

(1997) 03 GUJ CK 0037
In the Gujarat High Court

Hareshkumar Khushaldas and Co.

APPELLANT

Vs

Ahmedali Yusufali Tinwala and Others

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36
Constitution of India, 1950 — Article 227

Citation : (1997) 3 GLR 2088

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Challenge is made by the petitioner, by this Special Civil Application, to the order Annexure "F", dated 24th September 1985, passed by the Gujarat Revenue Tribunal, Ahmedabad, in appeal setting aside the order of the Joint Charity Commissioner, Rajkot, dated 30th April 1983 granting permission to the trustees for sale of the suit property to the petitioner.

2. The facts relevant for the purpose of deciding this case are that the respondent No. 5 is the sole trustee of a Public Charitable Trust called "Maulai Bapji Fakruddin Fatarwala-ni-Co." (hereinafter referred to as the "Trust"). The said Trust owns a shop situated at Danapith area of ward No. 2 of Rajkot. The respondent No. 7 was the Secretary of the Trust whereas the respondent No. 13 and one Abdul Hussain Jivaji were the Joint Secretaries of the said Trust.

3. The shop in dispute was in possession of M/s. Ashra & Company, as a tenant. On 2nd August 1979, an agreement was entered into between the partner of the aforesaid firm and Shri Khushaldas Jethabhai, partner of M/s. Khushaldas Jethabhai & Co., for assignment of tenancy rights with goodwill and existing business for an amount of Rs. 10,000/-. Pursuant to the aforesaid agreement, M/s. Khushaldas Jethabhai & Co. came into possession of the suit property. On that date, the original tenant was paying Rs. 51/- p.m. as rent, thereof, to the Trust. On the same date, an agreement to sell the shop in dispute was also entered into between Shri Hareshkumar Khushaldas a partner of M/s. Khushaldas Jethabhai &

Co., and also a partner of the petitioner firm, herein, on one hand and the said Trust, through its Secretary, respondent No. 7 and Joint Secretaries, respondent No. 13 and said Abdul Hussain Jivaji for an amount of Rs. 48,500/-. On 7th September 1980, the trustees were said to have invited offers for sale of this property (shop) which was in possession of the tenant. In response to the said notice, no offer to purchase the said shop was received by the Trust. After aforesaid "Sathakath" (agreement) was entered into, the trustees of the said Trust approached to the Charity Commissioner for grant of permission, to sale the shop, as required u/s 36 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the "Act, 1950"). The Charity Commissioner had given a Public Notice dated 13-4-1983, inviting offers for sale of the said property with tenant, for an amount more than Rs. 48,500/-. No offer in response to the aforesaid notice was received by the said Charity Commissioner. The Joint Charity Commissioner, Rajkot, by his order dated 30th April 1983, granted permission to the Trust for sale of the shop in question to the petitioner for Rs. 48,500/-. The respondent Nos. 1 to 4 filed an appeal against the order of the Joint Charity Commissioner, Rajkot, dated 30th April 1983 before the Gujarat Revenue Tribunal, at Ahmedabad. This appeal filed by respondent Nos. 1 to 4 came to be allowed by the Gujarat Revenue Tribunal, Ahmedabad, under its order dated 24th September 1985. Hence this Special Civil Application before this Court. None of the respondents have filed reply to the Special Civil Application and as such, the averments made therein stand uncontroverted.

4. The learned Counsel for the petitioner contended that the Tribunal has committed serious illegality in relying on the valuation report of the valuer dated 2-11-1983, valuing the property (the shop in dispute) at Rs. 1,13,193/-. The Tribunal while relying on the aforesaid valuation report has lost sight of the important facts that the shop was in occupation of the tenant since Samvat year 2009 and was fetching a rent of Rs. 51/- p.m. only and if its value is assessed for capitalization as per Rule of 16 years, the value thereof would come to only Rs. 9,792/-. Moreover, the Charity Commissioner had invited offers for sale of the property with tenant in the year 1980, but none of the respondents have come with any offer. Lastly, the Charity Commissioner had made another attempt by way of offer for sale of the said shop with tenant, during the pendency of application u/s 36 of the Act, 1950, but again it was not responded well. It has next been contended that the agreement to sell was entered into between the parties on 2-8-1979, whereas the valuation report relied by the Tribunal was of 2-11-1983. The valuation report should have been with reference to date 2-11-1979 which would have certainly been less than the amount of Rs. 1,13,193/-. Otherwise also, the valuation report got by the respondent Nos. 1 to 4 of the shop in dispute after the grant of permission to the Trust for sale thereof is of no value and substance. It has further been contended that the consideration of the Tribunal that the permission for sale of the shop in dispute, of the Charity Commissioner has been obtained in the present case by misrepresentation, is without any substance, basis and evidence. Lastly, it is

urged that Rule 24 of the Bombay Public Trusts Rules, 1951, (hereinafter referred to as "Rules, 1951") is not a mandatory provision. The requirement of valuation report of approved valuer to be taken by the Commissioner before grant of permission of sale of the property is not a condition precedent for the validity of the permission.

