(2011) 07 BOM CK 0175

In the Bombay High Court

Case No : Writ Petition No. 1801 of 2011

Datta Khalkonikar APPELLANT

Vs

Shriram Mandir Deosthan Trust, Wardha and Megh Reality and Developers Private Limited RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36, 36(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 7 ALLMR 12 : (2011) 5 BomCR 849

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : S.V. Sohoni, for the Appellant; A. Joshi, Learned Counsel for Respondent No. 1, M.G. Bhangde and V.V. Bhangde, Learned Counsel, for the Respondent

Judgement

R.M. Savant, J.—Rule with the consent of the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 15/02/2011 passed by the Joint Charity Commissioner, Nagpur, by which order the application filed by the Respondent No. 1Trust u/s 36(1)(a) of the Bombay Public Trust Act was disposed of by granting permission to the Respondent No. 1-Trust to sell the property in question to the Respondent No. 2 herein.

3. The questions which are arise for consideration in the above petition as to whether the price offered by the Respondent No. 2 herein for the property in question is the market price of the property? And whether the order passed meets the requirements of Section 36(1)(a) of the Bombay Public Trust Act? (Hereinafter referred to for brevities sake as the "said Act").

4. The factual matrix involved in the above petition can be stated thus -

The Petitioner is the trustee of the Respondent No. 1Trust and was at the relevant time the Treasurer of the said Trust. The application u/s 36(1)(a) of the said Act is in respect of the sale of property bearing Survey No. 124 admeasuring 7 hectares and 70 ares, which would be referred to hereinafter as the "said Trust property", on the ground of augmenting the facilities for the devotees during the "Navratra Utsav". The Respondent No. 1Trust was desirous of constructing Sabha Mandap (Hall), which could be used for generating income by letting it out on rent. Since funds were required for construction of the hall, the Respondent No. 1Trust in it''s meeting dated 05/02/2008 resolved to sell the said Trust property by issuing an advertisement in the newspapers. Accordingly advertisements were issued on 15/02/2008 and 17/02/2008 in the local newspapers. In terms of the said advertisement, the last date for submitting the tenders was 02/03/2008. It appears that pursuant to the said advertisement, three offers were received amongst which the offer of the Respondent No. 2 was Rs. 4,01,100/- per acre, whereas the offers given by the two other bidders were much lower at Rs. 2,01,000/- per acre and Rs. 1,30,000/- per acre. Since the offers received were not to the satisfaction of the Respondent No. 1Trust, in the meeting dated 03/03/2008, it was decided to again issue a fresh advertisement in the local newspapers so as to get better offers. Accordingly, advertisement was issued in the various local newspapers. As per the said advertisement, the last date for submitting the offers was 13/03/2008. In terms of the said advertisement, the Petitioner and the other two bidders gave their revised offers on 13/03/2008. The Respondent No. 2 gave a revised offer of Rs. 6,02,500/- per acre which was the highest. After negotiations, the Respondent No. 2 increased its offer to Rs. 6,10,000/- per acre and, therefore, the total offer of the Respondent No. 2 for the said Trust property was in the sum of Rs. 1,16,01,590/. The Respondent No. 1 Trust accordingly accepted the said offer and entered into an agreement and applied to the learned Joint Charity Commissioner for according sanction to the sale of the said Trust property to the Respondent No. 2 with whom it had entered into an agreement. The learned Joint Charity Commissioner in turn directed the Respondent No. 1Trust to invite objections in respect of the said proposed sale to the Respondent No. 2. Accordingly, the Respondent No. 1Trust issued a notice in a local newspaper inviting objections. The Petitioner accordingly submitted his objection. It was the contention of the Petitioner that the price offered by the Respondent No. 2 was much lower than the market price prevailing for the land in question. The Petitioner also offered a price of Rs. 17,00,000/ per acre by filing his affidavit. In response to the said affidavit filed by the Petitioner, the Respondent No. 1 filed its additional affidavit on 06/12/2010.

5. The learned Joint Charity Commissioner considered the application filed u/s 36(1)(a) of the said Act seeking sanction for sale of the said Trust property to the Respondent No. 2 herein and by the impugned order dated 15/02/2011 disposed of the said application and thereby accorded sanction to the sale of the said Trust property to the Respondent No. 2 herein. The gist of the reasoning of the learned Charity Commissioner can be found in paragraph23, which for the sake of

convenience is reproduced herein under.

