IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6226 OF 2008

1. Arun s/o Soniram Shinkar
Age : 35 years, Occu. : Business,
R/o. : Galli No. 4,
Dhule, Dist. Dhule.

2. Sau. Savita w/o Arun Shinkar
Age : 35 years, Occu. : Household,
R/o. : Galli No. 4, Dhule,
Dist. Dhule. .. Petitioners

Versus

1. State of Maharashtra
Though Joint Charity Commissioner,
Aurangabad Division, Aurangabad.

2. Assistant Charity Commissioner,
Dhule, District Dhule.

3. Joint Charity Commissioner,
Dhule, District Dhule.

4. Lad Samaj Shakiya Wani Samaj
Sanstha, Gut No. 4, Dhule, Dist. Dhule
Through its President.

5. Lad Samaj Shakiya Wani Samaj
Sanstha, Gut No. 4, Dhule, Dist. Dhule
Through its Secretary.

6. Ashok s/o Shravan Patkar
Age : Major, Occu. : Business,
R/o. : 17, Patkar Nagar, Deopur,
Dhule, Dist. Dhule. .. Respondents

Mr. N. L. Choudhari, Advocate for the Petitioners.
Smt. A. S. Deshmukh, AGP for Respondent Nos. 1 to 3.
Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for Respondent Nos. 4 and 5.
Mr. Ajay G. Talhar, Advocate for Respondent No. 6 (through V.C.).

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 08th September, 2025.

Date on which judgment pronounced : 24th September, 2025.

JUDGMENT :-

. The petitioners have approached this Court challenging judgment and order dated 30.10.2007 passed by the learned Joint Charity Commissioner, Aurangabad in Enquiry No. 7/2007 in PTR No. A-276/Dhule. The application of the petitioners came to be rejected and possession is directed to be recovered from the petitioners. The respondent No. 1 is the State of Maharashtra, respondent Nos. 2 and 3 are learned Assistant Charity Commissioner (A.C.C.), Dhule and learned Joint Charity Commissioner (J.C.C.), Dhule respectively and respondent No. 4 is a trust namely Lad Samaj Shakhiya Wani Samaj Sanstha having trust at Dhule. Other respondents are the trustees.

2. Few facts giving rise to the present petition are that, the respondent Nos. 4 and 5 are trust having property admeasuring

183.9 sq.mtr. in City Survey No. 1319 situated in Dhule. The land was purchased by the trust in the year 1972 for the purpose of function hall and marriage hall. The trust resolved on 01.10.1989. It was resolved by the trustees to sell out the property of the trust and to acquire a bigger plot as the present land was inadequate. In the year 1989 again a proposal was passed. The resolution was passed on 17.01.1999 in the general body meeting and an advertisement pursuant to the same came to be published calling for prospective purchasers and for negotiations. A committee was formed. An advertisement came to be issued on 21.01.2001. Since there was no proper response, third time the advertisement was issued in newspaper dated 11.10.2001. The trust received offers from various persons. The offer of the petitioners was accepted as it was found to be highest i.e. Rs. 31.11 Lakhs. The said offer was accepted in a meeting dated 18.11.2001 as it was matching with the Government valuation. The valuer’s report was showing the value to be 22.47 Lakhs. Pursuant to the said even the agreement came to be executed in favour of the petitioners. It is thereafter, the trust filed an application seeking prior sanction from the learned

Assistant Charity Commissioner to learned Joint Charity Commissioner, Nashik by filing an application No. 120/2001 by making compliances.

3. In the enquiry respondent No. 6 – Ashok Patkar raised an objection in the said proceeding. The learned Joint Charity Commissioner, Nashik again directed to publish an advertisement and call for fresh offers. Pursuant to the said, an advertisement was again published on 30.12.2002. However, there was no response. The respondent No. 6, however, shown relevant to purchase the properties for Rs. 50 Lakhs. The learned Joint Charity Commissioner, therefore, directed respondent No. 6 to deposit an amount of Rs. 50 Lakhs in a fixed deposit. However, the respondent No. 6 did not appear thereafter.

