(2003) 08 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 4977 of 1995 with Civil Application No''s. 2974, 4106 and 5400 of 2003

Jalaram Group Housing Society — APPELLANT

Vs

State of Gujarat — RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36, 36(3)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1(1)
Constitution of India, 1950 — Article 14, 16, 19, 226, 227
Limitation Act, 1908 — Section 12, 14, 4, 5, 72
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2003) 08 GUJ CK 0062

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : K.G. Vakhariya and Tushar Mehta in Special Civil application No. 4977 of 1995 and M.C. Bhatt, in Civil application No. 4106 of 2003, for the Appellant; S.N. Shelat, General for Respondent No. 1-2, H.J. Nanavaty, for Respondent Nos. 3-4/1, 4/2, 4/3 and 4/4, S.H. Sanjanwala and Mrugen K. Purohit, in Special Civil Application No. 4977 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—Since main petition i.e. S.C.A. No. 4977 of 1995 as well as all Civil Applications are connected with each other, all of them are disposed of by this common judgment.

2. The petitioner in S.C.A. NO. 4977 of 1995, filed under Article 226 of the Constitution of India, has challenged the order dtd. 17.06.1991 passed by the State Government u/s 20 of the Urban Land (Ceiling and Regulation Act), 1976 (hereinafter referred to as the ''ULC Act'') and the order dtd. 20.06.1991 passed by the Charity Commissioner while exercising powers u/s 36 of the Bombay Public Trust Act, 1950 (hereinafter referred to as the ''BPT Act'').

3. Civil Application No. 2974/2003 is filed by Purshottamnagar Cooperative

Housing Society Ltd. (Vibhag 1 to 27) original respondent No.5 in S.C.A. NO. 4977 of 1995 for vacating of interim relief granted by this Court vide order dtd. 29.06.1995 and 30.06.1996 in S.C.A. NO. 4977 of 1995.

4. Civil Application No. 4106/03 is filed by one Mr. Rajubhai Shyambhai Zariwala of Surat requesting this Court to allow him to be joined as party respondent in S.C.A. NO. 4977 of 1995.

5. Civil Application No. 5400/03 is filed by the original petitioner seeking amendment in the petition by inserting para 3 of the Civil Application as para 3 (13), 3(14) and para 10(BB) and Para 10 (BBB) of the petition.

6. During the pendency of the petition, Civil Application No. 2676/96 was filed by one Mr. Jaswantlal J. Patel seeking permission of this Court to allow him to be joined as party - petitioner in S.C.A. NO. 4977 of 1995. However, the said Civil Application was withdrawn on 20.03.1996.

7. During the pendency of the present petition, one more Civil Application was filed by one Mr. Bharatbhai Keshavbhai Unadkat @ Jasdanwala requesting this Court to allow him to be joined as party - respondent in S.C.A. NO. 4977 of 1995. However, the said Civil Application was withdrawn on 29.04.2003.

8. As far as main petition is concerned, it is the case of the petitioner that respondents No.3 and 4 which are Charitable Trusts had entered into a development agreement with the petitioner firm on 11.06.1987 under which all the lands belonging to the Trusts were agreed to be sold and/or to be developed through the petitioner at the following prices.

Village Survey No. Rate in Rupees per Sq. Mtr.

Bhatar 38,39,40 495/-

Bhatar 58 550/-

Pandesara 1/1 301/- 9. In view of the said development agreement, the respondent Trusts have made an application dtd. 05.01.1988 before the Charity Commissioner u/s 36 of the BPT Act. The Trusts have also made an application dtd. 08.11.1990 before the State Government with respect to all the properties as referred to in the petition for being granted exemption from the Provisions of ULC Act. In response to the said application, the State Government granted exemption u/s 20 of the ULC Act by its order dtd. 12.03.1991 in respect of total area approximately admeasuring 68387 Sq. Mtrs. while granting the exemption u/s 20 of the ULC Act, the State Government had imposed certain conditions to secure the interest of the Trusts and one of the important condition imposed in the order was that the Trusts would sell the said land only at the highest possible price. Since there was some discrepancy in the area of the land, the State Government has passed another order on 27.03.1991 modifying its earlier order dtd. 12.03.1991.

10. It is the case of the petitioner that one Mr. Girishbhai Dalsukhbhai Godani

who is the son of Shri Dalsukhbhai Godani who was a Revenue Minister, State of Gujarat, at the relevant point of time, entered into the scene and negotiated with the Trustees in the name of respondent No.5 society and agreement for sale was entered into between the Trusts and the said society on 11.04.1991. It is further stated that the Trusts thereafter made another application before the State Government praying for exemption u/s 20 of the ULC Act specifying therein that the respondent No.5 society was the proposed buyer of the lands in question. Pursuant to the said application, the State Government reviewed its earlier order dtd. 12.03.1991 and passed an order on 17.06.1991 u/s 20 of the ULC Act permitting the Trusts to sell the lands in question to the respondent No.5 society and removing the earlier conditions imposed in the order dtd. 12.03.1991 with regard to the property being sold at the maximum price.

11. It is further stated that the Trusts had made an application dtd. 15.05.1991 to the Charity Commissioner seeking his sanction u/s 36 of the BPT Act. Pursuant to the said application, the Charity Commissioner issued a public advertisement in the local Gujarati daily ''Gujarat Mitra'' in its edition dtd. 17.05.1991. The Charity Commissioner thereafter passed an order on 20.06.1991 granting sanction to the Trusts to sell the lands to respondent No.5 society inter alia on the ground that the State Government has exempted the land under the ULC Act, subject to the condition that the same would be sold to respondent No.5 society.

12. It is further stated that pursuant to the public advertisement, the petitioner raised objections vide its letter dtd. 18.05.1991 offering the same price which was mentioned in the development agreement as well as asking for the personal hearing in the matter. The petitioner has also pointed out in the said objections raised on 18.05.1991 that comparing the prices of the petitioner and the respondent No.5 society, the difference in the price would be more than approximately Rs. 2 Cores. However, the said objections were not considered by the Charity Commissioner and the sanction u/s 36 of the BPT Act was granted by an order dtd. 20.06.1991.