23. The learned Advocate Shri Chorghade explains that, the factory of the proposed purchaser situates near the trust land. The trust land may come in the area of operation for development of industrial area. The proposed purchaser is a businessman and, therefore, wants to invest accordingly, putting in view, the future prospectus.

This statement on behalf of the proposed purchaser is not countered at Bar.

6. In so far as the objection of the Petitioner is concerned, the learned Joint Charity Commissioner observed that the offer of the Petitioner of purchasing the land at Rs. 17,00,000/- per acre was an afterthought and without any support and, therefore, cannot be accepted. The learned Joint Charity Commissioner also observed in the order that the price fetched is maximum and the proposal is in the interest of the Trust. As indicated above, it is this order, which is impugned in the present petition.

7. Before proceeding to consider the rival contentions, it would be apposite to refer to the affidavit in reply filed by the Respondent No. 2 and the rejoinder filed by the Petitioner in the above petition.

Affidavit in reply:

i) In the affidavit in reply dated 07/06/2011 filed on behalf of the Respondent No. 2 herein i.e. the proposed purchaser, it has been in terms stated that the Respondent No. 2 offered the price that it has offered for the reason that the Respondent No. 2 is an Associate Company of one M/s. Uttam Galva Metallics Limited and is engaged in the activity of purchasing land for M/s. Uttam Galva Metallics Ltd. It has further been stated in the said affidavit that M/s. Uttam Galva Metallics Ltd. and the Respondent No. 2 have already purchased the surrounding lands (approximately 250 plus acres) for starting steel manufacturing unit of M/s. Uttam Galva Metallics Ltd. It has further been stated that the project cost of M/s. Uttam Galva Metallics Ltd. is Rs. 1500 Crores and that the parent company has taken loan approximately of Rs. 1200 Crores from consortium of various banks wherein the State Bank of India is the lead bank. It has further been stated that the construction on the site has been started in July, 2008 and was completed in the 2010.

ii) In so far as the objection of the Petitioner was concerned, it has been averred that the Joint Charity Commissioner was only required to see whether the price offered by the Respondent No. 2 on the date when the tenders were invited was as per the market value or not. It has further been averred that the reason given by the Joint Charity Commissioner for not considering the Petitioner''s offer is correct as nothing was brought to his notice by the Petitioner to show his bona fides in respect of the said offer.

Affidavit in rejoinder:

i) The Petitioner has filed an affidavit in rejoinder dated 16/06/2011 wherein it is contended that the proposed sale in favour of the Respondent No. 2 has not been carried out in a transparent manner. It is averred that the Respondent No. 2 seeks to rely on the offer made by him in the first round of advertisement i.e. pursuant to the advertisement issued on 15/02/2008 and 17/02/2008, whereas in fact the revised offer, pursuant to the advertisement issued in March, 2008, has been purportedly accepted. This according to the Petitioner is a circumstance, which does not inspire confidence in the whole decision making process.

ii) It has further been averred that though the Respondent No. 2 claims that it was purchasing the property for its Associate Company M/s. Uttam Galva Metallics Ltd., no document was produced before the Joint Charity Commissioner to show the connection between the Petitioner and the said M/s. Uttam Galva Metallics Ltd.

iii) The Petitioner to the said affidavit in rejoinder has annexed six sale deeds entered into by the said M/s. Uttam Galva Metallics Ltd. with six land holders of adjoining lands in the same village wherein the said Trust property is situated wherein the said M/s. Uttam Galva Metallics Ltd. has agreed to purchase the land at rate of Rs. 16,79,000/- per acre. The copies of sale deeds as well a tabular statement are annexed. It further averred in the said rejoinder that from the sale deeds dated 30/01/2010, it can be seen that the price offered by the Respondent No. 2 was much lower than the market price.