5. On the other hand, the learned Counsel for the respondents supported the order passed by the Gujarat Revenue Tribunal.

6. I have given my thoughtful considerations to the submissions made by the learned Counsel for the parties.

7. It is not in dispute that respondent No. 1, alongwith the application, submitted before the Charity Commissioner, for grant of permission to sell the disputed shop, had not produced the valuation report of the approved valuer. Rule 24 of the Rules, 1951, may or may not be a mandatory provision, but it provides that alongwith the application for grant of permission for sale of the Trust property, same should be supported by a valuation report thereof of an approved valuer. In the case in hand, the Secretary and two Joint Secretaries of the Trust have not got the valuation of the shop in dispute done by the approved valuer. Rule 24 of the Bombay Public Trust Rules, 1951, provides that :

(1) Every application for sanction of an alienation shall contain information inter alia on the following points :

(i) whether the instrument of trust contains any directions as to alienation of immovable property;

(ii) what is the necessity for the proposed alienation;

(iii) how the proposed alienation is in the interest of the public trust; and

(iv) in the case of a proposed lease, the terms of the past leases, if any,

(v) in the case of a proposed lease, the terms of the past lease, if any,

Such application shall be accompanied, as far as practicable, by a valuation report of an expert.

(2) The Charity Commissioner, before according or refusing sanction, may make such inquiry as he may deem necessary.

(3) In according sanction, the Charity Commissioner may impost such conditions or give such directions as he may deem fit.

8. As per Rule 24 of the Rules, 1951, an application aforesaid shall be accompanied, as far as practicable, by a valuation report of an expert. It is not the case of the petitioner, either before the Tribunal or before this Court, that the valuation of the shop in dispute was not practicable or possible to be made by an expert. The Joint Charity Commissioner, Rajkot, has not considered this aspect and relying on the agreement to sell, entered into between the parties,

sanctioned the alienation u/s 36 of the Act, 1950. The matter would have been different where for the reasons to be recorded, the Joint Charity Commissioner, Rajkot, would have found it to be not practical to value the property in dispute by an expert. The parties may have given their own valuation but it is not a valuation of the property by an expert. The contracting parties may have valued the property at much less price than what its real value may be, as per the expert. No explanation whatsoever is forthcoming from the petitioner, as well as from the Trust as to why this exercise, which was required to be done under Rule 24 of the Rules, 1951 was not undertaken. In absence of valuation report of the property, the shop in dispute, of an expert, the Tribunal was perfectly justified and correct to hold the order of the Joint Charity Commissioner, Rajkot to be illegal. Much emphasis has been put by the learned Counsel for the petitioner on the ground that the valuation of the property, to be alienated, by an expert and to be filed alongwith the application for grant of sanction is not mandatory, but even if this requirement of Rule is taken to be directive (without deciding this point) then too, there must be some reasonable explanation, to be furnished by the Trust and the purchaser of the disputed property why the valuation report of the expert was not taken. The directive provisions are not for flouting the same. These provisions have to be complied with irrespective of the fact whether they are directive or mandatory and in the case where for the reasons given, it would not be possible to comply with it, then the matter would have been different. It is for the authority to decide whether in the absence of valuation report by expert, the valuation as made of the property by the parties should be accepted or not. The language of Rule 24 of Rules, 1951 has carved only one exception to the filing of the valuation report of the property, for alienation of which the permission was sought, where it was not practicable. This aspect has to be gone into and considered by the Joint Charity Commissioner, Rajkot. He could have dispensed with the requirement of filing thereof where it would have satisfied that it was not practicable to have a valuation report, of the property in dispute, of an expert. That is not the case here. The Joint Charity Commissioner, Rajkot, has taken the matter very casually and in perfunctory manner. Even he has not cared to see the requirement of provisions of Rule 24 of Rules, 1951. The calling of the offer by public notice given therein and the valuation as put by the parties to the agreement to sell, may not be a sufficient compliance what to say to be substantial compliance of the provisions of Rule 24 of Rules, 1951.