13. It is also the case of the petitioner that even after granting sanction u/s 36 of the BPT Act, the petitioner made several representations to the Charity Commissioner. However, the petitioner was assured time and again that justice would be done to the petitioner. Since no action was taken by the Charity Commissioner, the petitioner wrote a letter dtd. 01.05.1995 to the Charity Commissioner requesting him to grant the personal hearing and pointing out relevant facts. Pursuant to the said letter, the Charity Commissioner sent his reply on 09.05.1995 stating that the order was already passed on 20.06.1991 and the petitioner was already informed earlier about this order.

14. It is further stated that one Mr. Suresh Patel and 8 others have challenged the order dtd. 20.06.1991 passed by the Charity Commissioner by filing appeal before the Gujarat Revenue Tribunal. However, the Tribunal vide its order dtd. 10.12.1991 dismissed the said appeal and being aggrieved by the said decision

of the Tribunal, the said Shri Suresh Patel and other 8 persons have filed S.C.A. No. 8990/1991 before this Court, inter alia, challenging the order dtd. 20.06.1991 passed by the Charity Commissioner as well as the order dtd. 10.12.1991 passed by the Gujarat Revenue Tribunal. Since the said petition was admitted by this Court and interim relief was granted, the present petition filed by the petitioner in the year 1995 was also admitted and was ordered to be heard along with said S.C.A. No. 8990/1991.

15. Mr. K.G. Vakhariya, learned senior counsel appearing with Mr. Tushar Mehta, learned advocate for the petitioner has submitted that impugned order dtd. 17.06.1991 passed by the Revenue Department, State of Gujarat is unjust, illegal and without jurisdiction in as much as the State Government has concluded the matter u/s 20 of the ULC Act by passing the order dtd. 12.03.1991 and exempting the land subject to the condition that the same would be sold to a person offering maximum available price. Passing of the order dtd. 17.06.1991 amounts to reviewing of the order dtd. 12.03.1991 whereby the condition subject to which the exemption was accorded, were substantially changed. Mr. Vakhariya has alternatively submitted that before applying for exemption u/s 20 of the ULC Act, the respondents trusts have already entered into a development agreement with the petitioner and since the petitioner has acquired the vested rights over the land in question, no orders with regard to the said land could be passed in absence of the petitioner and behind its back. Since the impugned order dtd. 17.06.1991 was passed by the Revenue Department behind the back of the petitioner, the same was illegal and arbitrary, being violative of the principles of natural justice and hence, requires to be quashed and set aside.

16. Mr. Vakhariya has further submitted that the order dtd. 20.06.1991 passed by the Charity Commissioner in purported exercise of his powers u/s 36 of the BPT Act is also unjust, illegal and arbitrary as while passing the impugned order, the Charity Commissioner has totally ignored the purpose and legislative intent which requires the Charity Commissioner to consider before taking a decision whether or not to sanction sale of all Trusts properties u/s 36 of the BPT Act. He has further submitted that while exercising powers u/s 36 of the BPT Act, the Charity Commissioner is under the statutory obligation to ensure that alienation of the property by the Trusts is in the larger interest and for the benefit of the public trust. It is the duty of the Charity Commissioner to see that the Trust gets the maximum amount possible out of the alienation of the property so that the interest of the beneficiaries of the public trust are not jeopardized in any manner. He has further submitted that because of the sanction given by the Charity Commissioner to sell the property in favour of respondent No.5 society, the interest of the trust was adversely affected as the amount received by the Trust would be much less than the amount being the market price of the lands in question. He has further submitted that since the Charity Commissioner has not at all taken into consideration the relevant mandatory requirements of Section 36 of the BPT Act, the impugned order dtd. 20.06.1991 is unjust, arbitrary, irrational and dehors the Provision of Section 36 of the BPT Act.

17. Mr. Vakhariya has further strongly submitted before the Court that both the authorities while exercising the powers u/s 20 of the ULC Act as well as Section 36 of the BPT Act were pressurized and persuaded by Shri Dalsukhbhai Godani, the Revenue Minister in the State of Gujarat at the relevant point of time and hence, the orders passed by both the authorities are unjust, illegal, being in malaise exercise of powers for extraneous considerations and are violative of Articles 14 and 19 of Constitution of India.

18. In support of his submission that Charity Commissioner has no power to review his own order, Mr. Vakhariya has relied on the decision of the Hon''ble Supreme Court in the case of Indian National Congress (I) Vs. Institute of Social Welfare and Others, wherein it is held in para 33 that "it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In Smith V/s. East Ellos Rural District Council (1956) 1 All ER 855, it was stated that the effect of fraud would normally be to vitiate all s and order. In Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., , it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to Courts of law, but also statutory tribunals which do not have power of review. Thus, fraud or forgery practice by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to de-register such a political party." Applying the above ratio of decision to the facts of the present case, Mr. Vakhariya has submitted that it was only due to political pressure brought on the statutory authorities, such unlawful and illegal decisions were taken. It is not necessary to mention the name of the intending purchaser while granting permission u/s 20 of the Act and yet the permission was granted to the Trust only on the condition that the land would be sold to the respondent No.5 society. He has further submitted that in the earlier order of the Charity Commissioner, the condition was imposed to sell the property at the maximum price. However, the said condition was given go-bye in the subsequent order and that was also done at the behest of Mr. Dalsukhbhai Godani, the Revenue Minister in the State Government at the relevant point of time. Because of these extraneous considerations, the statutory authorities have not discharged their functions and fraudulently taken the decision contrary to the interest of the Trust. He has therefore submitted that the cumulative effect of the transactions entered into would certainly lead to draw an inference that the decisions were taken in collusion with all the parties and the same being fraudulent transactions deserves to be quashed and set aside by this Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