Submissions on behalf of the Petitioner:

i) The learned Counsel for the Petitioner submitted that the learned Joint Charity Commissioner has not taken into consideration the relevant facts and has decided the application on facts which have no bearing whilst considering an application u/s 36(1)(a) of the said Act.

ii) In the teeth of the offer made by the Petitioner at Rs. 17,00,000/- per acre, the learned Joint Charity Commissioner ought to have given the Petitioner a chance to pay the amount in terms of the said offer.

iii) The learned Joint Charity Commissioner has not adjudicated upon, whether the price offered by the Respondent No. 2 was the market price. The learned Joint Charity Commissioner erred in basing his order upon the fact that the proposed purchaser, who is a businessman, is having his factory near the Trust land when there was no such document produced before him in that regard.

iv) In the teeth of the sale deeds executed by the said M/s. Uttam Galva Metallics Ltd. with the land owners of the adjoining lands, which sale deeds are dated 30/01/2010, the price offered by the Respondent No. 2, as can be seen, is 1/3rd of the price offered by the said M/s. Uttam Galva Metallics Ltd. to the said land holders, which is near about Rs. 17,00,000/- per acre.

Submissions on behalf of the Respondent No. 2:

i) It is submitted on behalf of the Respondent No. 2 by the learned Senior Counsel Shri Bhangade that the Petitioner being a trustee and having not attended the meetings in which the decision was taken to sell the said Trust property to the Respondent No. 2 it is now not open for the Petitioner to challenge the sale of the said Trust property to the Respondent No. 2.

ii) Though, numerous meetings were held from time to time, the Petitioner for the reasons best known to him did not attend the said meetings and did not take any exception to the decision of the Respondent No. 1Trust to sell the land to the Petitioner and, therefore, the Petitioner is now estopped from questioning the sale to the Respondent No. 2.

iii) In a proceeding u/s 36(1)(a) of the said Act the learned Charity Commissioner was only required to consider whether the sale is in the interest of the Trust and whether the price offered for the property in question is the market price on the date of the sale.

iv) The sale deeds which are now sought to be relied upon by the Petitioner are of January, 2010, whereas the advertisement pursuant to which the offer was made by the Respondent No. 2 was issued in March 2008 and, therefore, the price mentioned in the sale deeds now produced by the Petitioner cannot be taken into consideration as an indication of the market price which was prevailing in the year 2008.

v) The Petitioner has not shown his bona fides by not depositing 25% of the amount of the offer, which he had made and, therefore, the learned Joint Charity Commissioner was right in coming to a conclusion that the offer of the Petitioner was an afterthought and that no steps have been taken by the Petitioner to show his bona fides. For the said purpose the learned senior counsel for the Respondent No. 2 relied upon a judgment of a learned Single Judge of this Court reported in 2011 (3) Mh.L.J. 31 in the matter of Raj Darshan Ventures v. Joint Charity Commissioner and Ors.

Consideration:

Having heard the learned Counsel for the Petitioner and the learned senior counsel for the Respondent No. 2, I have given my anxious consideration to the rival contentions.

i) In the instant case, as the impugned order discloses what has weighed with the learned Joint Charity Commissioner is the fact that the proposed purchaser is a businessman, who has got his factory by the side of the said Trust property, which is the subject matter of the sale. Without there being any material produced by the Respondent No. 2 in that regard. In so far as whether the price offered by the Respondent No. 2 is the market price or not the learned Joint Charity Commissioner has merely in one line observed that the price offered by the Respondent No. 2 is maximum and that the proposal is in the interest of the Trust.

ii) As regards the sale of trust property and the powers of the learned Joint Charity Commissioner u/s 36, the Full Bench judgment of this Court reported in 2007 (4) All MR 100 in the case of Shailesh Developers and Ors. v. Joint Charity Commissioner Maharashtra and Ors. has held that the power of the Charity Commissioner is not restricted either to grant sanction to a particular proposal of the trustees or to reject, it is the duty of the Charity Commissioner to ensure that the transaction of alienation is beneficial to the Trust and its beneficiaries. He has to ensure that the property is alienated to a purchaser or buyer whose offer is the best in all respects. It is not necessary in every case that the Charity Commissioner has to ensure that the property is sold by the trustees to the person offering highest price or consideration. What is the best offer in the interest of the Trust will again depend on the facts and circumstances of each case.

