scrupulously complied with, ensuring transparency in the process.

15. The learned Advocate further submitted that the financial standing of the successful bidder satisfied the requisite eligibility criteria, and the objections raised by the petitioner were more in the nature of academic contentions rather than substantive legal grievances. He contended that, apart from the valuation report examined by respondent No.1, another valuation report prepared by a government-registered valuer corroborated the assessment of the market price, thereby affirming that the consideration received was neither arbitrary nor undervalued. He, therefore, urged that this Court, in the exercise of its supervisory jurisdiction, ought to refrain from interfering with the well-reasoned order passed by respondent No.1, particularly in the absence of any demonstrated mala fides or arbitrariness in the decision-making process.

16. I have given my anxious consideration to the submissions advanced on behalf of the parties and have meticulously examined the material placed on record. The controversy at hand necessitates a careful construction of the relevant statutory provisions governing the alienation of trust properties and an assessment of the extent to which the impugned order conforms to the overarching legal framework. The disposition of property held in trust is not an ordinary transaction of sale but is imbued with considerations of fiduciary responsibility, statutory compliance, and the trust's long-term welfare. It is therefore imperative to scrutinize the validity of the alienation in question within the confines of the legislative mandate.

17. The Maharashtra Public Trusts Act, 1950, and the Maharashtra Public Trusts Rules, 1951, form a cohesive statutory regime governing public trusts in the State of Maharashtra. A plain reading of the provisions of the Act, particularly Section 36 thereof, leaves no room for doubt that the alienation of immovable property belonging to a public trust is subject to strict statutory regulation. The legislative intent underlying Section 36 is manifestly clear—it imposes an embargo on the sale, mortgage, exchange, or lease of trust property except with the prior sanction of the Charity Commissioner. This provision, read holistically, underscores the necessity of judicially monitoring such transactions to ensure that they are not only legally tenable but also aligned with the broader interests of the trust and its beneficiaries.

18. The statute mandates that the Charity Commissioner, before granting sanction, must satisfy himself that the proposed transaction is for the benefit, interest, and protection of the trust. This imposes a duty of vigilance upon the authority to prevent any misuse of trust property under the garb of alienation. Section 36(1) of the Act enunciates that no sale, exchange, or gift of trust property shall be valid in law unless prior permission has been accorded, and the transaction has been subjected to a reasoned inquiry. The provision is in harmony with the principle that trust property is held by trustees not as absolute owners but as custodians acting in a fiduciary capacity.

19. The provisions of Section 36 are not to be construed in isolation but in conjunction with the broader legal framework that governs the management of public trusts. The Charity Commissioner, while exercising jurisdiction under the Act, is bound to consider three overarching factors: (i) the welfare of the trust, (ii) the advancement of its objectives, and (iii) the long-term security of its assets. The statute confers discretion upon the Charity Commissioner to impose conditions while granting sanction, which ensures that the alienation does not result in the dissipation of trust assets. However, this discretion is not absolute; it is circumscribed by the paramountcy of trust interests. The statutory phrase "subject to such conditions as the Charity Commissioner may think fit" does not lend itself to an unregulated exercise of discretion, but rather mandates that such discretion be guided by reasoned considerations and objective justifications.

20. The principle governing alienation of trust property is well established—any disposition must be necessitated by legal and functional exigencies. It is impermissible for trustees to engage in alienation merely as a means of augmenting trust funds or maximizing financial returns. The doctrine of "legal necessity," which finds its origins in the jurisprudence of religious and charitable endowments, dictates that the sale, mortgage, or lease of trust property must be justified by an imperative need, such as liquidating assets to discharge legitimate debts, preserving the trust from imminent financial jeopardy, or fulfilling an indispensable obligation arising from the trust's core activities. Courts have repeatedly underscored that trustees are not at liberty to deal with trust property as if it were personal estate, and any deviation from this principle renders the transaction legally untenable.

21. It is a fundamental principle of trust law that trustees stand in a fiduciary relationship with the trust and its beneficiaries. They hold property not in their individual capacity but as stewards entrusted with the solemn duty of safeguarding the trust corpus. The fiduciary obligation of trustees demands a standard of conduct that is scrupulous, transparent, and untainted by considerations of personal gain. Consequently, trustees cannot deal with trust property in a manner that is inconsistent with its intended purpose. The doctrine of fiduciary duty imposes upon trustees a duty to act prudently, to avoid conflicts of interest, and to ensure that every transaction affecting trust property is undertaken solely in furtherance of the trust's objectives.

22. The alienation of immovable trust properties is not to be resorted to as a matter of routine. Judicial precedents have consistently recognized that trust properties, particularly immovable assets, constitute the lifeblood of charitable and religious institutions and must be zealously safeguarded. While it is recognized that circumstances may necessitate the sale or mortgage of trust property, such decisions must be taken with the highest degree of caution and accountability. The Charity Commissioner, before granting sanction, is duty-bound to scrutinize whether the alienation is dictated by genuine necessity and whether it will effectively subserve the interests of the trust. It is not enough that the trustees believe the transaction to be beneficial; the law demands a demonstrable basis for such belief, backed by tangible evidence and reasoned justifications.