19. Mr. S.N. Shelat, learned Advocate General appearing for respondents No.1 and 2 has submitted that so far as the order u/s 20 of the ULC Act is concerned, the petitioner has no legal right to seek any relief from this Court. He has further submitted that the petitioner is neither the owner of the properties in question nor any right is conferred upon the petitioner under any legally executed documents. He has further submitted that the alleged development agreement

would not create any interest of the petitioner in the property and hence, the challenge made to the order passed u/s 20 of the ULC Act is not entertainable while exercising powers under Article 226 of the Constitution of India. In support of his submission, he relied on the order passed on 30.04.1982 by this Court in LPA No. 135/1982. So far as the order passed by the Charity Commissioner is concerned, Mr. Shelat has submitted that the order was passed in the year 1991 whereas the present petition was filed in 1995. No justifiable reasons were given by the petitioner for delay caused in filing the present petition. He has further submitted that the order passed by the Charity Commissioner u/s 36 of the Act can be challenged before the Gujarat Revenue Tribunal within 30 days from the date of the publication of the order, as provided in Sub-section (3) of Section 36 of the BPT Act. Since the petitioner has not challenged the said order before the Gujarat Revenue Tribunal, Ahmedabad and since the said order was challenged by one Mr. Suresh Patel and other persons before the Gujarat Revenue Tribunal in appeal u/s 36(3) of the BPT Act and the said appeal having been dismissed and Special Civil Application having been filed before this court against the dismissal of the appeal as well as against the order of the Charity Commissioner, has been withdrawn, the petitioner cannot agitate the said issue before this Court in the present petition. He has further submitted that the issues raised in the present petition are disputed questions of facts and they are based on merely certain oral assertions and hence, the same cannot be raised in the present petition before this Court. He has lastly submitted that the order passed by the Gujarat Revenue Tribunal prevails as on today and the same having not been challenged in the present petition, the order passed by the Charity Commissioner is final. The petition, therefore, deserves to be dismissed with cost.

20. Mr. S.H. Sanjanwala, learned Senior advocate appearing for respondent No.5 Society has submitted that the petitioner has made certain false averments to its own knowledge, in the petition. He has further submitted that in para 10 of the petition, the petitioner has made an averment that order dtd. 20.06.1991 was kept as a close secret and specific attempts were made to ensure that nobody comes to know about the sanction being accorded by the Charity Commissioner by the said order. These are the false averments and they are made only with a view to mislead this Court as the petitioner was well within the knowledge of the said order and that was reflected in its own letters and correspondence. Pursuant to the letter dtd. 07.08.1991 written by the petitioner to the Charity Commissioner, the Charity Commissioner gave reply on 22.08.1991 wherein it is specifically stated that the Charity Commissioner has granted permission to the Trust to sell the lands in question to the respondent No.5 Society by passing a common order on 20.06.1991. The petitioner has also admitted the receipt of the letter dtd. 22.08.1991. In its letter dtd. 07.09.1991, it was stated that sanction made in favour of the respondent No.5 society was legal. Thus, it cannot be said that the petitioner was not aware about the order passed by the Charity Commissioner on 20.06.1991. Mr. Sanjanwala has further submitted that the order passed by the Charity Commissioner was merged with the order passed by

the Gujarat Revenue Tribunal and having regard to the principle of merger, it is not open for the petitioner now to challenge the order of the Charity Commissioner before this Court. He has further submitted that even if the petitioner is not a party to the proceedings before the Gujarat Revenue Tribunal, the said order binds to the petitioner. In support of his submission, he relied on the decision of the Hon''ble Supreme Court in the case of Somnath Sahu Vs. The State of Orissa and Others, wherein it is held as under:-

"The order of respondent No.4 dtd. 11.03.1960 has merged in the appellate order of the State Government dtd. 2.01.1962 and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. In other words the original decision of respondent No.4 dtd.11.03.1960, no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. There can be no doubt against an order passed by a tribunal; the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement."

21. Mr. Sanjanwala has further relied on the decision of the Hon''ble Supreme Court in the case of Kunhayammed and Others Vs. State of Kerala and Another, wherein it is held as under :-

"Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule 1 of Order 47 of the C.P.C."

22. Mr. Sanjanwala has further relied on the Division Bench Judgment of this Court in the case of T.P. Kumaran Vs. R. Kothandaraman, Commissioner of Income Tax, Gujarat, wherein it is held that "the original order of the inferior authority ceases to have an independent existence once the appeal or revision is disposed of and it merges in the order of the superior authority."

23. Mr. Sanjanwala has further submitted that the petition is filed after more than four years and hence, it is barred by delay and latches. He has further submitted that there is no provision for condonation of delay so far as the BPT Act is concerned. Section 75 of the Act deals with limitation and it says that in computing the period of appeal under this chapter, or of an application u/s 72,

the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 shall apply to filing of said appeals and applications. He has further submitted that the petitioner has neither filed any appeal challenging the order of the Charity Commissioner and in any case the appeal should have been filed within 60 days from the date of the publication of the order and since the present petition was filed after more than four years and there being no provision of condonation of delay, the present petition deserves to be dismissed on that ground only. Mr. Sanjanwala has further submitted that the petitioner has not established his locus in the petition as he has no right to challenge any exemption u/s 20 of the Ceiling Act granted to the lands of the Trust or any sanction granted by the Charity Commissioner u/s 36 of the BPT Act. He has further submitted that the respondent Trust filed affidavit way back in January, 1996 raising the contention that the petitioner had not annexed to the petition any copy of the development agreement and thereby suppressed the provisions of the development agreement. The respondent trust has also called upon the petitioner to produce the development agreement. Mr. Sanjanwala has therefore submitted that on all counts, namely, either on the ground of principle of merger or on the ground of delay and latches or on the ground that the petitioner had no locus standing, present petition deserves to be dismissed.