iii) It is in the said context that the instant matter would have to be considered, it is required to be noted that in the first round of tendering the offer made by the Respondent No. 2 was to the extent of Rs. 4,01,100/- per acre. Thereafter within 15 days of the fresh tenders being invited, the Respondent No. 2 hiked his offer to Rs. 6,02,500/per acre and in negotiations to Rs. 6,10,000/- per acre. Obviously, the Respondent No. 2 was aware that the price offered by him of Rs. 4,01,100/- per acre in February, 2008 was not the market price at the relevant time. The learned Joint Charity Commissioner, therefore, ought to have considered the said aspect from all its angles especially when there was an objection by the Petitioner that the price offered was not the market price. However, the learned Joint Charity Commissioner, it seems, has mechanically accepted the price offered as the maximum price and has accorded sanction to the sale in favour of the Respondent No. 2. The factor which has weighed with the learned Joint Charity Commissioner, as can be seen from the paragraph No. 24 of the impugned order, is not a relevant factor, which was required to be taken into consideration whilst considering an application u/s 36 of the said Act.

iv) It is pertinent to note that the Petitioner in his affidavit in rejoinder in the above proceedings has annexed six sale deeds disclosing that the said M/s. Uttam Galva Metallics Ltd. has purchased lands from six adjoining land holders at the rate of Rs. 16,79,400/to Rs. 17,79,600/- per acre on 30th January, 2010. Though the said sale deeds were not before the learned Joint Charity Commissioner, this Court in its writ jurisdiction cannot shut its eyes to the said sale deeds. Admittedly, the Petitioner claims to have purchased the land on behalf of the said M/s. Uttam Galva Metallics Ltd. that the offer of the Petitioner at Rs. 6,10,000/- per acre is of the year 2008. There cannot be such a high amount of appreciation within a period of two years and that also of land in a rural area, the only irresistible conclusion that can be drawn is that the price offered by the Petitioner in the year 2008 cannot be said to be the market price and, therefore, the said Trust property cannot be said to have fetched the best market price.

v) The contention of the learned Counsel for the Petitioner that the price as on 06/03/2008 would have to be taken into consideration and in the absence of any better offer received in spite of the two attempts being made by the Respondent No. 1Trust, the order of the learned Joint Charity Commissioner according sanction cannot be faulted with, in my view cannot be accepted. In the teeth of the said six sale deeds which the said M/s. Uttam Galva Metallics Ltd. has itself entered into with the adjoining land holders, the said submission of the learned Counsel for the Petitioner cannot be countenanced. The fact that the Petitioner has not shown his bona fides by not depositing 25% of the amount whilst objecting to the proposed sale in favour of the Respondent No. 2 and has also not deposited the amount as directed by this Court in the above petition by order dated 25/04/2011, cannot be a ground to deny reliefs to the Petitioner more so, in the teeth of the sale deeds, which have now been produced by the Petitioner on record. It is trite that the transaction in question is to be in the best interest of the trust which encompasses within itself the aspect of the property fetching the market value. The reliance placed by the learned senior counsel for the Respondent No. 2 on the judgment of a learned Single Judge of this Court in Raj Darshan Ventures Vs. Joint Charity Commissioner and Others, , in my view, is misplaced. The Petitioner in the said case had not made any specific offer and secondly the application/letter was not accompanied by the EMD and the Petitioner had merely stated that time to be granted to deposit the amount.

vi) In my view, in view of the six sale deeds annexed by the Petitioner to his affidavit in rejoinder, the scenario changes dramatically, since the party on behalf of whom the Petitioner is purported to be acting i.e. M/s. Uttam Galva Metallics Ltd. has itself purchased the lands from the adjoining land holders though in January 2010 for prices ranging from Rs. 16,79,400/- per acre to Rs. 16,79,600/ per acre. In my view, the said factor would be a relevant factor to consider whilst arriving at a conclusion whether the price offered by the Respondent No. 2 was the market price for the property in question. In that view of the matter, the impugned order would have to be set aside and is accordingly set aside and the matter would have to be relegated back to the learned Joint Charity Commissioner for a de novo consideration in the light of the said six sale deeds produced by the Petitioner.

vii) On remand, the learned Joint Charity Commissioner to decide the application filed by the Respondent No. 1 within a period of three months of the first appearance of the parties. The parties to appear before the learned Joint Charity Commissioner on 25th July, 2011 at 3.00 p.m. The learned Joint Charity Commissioner thereafter to fix the schedule as per his convenience.

viii) Needless to state that the learned Joint Charity Commissioner would decide the application on its own merits and in accordance with law, uninfluenced by the observations made in the instant order but keeping in mind the well settled principles applicable whilst deciding an application u/s 36 of the said Act.

8. Rule is accordingly made absolute in the aforesaid terms, with parties to bear

their respective costs.