23. The power of trustees to alienate trust property is neither absolute nor unfettered. The legislative framework does not envisage an unrestricted discretion to dispose of trust assets at will. Instead, such power is defined by necessity, tempered by the principle of prudent administration, and ultimately subject to judicial review. Where trustees seek to create encumbrances, incur debts, or engage in transactions that affect the corpus of the trust, they bear the onus of establishing that such measures are indispensable. It follows, therefore, that any proposed alienation must be assessed on the touchstone of necessity, propriety, and the trust's long-term sustainability.

24. The statutory scheme of the Maharashtra Public Trusts Act, 1950, read in conjunction with established principles of trust law, envisions a structured and rigorous scrutiny of transactions concerning trust property. The Charity Commissioner, in exercising the power to grant sanction, is required to ensure that the transaction is actuated by legitimate considerations, undertaken in good faith, and bereft of any extraneous influence or impropriety. Any deviation from this structured framework or any attempt to circumvent the safeguards enshrined in law would vitiate the transaction and justify judicial interference.

25. The legislative scheme also envisages a built-in corrective mechanism to guard against improper alienations. Section 36(2) of the Maharashtra Public Trusts Act, 1950, explicitly confers upon the Charity Commissioner the authority to revoke previously granted sanction if it is demonstrated that the permission was obtained by fraud, misrepresentation, or concealment of material facts. The Hon'ble Supreme Court, in *A.A. Gopalakrishnan v. Cochin Devaswom Board*, (2007) 7 SCC 482, underscored the paramount importance of protecting religious and charitable properties and cautioned against the misuse of such assets. The Court observed that statutory authorities, as well as trustees, bear the solemn obligation of exercising the highest degree of vigilance in safeguarding trust assets. The rationale underlying the revocation provision in Section 36(2) is to preserve the integrity of charitable endowments and prevent any erosion of trust property through transactions vitiated by mala fides.

26. The overarching principle, therefore, is that trustees, as custodians of public trust property, must exercise their powers with prudence, accountability, and unwavering fidelity to the trust's objectives. Any alienation that does not conform to these cardinal principles invites judicial scrutiny, and where warranted, intervention to safeguard the interests of the trust and its beneficiaries.

27. The procedural framework governing applications under Section 36 of the Maharashtra Public Trusts Act, 1950, is meticulously delineated in Rule 24 of the Maharashtra Public Trusts Rules, 1951. The rule mandates that any application seeking sanction for alienation must be supported by full and frank disclosure of all pertinent details. These include the necessity of the proposed transaction, its anticipated impact on the trust's objectives, and any existing encumbrances on the subject property. Recognizing that the sale of trust property is an extraordinary measure and not a matter of routine administration, the rule further enjoins the trustees to, as far as practicable, annex a valuation report prepared by a qualified expert. The Charity Commissioner is vested with discretionary power to conduct such inquiries as may be deemed necessary to ascertain the prudence of the proposed alienation and to impose such conditions as may be appropriate to safeguard the trust's interests.

28. With these legal principles firmly in view, I now proceed to adjudicate upon the issues raised in the present writ petition, particularly concerning the manner in which the Joint Charity Commissioner has exercised his jurisdiction under Section 36 of the Act.

29. A perusal of the impugned order indicates that the fair market value of the subject property, as determined by the Joint Charity Commissioner, is premised upon a valuation report dated 22nd May 2024. However, a critical examination of the said valuation report reveals multiple infirmities that strike at the very root of its reliability. The report, while purporting to establish the valuation, applies a reduction of 50% to the Ready Reckoner price without any cogent rationale or supporting material. The negative weightages assigned—30% for the green zone classification and 20% for litigation—are equally unexplained and arbitrary. Furthermore, the basis on which the Transferable Development Rights (TDR) have been factored into the valuation remains obscure. When public trust property is sought to be alienated, it is incumbent upon the Charity Commissioner to adopt a scrupulous approach in verifying valuations, ensuring that trust property is not disposed of at an undervaluation or in a manner that lacks transparency.

30. The statutory duty imposed upon the Charity Commissioner while granting sanction for the alienation of trust property is not a mere formality but a solemn obligation to rigorously assess whether the proposed sale is truly necessitated by compelling circumstances and whether it would operate to the advantage of the trust. This duty necessitates a careful determination of the fair market value of the property, which can only be ascertained through transparent mechanisms such as public auction or competitive bidding. In *Sailesh Developers and Another v. Joint Charity Commissioner, Maharashtra and Others*, 2007 (3) Mh.L.J. 717 (FB), the Full Bench of this Court unequivocally laid down that a public advertisement inviting bids is the preferred and most effective mechanism for ascertaining the true market value of trust properties. This principle ensures that the process remains insulated from favoritism, undervaluation, or collusive dealings.