4. During the pendency of the proceeding the trust received a good offer for purchase of one property in Gat No. 177 at Mohadi, near Dhule. The said land was admeasuring 2 H 26 R. The price of the land was Rs. 47,50,000/-. The trust, therefore, requested the petitioners to pay some amount of consideration. The petitioners paid an amount of Rs. 18 Lakhs on 23.02.2004 and

Rs. 15 Lakhs on 11.08.2004. However, thereafter the learned Joint Charity Commissioner refused to grant sanction by way of impugned order and thus, the petitioners have approached this Court.

5. In view of subsequent developments the petitioners carried out amendment with leave of this Court in 2019. In the meantime, the petition came to be admitted, however, interim relief was refused against which L.P.A. No. 28/2009 was preferred. In the said L.P.A. an order is passed restraining respondents from taking coercive action pursuant to impugned order dated 31.10.2007. It is further brought on record that the petitioners had availed loan from one Waman Vishnu Shinkar Nagari Sahakari Sanstha. They could not utilize the property of the trust and could not generate revenue. Therefore, he could not pay the amount of loan and now action under section 101 of the Maharashtra Co-operative Societies Act (for short "M.C.S. Act") is initiated. In the proceeding under section 101 of the M.C.S. Act they filed an application to the society for attaching the property of the trust newly acquired allegedly from the funds of the petitioners. Now, the property of the trust is seized by the society.

However, no further steps are taken. One FIR is also now registered against the petitioners on 29.09.2016 and under section 3(b) and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (for short "M.P.I.D. Act") along with other I.P.C. sections. A petition for quashing was also filed and that was also withdrawn by the petitioners. In view of subsequent development it is stated that, the petition was fixed for hearing on 13.11.2017 . The L.P.A. was heard finally on 24.11.2017. L.P.A. is now disposed of observing that the interim order shall be in force till disposal of the writ petition. Ultimately, it is stated that, now the petitioners are facing great financial difficulties as they have paid the amount to the extent of Rs. 33,00,000/- to the society now added as respondent No. 4 and thus now prayer is made that the respondent No. 4 society be directed to refund the amount of Rs. 33,00,000/- deposited with it along with interest and prayers are added to that effect.

6. The learned Advocate Mr. Choudhari for the petitioners vehemently argued that the learned Joint Charity Commissioner has committed an error in rejecting the application seeking

sanction under section 36 of the Bombay Public Trust Act. So far as locus standi is concerned, he submits that, it is the petitioners who are ultimate sufferers and therefore, they have every right to challenge the impugned order. He also submits that, since the trust has purchased a new property from the funds of the petitioners, they are entitled to get that property purchased by the trust. He submits that, learned Joint Charity Commissioner has committed an error by dismissing the application seeking previous sanction. He relies upon the following judgments :

(I) **Parsi Zoroastrian Anjuman, Mhow Vs. The Sub Divisional Officer/The Registrar of Public Trusts & Anr.** reported in **2002 Live Law (SC) 96.**

(II) **Suburban Education Society , Mumbai and another Vs. Charity Commissioner of Maharashtra State** reported in **2004 (2) Mh.L.J 792.**

7. The learned Senior Advocate Mr. Hon for respondent Nos. 4 and 5 submits that, the petitioners do not have any locus standi as there is no right vested with the petitioners. The entire transaction is illegal as the same is without prior sanction of the authorities under the Bombay Public Trust Act. Section 36 of the Bombay Public Trust Act requires that, the transaction can be made only with prior sanction. He submits that, sub section 5

makes a provision of granting post facto sanction. However, the said amendment is introduced in the year 2017. He relies upon the judgment in the case of **Chandrabhan Chunnilal Gour Vs. Shravan Kumar Khunnolal Gour and another** reported in **1980 Mh.L.J. 690**. He submits that the provision needs to be construed strictly. The order was, in fact, challenged by filing writ petition by the trust and the same is even withdrawn. When the trust itself is not interested in prosecuting the writ petition, there is no question of the petitioners getting any locus standi to challenge the impugned order. When so called agreement was executed the uncle of the petitioner No. 1 was office bearer of the trust and it is because of that relation the agreement was entered into for inadequate consideration. Thereafter even action was required to be directed under section 41 (B) of the Act. There is also interim order passed by the Division Bench in L.P.A. not to use the property. The property is thus lying idle. Now, even the Municipal Corporation has issued notice stating that the building is in dilapidated condition.

