IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12939 OF 2024

Dilip Bhagwatlal Dalal & Anr. ....Petitioners

Versus

The State Of Maharashtra & Ors. ....Respondents

Mr. Ashok T. Gade *a/w. Riya John & Navin B. Rathod, for Petitioners.*

Dr. Dhruti Kapadia, *AGP for State.*

Ms. Pranjali Jadhav *i/b. Vishwajeet Mohite, for Respondent No.4.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 3, 2026

ORAL JUDGEMENT :

1. Rule. Made returnable forthwith, and by consent of parties, taken up for final hearing.

2. The challenge in this Petition is to an Impugned Order dated June 6, 2024 passed in Application No.46 of 2020 by the Learned Joint Charity Commissioner ("***JCC***") disallowing the sale of a certain shop located in Gujarat (***"subject property"***) owned by the Keshavlal Changanlal Trust ("***Trust***"), of which the Petitioners are trustees.

3. This is the second time the matter has come to this Court since on an earlier occasion, Learned Single Judge of this Court, by an order dated February 21, 2024, set aside an earlier order passed by the Learned JCC on March 21, 2022, that had disallowed a proposed sale of the subject property. The trustees are all in Mumbai and the Trust's operations are in Maharashtra. The shop in Gujarat is an asset on the books of the Trust, disposal of which requires approval of the Charity Commissioner under Section 36(1)(a) of the Maharashtra Public Trust Act, 1950 (***"the Act"***).

4. The Learned Single Judge took on board the submission that the value of the shop could be re-assessed considering that the earlier valuation had been effected in 2019. Pursuant to such revaluation, the earlier value of Rs.28.77 lakhs as determined on June 17, 2019 was enhanced to a value of Rs.30.55 lakhs by valuation effected on May 18, 2024.

5. The core contention on behalf of the Petitioners is that the shop lies in the midst of five other shops and the frontage of the shop is occupied by vegetable vendors. The activities of the trust are situated in Maharashtra and the trustees have contended that continuing maintenance and upkeep of the said shop is counter-productive and the benefits therefrom are not worth the costs incurred in continuing ownership and maintenance of the subject property. The trustees have

had to litigate for nearly 50 years to recover the shop and continuing its upkeep in distant Gujarat is not found worthwhile by the trustees.

6. It appears that the trustees had invited an open tender on November 13, 2019 and Respondent No.4, Mr. Kachia Patel Trushal Baldevbhai ("***Patel***") had agreed to acquire the property at Rs.30 lakhs (as against the then perceived value of Rs.28.77 lakhs).

7. Patel has been willing to increase the price now to Rs.31.55 lakhs i.e. Rs.1 Lakh more than the revised valuation effected pursuant to the remand effected on February 21, 2024. In the Impugned Order, the Learned JCC has virtually repeated the same reasons for not permitting the alienation of the subject property.

8. On a review of the Impugned Order and the approach already adopted in the course of remand on the last occasion, it appears that the Learned JCC's exercise of discretion has constituted substituting the wisdom of the trustees with the wisdom of the Learned JCC on what the trustees could have done or ought to have done with the subject property. This indicates to me that the Learned JCC has substituted the trustees' wisdom by suggesting that the trustees could lease out the subject property and utilize the income earned from it to service the primary objectives of the trust.

9. In the facts of the case, such a substitution of wisdom, to my mind would not be appropriate. It is submitted that all the activity of the Trust is in Maharashtra and the trustees are located here. The trustees have struggled with protracted litigation to secure the subject property. The trustees are entitled to take a view that monitoring the subject property from this physical distance and expending efforts in property management by leasing it out and collecting rentals is not worth their while and not necessarily commensurate with and consistent with the objectives of the Trust. If they believe they would be better off monetizing the subject property and deploying it towards the objectives of the Trust, it appears to be a reasonable decision.

10. When a proposal is put up to the Learned JCC, what must be objectively examined is whether the proposal is in conformity with the objects of the trust and whether the process by which such disposal was arrived at had any infirmity or lack of reasoning and objectivity. This could lend credence to any perception of value erosion to the trust property that could be occasioned by the disposal.

11. What other alternate decisions and measures, the trustees ought to have taken or could have taken, to my mind, appears to represent extraneous considerations for purposes of accepting or rejecting the proposal. The absence of any benchmark in the factual matrix to challenge the valuation; the absence of any remedial directions should

the Learned JCC have felt the valuation process needed to be remedied; the absence of any conflict among the trustees and any complaint from the beneficiaries; the view of the Learned JCC that if the property had been leased, the trustees would have earned further monies, represents consideration of factors outside the scope of what should inform a decision on whether to approve the decision to dispose of the property. It is now settled law that while due process alone need not drive the review by the Charity Commissioner, in the absence of any indicia to challenge the wisdom deployed by the trustees, it is not open to the Charity Commissioner to play the role of a super-trustee to veto a decision that appears to be otherwise well supported by logical reasons and is not opposed by any segment of the beneficiaries or trustees.