24. Mr. H.J. Nanavaty, learned advocate appearing on behalf of respondent Trusts has submitted that no development agreement was executed by the respondent Trust with the petitioner and the petitioner has not produced the said document along with the petition. He has further submitted that the document produced by the petitioner along with the affidavit-in-rejoinder filed on 09.07.2003 is concocted document and it was not signed by Mahant Satya Ramdasji on behalf of the respondent Trust. He has further submitted that since the petitioner has made the false statements in the petition as well as produced concocted document before this Court only with a view to mislead this Court, a serious view can be taken. In support of his submission, he relied on the decision of the Hon''ble Supreme Court in the case of SUBE SINGH vs.. STATE OF HARYANA AND OTHERS, 2002 (10) SCC 121 wherein it is held that "It is prima facie, clear that a false statement has been made on oath by the deponent and that it was intended to subvert the process of the law. We, therefore, issue to the deponent, O.P. Singh, suo motu, notice to show cause why action should not be taken against him and he should not be punished for contempt of court. The notice shall be returnable after four weeks."

25. Mr. H.J. Nanavaty has further submitted that the ground relied upon by the petitioner in support of the petition are factually and in law misconceived and erroneous. He has further submitted that in the matter of grant of exemption u/s 20 of the Ceiling Act, the State Government published several guidelines under which grant of exemption for the transfer of the lands in favour of the Govt. society has been recognised as provided therein. However, transfer of land to a developer or bidder has not been recognised. He has further submitted that even if the Trustees of the Trust wanted to sell the lands to the petitioner, they could

not have obtained any exemption u/s 20 of the Act. The condition of selling the land to a person offering maximum available price has to be understood consistently with the guidelines notified by the State Government. He has further submitted that there is no such settled principle of law that the statutory authority exercising statutory powers can review its own orders only if specific powers are conferred upon such authority under the statute itself. The order passed by the Charity Commissioner on 20.06.1991 cannot be said to be without jurisdiction, illegal or violative of Articles 14 and 16 of the Constitution of India. He has further submitted that the petitioners have not acquired any vested right over the land by virtue of the alleged development agreement. He has further submitted that the market price is the price in the free market and if for the sell of a property, free market is not available and only restricted market is available, the market price would be the price which can be realized in that restricted market. He has further submitted that in making the impugned orders, neither the State Government nor the Charity Commissioner have acted under any political pressure nor they were pressurized or persuaded by Shri Dalsukhbhai Godani, Revenue Minister at the relevant point of time, as alleged by the petitioners. He has, therefore, submitted that the petition filed by the petitioners is devoid of any valid substance and deserves to be dismissed with cost.

26. Mr. M.K. Purohit, learned advocate appearing for respondent No.6 has placed on record Affidavit-in-reply filed by respondent No.6. He has submitted that respondent No.6 has not negotiated with the Trust under the name of respondent No.5 society. He has further submitted that he has not played any role so far as the execution of agreement to sale between the respondents No.3 and 4 on the one hand and the respondent No.5 society on the other hand is concerned. It is further submitted that the respondent No.6 has not instructed any one to make an application u/s 20 of the Ceiling Act nor any political pressure was exercised by the respondent No.6''s father who was Revenue Minister at the relevant point of time. He has further submitted that the respondent No.6 has no connection whatsoever with the transactions in question and hence, the respondent No.6 was wrongly impleaded as a party in the present proceedings.

27. Mr. M.C. Bhatt, learned advocate appearing for the applicant in Civil Application No. 4106/2003 has submitted that by filing the present Civil Application, the applicant - third party, namely, Rajubhai Shyambhai Zariwala has sought permission to be joined as party respondent in S.C.A. No. 4977/1995. He has further submitted that the applicant is a necessary and proper party and he is very much interested in the ultimate result of the petition as he has acquired rights and interest in the property, which is subject matter of the present petition. He has further submitted that one Mr. Jaswant J. Patel, the partner of the petitioner society decided to enter into a development agreement with the applicant, in respect of the lands in question and accordingly, the agreement was executed on 12.01.1995. Since the applicant came to know about the fact that the said Shri Jaswant J. Patel was not proceeding with the matter and even if application for joining party was withdrawn by him, the applicant has filed this

Civil Application before this Court to be impleaded as party in the present petition. Mr. M.C. Bhatt has further submitted that the applicant is having rights in the land in question through original petitioner and hence, his presence being necessary and proper for resolving the controversy involved in the matter. He has further submitted that the applicant being a developer has every right to transfer, sell, alienate or assign the property and that the applicant is also a person who has financed for the litigation and keeping all these facts in mind, the applicant is required to be joined as party respondent.

28. Mr. M.C. Bhatt has further submitted that neither the competent authority under the U.L.C. Act nor the Charity Commissioner have acted bonafide and in accordance with the statutory provisions. He has further submitted that while granting exemption u/s 20 of the U.L.C. Act, the competent authority has exceeded his jurisdiction and acted under some pressure or was influenced by some extraneous consideration as the exemption was granted only on condition that the land in question could be sold to respondent No.5 society only. Such a condition can never be imposed which would curtail the right of the seller to sell the land in favour of any party who is offering maximum price to the seller. He has further submitted that the Charity Commissioner is supposed to be the custodian of the Trust property and he has to act in the best interest of the Charitable Trust and for the benefit of the estate. Despite the fact that high price was offered by the petitioner, the permission to sell the property was granted by him u/s 36 of the BPT Act which is efface, illegal and contrary to the interest of the Trust.

29. Mr. M.C. Bhatt has relied on the decision of the Hon''ble Supreme Court in the case of Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, wherein it is observed that "the Court is the custodian of the interest of the company and its creditors. Hence, it is the duty of the Court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud." The Court has referred to the judgment of the Hon''ble Supreme Court in the case of LICA (P) LTD. V/S. OFFICIAL LIQUIDATOR wherein it is observed that " the purpose of an open auction is to get the most remunerative price and it is the duty of the Court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The Court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case." On the basis of the above judgment, Mr. M.C. Bhatt has submitted that though the said judgment was rendered in the context of Company in liquidation, the ratio laid down therein equally applies to the facts of the present case. Here, the fraud is specifically alleged. The statutory authorities have acted under the pressure and influence of the Revenue Minister at the relevant point of time and despite the fact that higher price was offered by the petitioner, the permission for sale was granted in favour of the respondent No.5 society. He has further submitted that

though the sale was to be completed within the period of six months from the date of the order passed by the Charity Commissioner u/s 36 of the BPT Act, the respondent No.5 Society has not paid the full price of the properties despite the fact that the sale deeds were executed. In this connection, Mr. M.C. Bhatt has invited the attention of the Court to the Index No. 2 produced wherein in the remark column, it is specifically stated that the remaining consideration would be paid first and thereafter, the possession of the property would be given. He has further submitted that to his knowledge, the documents were executed in July 1991 and till this date, the full consideration is not paid by the respondent No.5 Society to the Trust and possession was given in violation of the Court''s order.