31. Before granting sanction for the sale of trust property, the Charity Commissioner is duty-bound to arrive at definitive findings on the following critical aspects: (i) whether the trust has a genuine and demonstrable necessity to sell the property; (ii) whether the alienation would unequivocally benefit the trust and further its objectives; and (iii) whether the sale is necessary and expedient in the broader scheme of managing and preserving the trust's assets. As held in *Sailesh Developers* (supra), and in a consistent line of decisions, the Charity Commissioner is required to follow a transparent and structured process, preferably involving public advertisement or auction, to ensure that the trust property commands its fair market value and is not subjected to undervaluation or collusive bidding.

32. It is not disputed that the trust property in question is affected by topographical challenges, encroachments, and the burden of substantial expenses incurred in litigation. These are factors that may, in appropriate cases, constitute legitimate grounds for trustees to seek alienation. However, such considerations cannot be accepted at face value. They must be substantiated by objective and tangible proof, and the Charity Commissioner must engage in a reasoned analysis to determine whether, on balance, the interests of the trust are best served by divesting itself of the property. The determination cannot rest merely on the representations of the trustees but must be tested against the touchstone of necessity and long-term viability.

33. The Joint Charity Commissioner was required to undertake a deeper and more rigorous inquiry to assess whether the necessity pleaded by the trustees was indeed bona fide and whether the proposed alienation would serve the trust's long-term mission or jeopardize its sustainability. The factual and legal materials placed on record warranted a far more meticulous evaluation, particularly in light of the statutory duty cast upon the authority to act as a guardian of trust properties.

34. While it may be that the factors cited by the trustees, such as the property's uneven terrain and the burden of encroachments, have some basis in fact, the overriding consideration must remain whether the sale is indispensable and whether it is structured in a manner that optimally serves the trust's interests. The onus lies squarely on the Charity Commissioner to conduct a thorough and probing inquiry to determine whether the purported necessity is genuine and whether the transaction subserves the objectives of the trust. Alienation of trust property must always be a measure of last resort, lest the trust be denuded of its assets without substantial and compelling justification.

35. A critical infirmity in the impugned order is the lack of any cogent explanation or detailed examination of the drastic reduction in the Ready Reckoner valuation. Equally concerning is the opacity surrounding the valuation of the TDR and the absence of a structured methodology to justify the assigned weightages. It is a settled principle that a willing purchaser's perspective, including an objective assessment of both the advantages and disadvantages of the property, must be taken into account in evaluating its true worth. The failure to subject the valuation report to a rigorous and reasoned scrutiny renders the decision-making process fundamentally flawed.

36. In summation, the Joint Charity Commissioner was required to frame conclusive and well-founded findings on whether the necessity to sell the property was genuine and, if so, whether the disposition would unambiguously promote the welfare and objectives of the trust. In cases where it is established that the property has become a financial burden or is incapable of yielding reasonable returns, a sale may be justified. However, even in such circumstances, it remains imperative for the Charity Commissioner to ensure that the trust receives the best possible value through a transparent, competitive process.

37. The statutory framework and judicial precedents emphasize that where the sale of trust property is deemed necessary, it must be carried out through an open, competitive mechanism, such as public auction or invitation of bids, to eliminate any scope for arbitrary decision-making or undervaluation. It is only through such processes that the trust's interests can be safeguarded and its corpus preserved for its beneficiaries.

38. In the absence of adherence to these fundamental procedural safeguards, the impugned order stands vitiated for want of adequate inquiry and reasoned deliberation. Given the nature of the deficiencies identified, it is deemed necessary to remit the matter to the Joint Charity Commissioner for fresh adjudication, in strict adherence to the statutory framework and authoritative judicial pronouncements.

39. In the result, I pass the following order:

(i) The impugned judgment and order dated 31st July 2024, passed by the Joint Charity Commissioner-2, Maharashtra State, Mumbai, in Application No.50 of 2024, is quashed and set aside.

(ii) The proceedings are remanded to the Joint Charity Commissioner-2, Maharashtra State, Mumbai, for a de novo consideration.

(iii) The Joint Charity Commissioner-2, Maharashtra State, Mumbai, shall decide Application No.50 of 2024 afresh, after affording all concerned parties an opportunity of being heard and permitting them to place any additional material relevant to the inquiry under Section 36 of the Act, 1950.

(iv) In view of the protracted nature of the litigation and the significance of the trust's interests, the Joint Charity Commissioner-2, Maharashtra State, Mumbai, shall endeavor to conclude the proceedings and render a final reasoned order within six months from today.

40. The writ petition stands disposed of in the above terms. No order as to costs.

41. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)