



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1608/2019

Arvind s/o. Mahavirprasad Agrawal,
Aged about 59 years, Occu. Service,
R/o. Dhamangaon Railway, Tq. Dhamangaon
Railway, District Amravati.

---PETITIONER

--VERSUS--

1. The Joint Charity Commissioner,
Amravati Region, Amravati.
2. Panchambhai Patel,
R/o. Opposite KGTI Industries
Dattapur Dhamangaon Railway,
Tq. Dhamangaon Railway, Dist. Amravati.
(Amended as per Court's order dated
02.05.2019).

----RESPONDENTS

Mr. A. J. Gilda, Advocate for Petitioner.
Mr. J. Y. Ghurde, A.G.P. for Respondent/State.

CORAM : MRS.VRUSHALI V. JOSHI, J.
RESERVED ON : 01.03.2024
PRONOUNCED ON : 15.03.2024.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with
consent of the learned Counsel for the parties.
2. The petitioner has challenged the order dated 16.07.2018
passed by the Joint Charity Commissioner, Amravati Region, Amravati

rejecting the application under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 filed by the petitioner.

3. Shri Ramchand Bhagchand Dharam Fund, Dhamangaon Railway, Tq. Dhamangaon Railway, District Amravati is a registered Public Trust bearing registration No.A-684/Amravati. The petitioner is the trustee of the said trust. The trust had given nazul plot Nos.69, 70, 76, 82 and 83 of nazul sheet No.28B, situated at Mouza Dhamangaon, Tq. Dhamangaon Railway on rent to 'Vasundhara Saw Mills'. Panchambhai Patel, Proprietor of Vasundhara Saw Mills was the tenant in respect of the aforesaid properties since the year 1980. Initially, the rent was Rs.180/- per month and it was increased from time to time to Rs.250/- per month. As the respondent failed to pay monthly rent since 1995, the trust has filed suit for possession and recovery of the arrears of the rent and mesne profit. Civil Suit bearing No.64/2003 was decreed in favour of the petitioner, the trust. Vasundhara Saw Mills through its proprietor Panchambhai Patel had filed an appeal before the District Court, Amravati challenging the decree dated 30.07.2011 passed in Regular Civil Suit No.64/2003. During the pendency of the appeal bearing No.157/2011, the matter was amicably settled. The compromise pursis was filed by both the parties the trust and Vasundhara Saw Mills. The appeal was disposed of on the basis of the compromise pursis and the compromise decree was

passed by the District Judge-6, Amravati. As per the terms of the compromise, an area admeasuring 12626 sq.ft. owned by the trust which was in possession of Vasundhara Saw Mills was to be sold to Panchambhai Patel, Kantilal Patel and Smt. Shantaben Patel for a consideration of Rs.28,50,000/-.

4. In view of the compromise decree, the petitioner trustee had filed an application under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 before the Charity Commissioner for grant of permission to sell immovable property situated at Dhamangaon Railway to Vasuandhara Saw Mills. The respondent had passed an order on 04.01.2018 directing issuance of the public notice inviting objections/applications from the interested persons in purchasing the property of the trust mentioned in the application and the public notice was to be affixed on the notice board of the trust, concerned Talathi office etc. In spite of the said notice, nobody has raised any objection or had submitted any offer for purchase of the property of the trust mentioned in the application. The respondent had also called Panchambhai Patel to appear before him so as to explore the possibility of negotiation in view of the inspector's report. Accordingly, he appeared before the respondent through his son and had brought it to the notice of the respondent that as per the Government valuation, the market value of the property in his possession was Rs.149/- per sq.ft. and he had

offered to purchase the property at the rate of Rs.225/- per sq.ft. and thus, this offer was far better than the market value as per the Government valuation. Respondent Panchambhai Patel had stated that he could not purchase the property for more than the offered price of Rs.28.50,000/-. The respondent Charity Commissioner by his judgment dated 16.07.2018 rejected the application filed by the petitioner.

5. Learned Counsel for the petitioner has stated that the trust had taken a decision to dispose of the property and enhanced their income so that it could be spent better on further fulfilling the object of the trust then in that event, it was not prudent to substitute the said decision of the trust and go behind it. The power which is conferred by Section 36(1)(a) on an authority like the respondent No.1 is to ascertain whether the proposed transaction is in the interest of the trust and whether the property is being sold at best possible price. The Charity Commissioner is not supposed to substitute his own ideas and views vis-a-vis the functioning of the trust. The offer of Panchambhai Patel of Rs.225/- per sq.ft. was a reasonable one and therefore, the proposed transaction to sell the property of the trust is in possession of Vasundhara Saw Mills was in the best interest of the trust. It is further submitted that since 1980, the trust was not earning any substantial amount by way of rent, the rent of the property was quite meagre and therefore, the trustees of the trust had

filed litigation before the Civil Court against Vasundhara Saw Mills and even after lapse of 14 years for filing of Civil Suit, the trust had not received back the possession of the property. The trust could earn a handsome amount by way of the interest if the sale proceeds i.e. Rs.28,50,000/- if deposited in a nationalized bank and thus, the said transaction was in the best interest of the trust. Therefore, the respondent has committed a serious error by rejecting the application.