30. Civil Application No. 4106/2003 moved by Shri Rajubhai Shyambhai Zariwala was seriously opposed by the petitioner as well as respondents. Mr. K.G. Vakhariya, learned senior counsel along with Mr. Tushar Mehta, learned advocate appearing on behalf of the petitioner has submitted that the only ground on which the applicant is desirous of being impleaded is the so called development agreement dtd. 12.06.1995 between Jaswant J. Patel and the applicant. He has further submitted that the said Shri Jaswant J. Patel has retired from the partnership firm on 21.02.1995 and the said alleged document appears to have been executed by the said Shri Jaswant J. Patel in his personal capacity and not for and on behalf of the firm as the petitioner firm has never authorised the said Shri Jaswant J. Patel to execute any such document. He has further submitted that the said Shri Jaswant J. Patel has filed two Civil Applications being C.A. No. 2676/1996 and C.A. No. 3082/1996 before this Court for impleading him to be a party in the present petition and both the Civil Applications were withdrawn. He has further submitted that one more Civil Application was filed by one Mr. Bharat Keshav Unadkat being C.A. No. 349/2003 wherein the said Shri Bharat Keshav Unadkat has alleged to have acquired agreement for sale and development right from Jaswant J. Patel. The said Civil Application was also withdrawn. He has therefore submitted that the present application which was filed at the behest of said Shri Jaswant J. Patel is also required to be rejected.

31. Mr. S.H. Sanjanwala, learned Senior advocate appearing for the respondent No.5 Society while opposing the said Civil Application has submitted that the applicant has no right to move the present application nor he has any right to address the Court on the subject matter of the present petition. He has further submitted that the original development agreement itself is not genuine and very serious doubts are raised against the execution of the said development agreement. The alleged rights derived by the applicant under the said agreement cannot be the basis for impleadment of the applicant in the present petition. He has relied on the decision of this Court in the case of MANUBHAI B. DESAI AND OTHERS V/s. CHARITY COMMISSIONER, AHMEDABAD AND OTHERS (2) GLR 1208 wherein it is held as under :-

"The proceedings initiated before the Charity Commissioner was examined by the Tribunal constituted under the Act and thus there is a seal of judicial proceedings. It is in these circumstances, when the Charity Commissioner has exercised the jurisdiction in accordance with law and has allowed the Trust to enter into an agreement, there was no reason for these three different outsiders to approach this Court, more particularly when the decision was confirmed by the appellate Tribunal. In the instant case, there was no default on the part of the State or the Public Authority. The Trust, which is a private Trust, with the sanction of the Charity Commissioner, having a seal of approval of the Tribunal, is permitted to dispose of the property, and there is no question of misuse of power by any public authority or the State authority. The Court would not like to overstep the limits of its judicial function and would not like to trench upon the function of other authorities, more particularly when the Tribunal has approved the action of the Charity Commissioner. The parties to the proceedings, if aggrieved, could have approached this Court by invoking jurisdiction of this Court under Art. 227 of the Constitution, but certainly these three petitioners who have not explained as to how they know each other and how they are jointly interested in the disposal of the property by the private trust, had no business to approach this Court in the facts and circumstances of this Case. This Court would not exercise its discretion and would not intervene at the instance of a meddlesome interlopers or busybodies."

32. Mr. H.J. Nanavaty, learned advocate appearing for the respondent Trusts has also objected to the said Civil Application and submitted that there is no base for moving such application and this Court should not entertain it at such belated stage. He has further submitted that the applicant was never in the picture at any point of time as the alleged agreement was said to have been executed in 1995 and the applicant has moved this Civil Application in 2003. He has further submitted that the applicant has himself made an averment in the application that he is financing the litigation. Such an application is not permissible under the law as the person who is financing the litigation cannot claim any right in the subject matter of the litigation.

33. Since the main petition is taken up for final hearing, the two remaining Civil Applications, namely, C.A. No. 5400/2003 moved by the petitioner for amendment and C.A. No. 2974/2003 moved by the respondent No.5 society for vacation of the interim relief could not be seriously pressed.

34. I have heard learned advocates appearing for the respective parties at great length. I have considered the facts stated, averments made and grounds raised in the main petition as well as in Civil Applications and pleadings made by the respective parties in their petitions and/or applications, affidavits-in-reply and rejoinders and/or sure-rejoinders etc. I have also carefully examined the relevant papers and documents attached with the respective pleadings. I have also given my serious thoughts to the authorities cited before the Court as well as relied upon by the respective parties. During the course of arguments and submissions made by the learned advocates on behalf of the respective parties, certain new facts have come to the forefront which are vitally touching the subject matter of

the petition as well as the transactions involved in the petition. It is a matter of fact that the present petition was ordered to be heard along with S.C.A. No. 8990/1991. This Court (Coram : A.N. DIVECHA, J.) has passed an order on 28.06.1995 directing the respondent Nos. 3,4, and 5 to maintain status quo with respect to the subject matter of this petition. It is also a matter of fact that S.C.A. No. 8990/1991 was withdrawn on 19.01.2000 under an order of this Court (Coram : KUNDAN SINGH , J.) recording the statement of the learned counsel appearing for the petitioner that since the matter in dispute has already been settled between the parties outside the Court, the petitioner sought permission to withdraw the petition and the said petition was disposed of as having been withdrawn. It is rather surprising that both the petitions were ordered to be heard together and yet the court''s attention was not drawn by any party, to the present petition which is yet pending. As stated earlier, S.C.A. No. 8990/1991 was filed challenging the order passed by the Gujarat Revenue Tribunal in Appeal preferred against the order of the Charity Commissioner passed u/s 36 of the BPT Act granting permission to sell the lands in question to the respondent No.5 Society. The very same issue is involved in the present petition.