9. The other ground given by the Tribunal that sanction of this alienation of the shop in dispute has been obtained by the parties by misrepresentation, is also not without substance. The petitioner has not produced on record any material to show that the agreement dated 2-11-1979 entered into between the existing tenant and Shri Khushaldas Jethabhai, partner of M/s. Khushaldas Jethabhai & Co., was produced by the respondent No. 9 alongwith the application submitted to the Charity Commissioner for grant of sanction for alienation thereof. Not only this, but nothing has been produced on record by trustees or the purchaser to show and establish that the Charity Commissioner was appraised of the fact that

the shop in dispute was in possession of M/s. Ashra & Company as a tenant since Samvat Year 2009. How the matter has been taken to the Charity Commissioner is also significant to note. An agreement has been entered into between the existing tenant and Shri Khushaldas Jethabhai, partner of M/s. Khushaldas Jethalal & Co., under which the former has assigned its tenancy rights with goodwill and existing business for an amount of Rs. 10,000/-. So it is a case of sub-letting and the Tribunal is correct to hold that in case this would have been brought to the notice of the Charity Commissioner, possibly, the said authority would not have granted sanction to alienate the shop in favour of the petitioner. The very fact that the existing tenant assigned its tenancy rights together with goodwill and existing business only for Rs. 10,000/- in favour of the partner of M/s. Khushaldas Jethabhai & Co., concludes that he was not interested to continue in possession of the shop. That was a very meagre amount and the petitioner's Counsel admits that the shop would have fetched the price more than what was agreed to be where it would have been a vacant shop. No explanation or reason whatsoever has been given by the petitioner as well as by the Trust why the Trust has not taken the shop from the existing tenant on payment of Rs. 10,000/- and then to decide to sell that property in open auction. The fact that on 2nd August, 1979, two agreements were entered into, one between the existing tenant and Shri Khushaldas Jethabhai - partner of M/s. Khushaldas Jethabhai & Co., and another between Shri Hareshkumar Khushaldas - partner of M/s. Khushaldas Jethabhai & Co. and the Trustees, creates suspicion in the mind of the Court and the possibility of some under-table deal cannot be excluded. This suspicion is further fortified from the fact that the Trust has not chosen to take possession from the existing tenant who was willing to give the same only for Rs. 10,000/-. This exercise should have been undertaken by the Trust for which no explanation whatsoever is forthcoming. Neither of the parties has produced on record any material to show that the existing tenant was not willing to purchase the shop. The suspicion which has been created gets further fortification from the fact that the shop in dispute ultimately was sold in favour of the petitioner who was not a party to any of the agreement entered into with the existing tenant and trustees. So, in this dealing there were two persons who intervened, namely, Shri Khushaldas Jethabhai and the existing tenant and Shri Khushaldas Jethabhai who has taken the tenancy right with goodwill and existing business from the tenant was not ultimately the purchaser of the shop in dispute. The agreement with the existing tenant was entered into by Shri Khushaldas Jethabhai whereas the agreement to sell the suit shop with the Trust was entered into by Shri Hareshkumar Khushaldas, as a partner of M/s. Khushaldas Jethabhai & Co., and also as a partner of the petitioner-firm. The partners of the two firms may be common but the firms were different and no explanation is forthcoming why ultimately the shop in dispute was alienated in the name of the petitioner-firm.

10. Taking into consideration the totality of the facts of this case, I am satisfied that the deal which has been entered into for alienation of the shop in dispute by

the Trust in favour of the petitioner was not fair and proper. It smells as the parties got sanction for alienation of the shop in dispute by misrepresenting material facts from the concerned authority. The order of the Gujarat Revenue Appellate Tribunal, Ahmedabad, challenged by the petitioner in this writ petition does not call for interference of this Court. This Court may not be justified in extending its jurisdiction under Article 227 of the Constitution in the present case. The Act, 1950 is a special Act governing matters pertaining to Public Trust and its property. The legislature has, in its wisdom, not provided second appeal or revision to this Court from the order of the Tribunal. The object is to give finality to the decision of the revisional or appellate authority. This Court, sitting under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless this Court interferes. After going through the judgment of the Tribunal, I am satisfied that no illegality has been committed by it in passing of the impugned order which justifies the interference of this Court under Article 227 of the Constitution.

In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated. No order as to costs.