6. The market value of the entire property of the trust admeasuring 22976.63 sq.ft. was Rs.38,37,956/-. However, the entire property was not in possession of Vasundhara Saw Mills and only an area admeasuring 12626 sq.ft. was in possession of Vasundhara Saw Mills. Therefore, the value of the property as sought to be sold by the trust was not Rs.38,37,956/-. Hence prayed to allow the petition.

7. The petitioner has relied on the following judgments in support of his argument that the Charity Commissioner is not supposed to substitute his own ideas and views while considering the application under Section 36(1)(a) of the Act as the scope of authority is very limited.

- i] Raj Darshan Ventures Vs. Joint Charity Commissioner and Ors. [Writ Petition Nos.4273 and 9440/2010].*
- ii] Bara Imam Masjid Trust and Ors. Vs. Charity Commissioner, Maharashtra State and Ors. [2006(1) Mh.L.J. 809].*

iii] Vilas Anand Kale and Ors. Vs. Joint Charity Commissioner, Nagpur [2022 (2) Mh.L.J. 209].

8. Learned A.G.P. opposed the application stating that the order was rejected as the trust was not in need of money. The decree of the possession was passed in favour of the trust. The reasons were not given why the matter was compromised though the decree was in favour of the trust. The trustees have entered into a compromise with the tenant at the lesser price of Rs.28.50,000/- when the market value of the said plots is more than 1,00,000,00/-. The property is situated adjacent to main road Yavatmal in residential area. The surplus income is shown in audit report. Considering all these circumstances, the Charity Commissioner has rightly rejected the petition.

9. The Charity Commissioner, while considering application under Section 36(1) of the Act is required to apply his mind and is required to make direct enquiry to find out whether it is in the interest of the trust to sanction the transaction in question. Without previous sanction of the Charity Commissioner, no life can be given to any transaction entered into by any trust and such transaction will have no legal or binding effect. While deciding an application under Section 36(1) of the Act, it is the duty of Charity Commissioner to hold an appropriate inquiry and from the material on record to find out as to whether the

transaction which the trust wants to enter into is required to be approved or not, any sanction is required to be given or not. While considering the scope and ambit of Section 36(1) of the Maharashtra Public Trusts Act, 1950, the Hon'ble Supreme Court in the case of ***Suburban Education Society, Mumbai and Anr. Vs. Charity Commissioner of Maharashtra State, Mumbai and Ors. [2004 (2) Mh.L.J. 792]*** has held as under :

“12. From the perusal of the above section, it is clear that the Charity Commissioner is empowered to scrutinize any application for sale or transfer of the immovable property which is owned by the Trust in order to ensure that the property is being sold for an adequate consideration and that the money is going to be utilised for fulfilling the aims and objects of the Trust and is not likely to be frittered away by the Trustees. The Apex Court as also this Court has time and again held that the Charity Commissioner should consider the need of the Trust and grant permission wherever the property of the Trust is being sold after following proper procedure so that the market value of the said property is received by the Trust.”

16. 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.”

10. Further in ***Cyrus Rustom Patel vrs. Charity Commissioner, Maharashtra State and others (2018) 14 SCC 761***, the Hon'ble Apex Court

laid down the consideration upon which the permission under Section 36 of the MPT Act has to be granted in the following words;

"26. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. "the interest, benefit, and protection" of the Trust. The expression that sanction may be accorded subject to such condition as the Charity Commissioner may think fit under section 31(1)(b) and section 36(1)(c). The Charity Commissioner has to be objectively satisfied that the property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account the aforesaid triple classic requirements. It is also open to the Charity Commissioner, in exercise of power of section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to subserve the interest, benefit and protection of the Trust and its property".

11. The following factors are required to be considered under Section 36 of the Maharashtra Public Trusts Act, 1950.

- a) the need as felt and determined by the trust;
- b) whether such need is genuine, considering the financial position of the trust, its holdings, the income derived from the same, the resources available;
- c) whether the alienation would be in the interest and for the benefit of the trust;

d) whether such alienation is for the protection and advancement of the aims and objects of the trust;

In considering and determining the existence of the above factors, the learned Charity Commissioner has to be objectively satisfied that the property should be disposed of in the interest of public trust and in doing so, he has a right to impose such conditions as he may think fit, taking into account the aforesaid requirements.

12. On perusal of the record, it appears that the suit is filed by the trust for possession and decree is in favour of the trust. In compromise application it is not mentioned why the trust compromised the matter though the decree is in favour of the trust. Moreover, the trust is not in need of money, it is not in benefit of the trust. Though the area considered by the Charity Commissioner is more than the area which the trust agreed to sell to the Mill but considering its location and the commercial potential of said plots which is more than the market value mentioned by the Mill. As the trustees are having decree for possession in their hands against the tenant and trust is not in need of money, which is ascertained from the audit report of the trust. The decision of the trustee to sell those plots to the tenant on lesser price is not in the interest of the trust. Therefore, the order passed by the Charity Commissioner does not suffer from any error. Hence, no interference at the hands of this Court is required.

13. In view of the above said observations, the writ petition stands dismissed.

14. Rule stands discharged. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

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