35. It is also an admitted position that the very basis of the present petition is the development agreement dtd. 11.06.1987 entered into between one Mr. Jaswant J. Patel on behalf of the petitioner and the respondent Trusts. The said development agreement was neither produced before the Charity Commissioner nor it was annexed along with the present petition. Despite the fact that the respondent Trust has filed Affidavit-in-reply way back on 11.01.1996 wherein the execution of the agreement was denied and specific prayer was made to the effect that the petitioner should be called upon to produce the said agreement before the Court and yet the same was not produced till 09.07.2003 and it was produced only on that day along with the affidavit-in-rejoinder. It is also an admitted position that the said agreement was stated to have been executed on 11.06.1987 and yet there is a reference to the Serial No. 36/22/91 and 36/29/91 while examining the original record of the Trusts, produced by the office of the Charity Commissioner, it is found that the Figure 91 refers to the year and this file itself was started in the year 1991. There is therefore not a slightest doubt about the fact that the reference of the year 1991 could not have been made in the document executed on 11.06.1987. The Court has, therefore, called for the explanation of the petitioner and Mr. Tushar Mehta, learned advocate appearing on behalf of the petitioner sought a day''s time to inquire about it from the petitioner. The Court has made it very clear that the Court is of the prima facie view that the document is false, fabricated and concocted and if the petitioner would try to justify it, very serious consequences would follow. The Court has also asked Mr. Tushar Mehta to produce the original document on record. Accordingly, original document was produced from the custody of one Mr. Dilipkumar Dalpatram Sopariwala, who is the partner of the petitioner firm and an Affidavit was also filed by him on 11.08.2003. It is stated therein that 36/22/91 and 36/29/91 are serial numbers of the Trust and not application

numbers. It is further stated that in the order at Annexure-D page 46, the word "Application No." appears to have been written wrongly. The petitioner has produced contemporaneous record to satisfy the conscience of the Court and to show that not only the development agreement was executed on 11.06.1987 but the said fact was intimated to the authorities in the year 1987 by writing letters by Regd. Post. It is further stated that a letter dtd. 24.10.1987 was written to the Secretary, Urban Development and Urban Housing Development Department, Sachivalaya, Gandhinagar, a copy of which was forwarded to the Chief Town Planner, Surat Municipal Corporation by Regd. Post and the copies of these letters as well as the acknowledgment slips were produced along with the said affidavit. It is further stated that in the said application, the petitioner has described the Trust in the sub-column giving 36/22/91 and 36/29/91 as serial number or registration number of the Trust. In that application also, a reference to the development agreement dtd. 11.06.1987 was made. It is further stated that the said letter is a contemporaneous record which was sent on 24.10.1987 which not only contains the reference of development agreement dtd. 11.06.1987 but also describes the Trust with its serial numbers.

36. It is further stated in the said affidavit that Surat Municipal Corporation had received a show cause notice dtd.22.09.1987 from the State Government. The petitioner who was claiming to have development rights under the development agreement dtd. 11.06.1987 had sent a letter dtd. 08.04.1989 to the Secretary, Revenue Department, Sachivalaya, Gandhinagar and the copy of the said letter is also produced along with the said Affidavit. It is further stated that in the said letter, a specific reference was made to the fact that the petitioner was given development rights under the development agreement dtd. 11.06.1987. It is further stated that the petitioner had written a letter dtd. 02.12.1987 to the Municipal Commissioner, Surat, with regard to the very land which is the subject matter of this petition and in the said letter also, a specific reference was made that the Trust has given development rights to the petitioner society under the development agreement dtd. 11.06.1987 and the said letter is also produced along with the said affidavit. It is further stated that the Trust itself has made an application dtd. 05.01.1988 before the Charity Commissioner which is produced at page 32 as Annexure - A and in the said application also, the Trust have described its serial number as 36/22/91 and 36/29/91. In that application also, the Trust had said that development agreement dtd. 11.06.1987 was executed with the petitioner. On the basis of this contemporaneous documents, it was contended that the development agreement was executed on 11.06.1987 and it is in existence since then and is not a concocted document nor it is created subsequently.

37. The above explanation tendered by the petitioner on oath was strongly objected to by the respondents. It was contended that the petitioner has not only concocted the document dtd. 11.06.1987 but also concocted all contemporaneous records which are produced before the Court along with the Affidavit. The Court should, therefore, take a very serious view of the matter and

a detailed inquiry and investigation must be ordered to find out the truth and to penalize the real culprit. Accordingly, the Registrar of this Court was directed to keep the original document in safe custody as the same was required for proper adjudication for the issue involved in the matter and for issuing certain directions.