8. The learned Advocate Mr. Talhar for intervener adopts the

argument of learned senior advocate Mr. Hon for respondent Nos. 4 and 5. He submits that, when the same notice was published in the newspaper it does not show the upset price. No resolution was on record.

9. In the case of **Suburban Education Society** *(supra)*, the trust was having two plots. The trust entered into memorandum of understanding with two parties for sell of the plots and thereafter applied for sanction under section 36(1)(a) of the Bombay Public Trust Act. The said application came to be dismissed on receiving objections from third party. The Charity Commissioner found the consideration to be inadequate. In a challenge by the trust, this Court recorded in the said case that, the transaction was genuine. The procedure adopted was transparent including public notices and receiving offers which were exceeding the market value. It was ultimately held that the learned Charity Commissioner failed to appreciate the adequacy of the sell price and passed an order on extraneous consideration. It was held that, though the agreement was entered prior to obtaining sanction and advance was accepted that would not invalidated the sale application and

the application was allowed.

10. In the case of **<u>Parsi Zoroastrian Anjuman</u>** *(supra)*, application seeking a sanction for sell of properties came to be rejected. The matter ultimately reached to the Hon'ble Apex Court. The Hon'ble Apex Court held that, the Registrar's role is confined to ensure that the decision is in accordance with the trust deed and relevant clause. It is not open for the Registrar to go into the aspect as to what is beneficial or prejudicial to the interest of the trust. On facts it was observed that the trust had made a transparent and democratic decision. The said judgment was under the Madhya Pradesh Public Trust Act. This Court finds that, both the judgments are not applicable to the present case.

11. So far as judgment relied upon by the learned senior advocate Mr. Hon in the case of **<u>Chandrabhan Chunnilal Gour</u>** *(supra)*, is concerned, this Court held that, there is no provision of granting ex post facto sanction to the transaction entered without prior sanction as required under section 36 (1) of the Bombay Public Trust Act. This Court finds that, the said judgment is squarely applicable to the facts of this case.

12. In view of these judgments and from the facts of the case it is clear that, in the present case, before even applying for a sanction under section 36 (1) (a) of the Bombay Public Trust Act, the trust entered into an agreement and accepted the amount of consideration from the petitioners. Even if the petitioners paid the amount to the trust that itself would not create any right in favour of the petitioners. Section 36 of the Bombay Public Trust Act requires prior sanction for transaction. It is the application of the trust which is rejected by the authority. As already discussed, there was even a writ petition filed by the trust which came to be withdrawn later on and presently there is challenge only by the petitioners and not by the trust.

13. In the judgment in the case of **Shri Ambadevi Sanstha and Ors. Vs. Joint Charity Commissioner and Ors.** reported in **(2019) 17 SCC 419**. In the said case, the learned Charity Commissioner granted sanction to sell the properties in the interest of trust. It was the case that, the trust was not having proper income. The said was challenged before the High Court. The High Court confirmed the order passed by the learned Charity Commissioner. The Hon'ble Apex Court set aside the order of sanction by setting

aside the order passed by the High Court. It is held that, three classic requirements must be satisfied being interest, benefit and protection of the trust. It is the duty of the learned Charity Commissioner in the cases while granting sanction to be atmost vigilant. In that case the said permission was granted without ascertaining the proper value and without fixing the reserved price. It is held that, for not following these two things the sell was invalid.

14. In the present case, this Court finds that, the learned Charity Commissioner has rightly passed an order. There was no proper valuation done by the trust. Looking to the reasoning of the learned authority this Court finds that, no case is made out calling for interference at the hands of this Court. The writ petition, therefore, stands dismissed. Rule is discharged. No order as to costs.

(KISHORE C. SANT, J.)

15. At this stage, learned advocate for the petitioners seeks to continue interim arrangement for a period of four weeks from today.

16. At the request of learned advocate for the petitioners, interim arrangement which was in force to continue for a period of four weeks from today.

(KISHORE C. SANT, J.)

P.S.B.