12. It is seen from the record that even getting clean and clear title to the said shop has involved litigation of over 50 years and having obtained such title, it is eminently feasible for anyone in the governance of the Trust to take a reasonable decision to dispose of the subject property. Unless the terms on which the subject property is being disposed presents a case of any reasonable suspicion of any *mala fides* or present extraneous considerations having vitiated the trustees' decision to dispose of the subject property, an intervention, merely because the power to approve exists, in the facts of this case, does not appear to be appropriate.

13. Towards this end, the judgment of a Learned Division Bench of this Court in ***Suburban Education Society, Mumbai***[1] would be appropriated to cite :-

> *17. The Charity Commissioner does not dispute the fact that the Trust has no funds for expansion or that due to growing strength of students it was necessary to provide additional facilities for their cultural and other activities. The Charity Commissioner, however, comes to the conclusion that though the offer of the purchaser in both the proceedings is highest, he records a finding that these Plots are purchased out of the funds raised by the parents donations given by the parents at the time of admission of their children to the School and that this fact should not be ignored. He further states that the Trust requires open land in future and the same would not be available in that locality. In our view, the finding that the plots are purchased out of the funds raised by the parents and donations given by the parents at the time of admission is not borne out by the record, except the mere statement of respondent No. 3. There is no evidence to suggest that these plots have been purchased out of the donations which have been given by the parents at the time of taking admission for their children. The observation of the Charity Commissioner that, in future, the Trust requires the open land also is equally unfounded. The Charity Commissioner also, in our view, has completely erred in observing as under :-*
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> > *"Moreover, Swetamber Murtipujak Jain Sangh is intending to construct temple. As a matter of fact at present our nation required more educational institutions than the temples. A prayer to the God can even be made by sitting in one corner*

1 Suburban Education Society, Mumbai & Anr. v. Charity Commissioner of Maharashtra State, Mumbai & Ors. – 2003 SCC Online Bom 1054

> *of our residential house, but school cannot be maintained in our residence."*

> ***18. In our view the said observation made by the Charity Commissioner is absolutely unfounded inasmuch as the scope of authority which is exercised by the Charity Commissioner under section 36(1)(a) is very limited. The Charity Commissioner in the first place is required to consider whether the Trust has a genuine need for the purpose of selling its immovable property and secondly whether the said property is being sold in the interest of the Trust and its beneficiaries. The Charity Commissioner is not supposed to substitute his own ideas and views vis-à-vis the functioning of the Trust. It is very strange that the Charity Commissioner has observed as under :-***

> *"No doubt the trust intending to provide better conductive infrastructure to the children of junior and senior K. G. level to provide better fundamental education to them, which requires heavy funds. However, that problem can be solved by securing loans from other institutions like banks and other financial institutions etc. It is not necessary to put the plots for sale."*

> ***[Emphasis Supplied]***

14. The approach adopted in the instant case is somewhat similar to the approach that came in for adverse comment by the Learned Division Bench in the aforesaid Judgement.

15. I have also examined the Affidavit in Reply filed on behalf of Respondent Nos.1 to 3. The Affidavit in Reply simply states that the proceedings before the Learned JCC should be conducted as if they are

proceedings before the Civil Court, but does not throw any additional light on any other factors that would support the decision taken by the Learned JCC not to permit the sale.

16. Unless there is any specific reason to find fault with the proposal put up to the Learned JCC, it would not be open to the Learned JCC to speculate what other steps the Trustees could have taken or ought to have taken to form a judgement in rejecting the proposal.

17. It is in this view of the matter, that in my opinion, the Impugned Order would fall foul of being influenced by reasons not emanating from the material on record, namely, the justification for the disposal and the price discovery for such disposal of the subject property.

18. Towards that end, for not being guided by relevant factors and having taken into account irrelevant factors, the Impugned Order is vulnerable on the grounds of being arbitrary. Consequently, the Impugned Order is ***set aside***.

19. The Petition is ***allowed.*** Rule is made absolute in the aforesaid terms.

20. Since the Impugned Order is being set aside, needless to say, the Trust should be permitted to proceed with completing the transaction, particularly, since Patel has already parted with a significant component of the consideration, which is lying in the fixed deposits

maintained by the trustees. The balance consideration shall be paid within a period of four weeks from the upload of this judgement on the Court's website.

21. The trustees shall complete all formalities for giving effect to the transfer approved hereby and file a compliance report with the Learned JCC within a period of four weeks from the completion of the transaction.

22. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]