38. While producing the above documents before the Court for the first time on 09.07.2003 along with the Affidavit-in-rejoinder, no explanation is given as to why the same is not produced till this date. Even when it is put to the learned counsel appearing for the petitioner that the Charity Commissioner''s record does not indicate that the said document is not produced before him, no satisfactory explanation was given. Not only this, the agreement is not signed on behalf of the petitioner. Though two names were mentioned on behalf of the petitioner in the agreement and they are Shri Jaswantbhai J. Patel and Shri Dilipkumar D. Sopariwala, the later one is the person who has filed the affidavit-in-rejoinder on behalf of the petitioner. He is not in a position to explain as to why the said agreement was not signed by the petitioner. It is further observed that the zeros copy of the agreement which was produced along with the affidavit-in-rejoinder contains a round seal wherein the petitioners'' name as well as the Trustees'' names were mentioned. There is no explanation to this effect as to how both the names are appearing in the round seal. It is further observed that the signature which is found on the agreement is purported to be the signature of Mahant Satya Ramdasji, one of the Trustees of the Trust. However, the execution of the said document was denied right from 1996 when the Affidavit-in-reply was filed. It is stated before the Court that Mahant Satya Ramdasji is not alive today and possibly there might be one of the reasons for not producing the said agreement before the Court during his life time as he could have certainly denied his signature had it been produced earlier before this Court and in any case, during his life time. Even otherwise, the signature which is found on the agreement also appears to be different from the usual signature of Mahant Satya Ramdasji as in all other places, while signing any letter or document, he puts his full name and never adds behind his name a word "Ji". However, in this development agreement, the signature is of Mahant Satya Ramdasji which is quite unusual and never signed by him in this manner. Considering all these points, the Court is of the view that the agreement does not seem to be a genuine document and it requires a detailed inquiry and investigation for the purpose of finding out as to whether the petitioner has committed any fraud and fraudulently made an attempt to mislead the Court by producing any false and concocted document. For this purpose, the Registrar of this Court is directed to launch criminal proceedings against the petitioner as well as against all its partners, more particularly Shri Jaswantbhai Jerambhai Patel, who was the ex-partner and Shri Dilipkumar Dalpatram Sopariwala, who is the present partner who has filed affidavit-in-rejoinder before this Court. The Registrar is further directed to make necessary inquiry and investigation with regard to the letters and documents produced along with the Affidavit on 11.08.2003. The Court has prima facie found that these documents do not seem to be genuine and they are also

attempted to have been concocted only with a view to create contemporaneous record and to justify the petitioners'' version that the development agreement is in fact executed on 11.06.1987.

39. Since the very document on the basis of which the petitioner has based its entire claim in the petition is not free from any cloud, it does not inspire any confidence and hence, the petitioner is not entitled to any relief in the present petition on the basis of such false and fabricated document which the Court has prima facie found. Apart from this ground, there are other grounds also for dismissing the present petition as the petitioner has not approached this Court in time and no satisfactory explanation is offered for such gross delay. Moreover, despite the fact that the petitioner was aware about the proceedings before the Charity Commissioner, false averments are made in the petition and an attempt was made to justify its contentions raised in the petition. There is a statutory remedy available to the petitioner against the order of the Charity Commissioner by way of filing an appeal before the Gujarat Revenue Tribunal. The said remedy is not availed of by the petitioner. Not only this, the order of the Charity Commissioner was merged into the order of the Gujarat Revenue Tribunal and petition filed against the Tribunal''s order was withdrawn which fact was very much within the knowledge of the petitioner. No attempt was made by the petitioner to insist for hearing of the present petition before the earlier petition was withdrawn. It is also clear from the Division Bench''s order dtd. 13.04.1982 passed in L.P.A. No. 135 of 1982 that a person in whose favour an agreement to sell has been executed by the land owner, has no right to invoke the powers of the State Government u/s 20 of the ULC Act to exempt the land from the operation of the ULC Act. It is further observed that the exemption u/s 20 could be granted only if the State Government is satisfied that it is necessary or expedient in the public interest so to do or it is a case of undue hardship. A person who is not interested in the land, like the petitioner or the applicant in C.A. No. 4106 of 2003 cannot challenge the impugned order of granting exemption to the respondent Trust, the owner of the land.

40. After having considered all these grounds together and examining the cumulative effect thereof, there is no reason to grant any relief claimed by the petitioner in the present petition and hence, the petition is dismissed.

41. It is however made clear that the dismissal of petition in the back drop of the facts and circumstances of the present case would not automatically justify the action taken by the competent authority under the ULC Act as well as by the Charity Commissioner under the BPT Act. While exercising powers under Article 226 of the Constitution of India, this Court thinks it just and proper to examine the said aspect in the facts and circumstances of the present case. The facts as emerged from the record are that the transactions entered into by and between the respondents Nos. 3 and 4 Trusts on the one hand and the respondent No.5 on the other hand are not completely free from doubt. The role played by the competent authority while exercising powers u/s 20 of the ULC Act, and the

Charity Commissioner, while exercising powers u/s 36 of the BPT Act, is heavily clouded by the alleged involvement of the respondent No.6 who is the son of a Revenue Minister in the Government of Gujarat at the relevant point of time. Despite the very late denial of such involvement by the respondent No.6, the way in which the statutory authorities have acted and cleared the transactions in supersonic jet speed raised anybody''s eye-brow. Once the exemption u/s 20 of the ULC Act was granted by the competent authority, there was no need to apply again for such exemption and to pass another order granting fresh exemption u/s 20 of the ULC Act. Fresh exemption subject to the condition that it was to be made only in favour of respondent No.5 Society and the removal of condition to sell at the maximum price, requires the Court not to conform the order in its entirety. Likewise, the Charity Commissioner while granting permission u/s 36 of the BPT Act to sell the lands in question at a price offered by the respondent No.5, which was stated to have based on the Town Planner''s estimate, had not considered the other possibilities of fetching more price of the lands belonging to the trusts.

42. Even after execution of the sale deed, the full consideration of the lands in question was not paid by the respondent No.5 Society. It was, however, contended on behalf of the respondent No.5 Society that only after payment of full consideration, the possession of lands was agreed to be given. Thereafter, interim stay was granted by this Court in S.C.A. No. 8990 of 1991 which remain in operation till 19.01.2000. Moreover, order of status quo passed by this Court in present petition, is still in operation and, therefore, neither the full consideration was paid nor the possession of the lands was taken. Mr. M.C. Bhatt, learned advocate, however disputes this statement and pointed out that the record itself reveals that the possession is not with the Trusts and lands were divided into plots and sub-plots, members were enrolled and allotment letters were already issued and construction was also coming up.

43. The conduct of the respondent Trusts is also not free from doubt as despite the fact that this Court wanted to know about the amount received by the Trusts for sale of land and the factual position with regard to possession of land, neither necessary details were filed nor any affidavit in this regard is filed. An affidavit is filed by one Mr. Janakbhai Ranchhodbhai Patel, on behalf of respondent No.5 Society stating that as per the agreement entered into between the trust and the Society, total amount of the consideration payable was Rs.2,12,11,050/- (Correct figure is Rs.2,28,49,950/-). However, because of the interim order operating right from December 1991, the total consideration could not be paid. The respondent No.5 has shown its willingness to deposit the full amount of consideration payable, after deducting the amount already paid, as soon as the stay is vacated by this Court. It is further stated in the affidavit that if this Court feels that the Trusts should further benefit, the Society will pay such amount as directed by this Court to the trust within four weeks of the date of the order.

44. The above offer of the respondent No.5 Society should be viewed in the light

of the alleged Development agreement said to have been executed between the petitioner and the respondent Trusts, which determines the price at Rs. 3,40,59,609/-. It is also pertinent to observe that Mr. M.C. Bhatt, learned advocate appearing for the applicant in C.A. No. 4106/2003 has submitted that the applicant in the said Civil Application is ready and willing to pay Rs. 2.5 Crores more than the price agreed by the respondent No.5 Society as per its agreement with the Trusts.

45. In the above view of the matter, the Court can not shirk from its responsibility of striking a fair deal for the benefit of the public charitable trusts. At the behest of the petitioner or of the applicant in Civil Application No. 4106 of 2003, the Court may not quash or set aside the orders passed by the statutory authorities considering the facts and circumstances of the case,but the Court, at the same time, for satisfying its own conscience, can certainly put the parties to certain terms. While showing this indulgence and undergoing such exercise in the best interest of equity, justice and fair play, the Court thinks it fit and proper to issue the following directions :-

(i) Since the petition is dismissed and interim relief granted is vacated, the respondent No.5 society is directed to deposit entire sale consideration of Rs. 2,28,49,950/- (Rupees Two Crores Twenty Eight Laces Forty Nine Thousand Nine Hundred Fifty) with the Respondent Trusts by Account Payee Chouse or Bank Drafts, within one week from the date of this judgment and necessary documents will, thereafter be executed.

(ii) Since the offers made by the petitioner in the alleged development agreement dtd. 11.06.1987 and by the applicant in Civil Application No. 4106 of 2003 do not seem to be fair, genuine or bonafide and since the respondent No.5, over the years and during the pendency of this petition and earlier petition, might have incurred substantial expenses and looking to the fact that the respondent Trusts were deprived of sale consideration for all these years, the respondent No.5 Society is directed to deposit an amount of Rs. 1.5 Core with the respondent Trusts by Account Payee Cheques or Bank Drafts over and above the agreed price of Rs. 2,28,49,950/- within one month from the date of this order.

(iii) The respondent No.5 Society through its Chairman and/or Secretary shall file an undertaking before this Court to the above effect, incorporating the above referred two conditions, within three days from the date of this judgment.

(iv) If the respondent No.5 Society fails to comply with any of the above referred three directions, all subsequent transactions and/or documents entered into by it with the respondent Trusts or any third party interest created in lands in question stand cancelled and orders passed by the competent authority u/s 20 of the ULC Act as well as by the Charity Commissioner u/s 36 of the BPT Act would also stand cancelled.

(v) If the above contingency would arise, the Charity Commissioner is directed to consider the offer made by the applicant in Civil Application No. 4106 of 2003 before this Court and if he is satisfied about the genuineness of his offer, direct him to deposit the entire amount i.e. Rs. 2,28,49,950/- + Rs. 2,50,00,000/- = Rs. 4,78,49,950/- forthwith with him and grant the permission u/s 36 of the BPT Act to sell the lands in question in his favour.

(vi) The amount as stated above in clause (i) and (ii) or clause (v), that may be deposited by the respondent No.5 Society or by the applicant in C.A. No. 4106 of 2003 as the case may be, shall not be utilised by the respondent Trusts without prior permission of the Charity Commissioner. In any case, after the expiry of the period of four weeks from today, the amount so received by the Trusts from the respondent No.5 or from the applicant in C.A. No. 4106 of 2003 shall be invested in the long term deposits with nationalized Bank as per the direction of the Charity Commissioner. The respondent Trusts shall be entitled to utilise interest only towards the objects of trust. This is however, subject to the provisions contained in the Income Tax Act and other relevant Acts.

(vii) If the respondent No.5 Society fails to comply with directions or the applicant in C.A. No. 4106 of 2003 fails to be abide by his offer, the Charity Commissioner shall decide the issue of granting permission u/s 36 of the BPT Act, afresh and after inviting fresh offers, grant permission to sell the lands in question at a maximum price, after fixing the upset price of Rs. 4.75 Crores or so.

46. Subject to the aforesaid directions, the present petition is dismissed with cost. Since the main petition is dismissed, there is no question of granting any amendment now and hence, Civil Application No. 5400 of 2003 is rejected. The applicant in Civil Application No. 4106 of 2003 is not impleaded as party respondent. He was, however, given a right of audience in the main petition. This application is, therefore, rejected. With the dismissal of the main petition, the interim stay granted earlier is vacated and hence, Civil Application No. 2974 of 2003 becomes infructuous which requires no order from the Court.

47. In the above view of the matter and subject to the aforesaid directions, the main petition as well as all the three Civil Applications are accordingly disposed of. Rule discharged in each of these matters.

Further Order :

After the pronouncement of the judgment, Mr.K.G.Vakharia, learned Senior Counsel appearing for the petitioner requests the court to stay the order for two weeks so as to enable the petitioner to approach the higher forum. Mr.M.C.Bhatt, learned counsel appearing for the applicant in Civil Application No.4106 of 2003 also makes the request to grant stay against the execution of the sale deed in respect of the land in question. Mr.B.B.Naik, learned counsel mentions on behalf of Mr.S.H.Sanjanwala, learned Senior Counsel appearing for the respondent No.5 requests that time to file undertaking may be extended for 3 days more.

I have considered the requests made by the learned advocates. Looking to the facts and circumstances of the case and the directions given by this Court in the impugned order, the request for granting stay against the entire order and execution of sale is rejected. However, time to file undertaking is granted for 5 days instead of 3 days and hence, respondent No.5 is directed to file undertaking on or before 27th August, 2003.

