
(1990) 09 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 968 of 1984

Mrs. Fatmabai B. Bachooali, Adv.

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1991 Bom 220 : (1991) 1 BomCR 1

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : M.P.S. Rao, instructed by H. Doctor and Co, for the Appellant; S.G. Surana and A.R. Mehra, for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution takes exception to an order passed by the 2nd respondent upon an application moved u/s 36(2) of the Bombay Public Trust Act, 1950 -- hereinafter referred to as "the Act".

2. Respondents Nos. 3 to 11 and the deceased respondent No. 12 were office bearers of a Public Trust known as Khoja Sumat Trust registered under the aforementioned Act. This Trust owned property bearing House No. 131/A, Nishanpada Road, Bombay-9. Petitioner was in occupation of the property as a tenant and the rent payable by her was meagre. For this reason, the Trust decided to sell the property. Advertisements were published in a certain number of newspapers and quotations invited from intending purchasers. Amongst the offerers were the petitioner who quoted a price of Rs.40,000/- and Mahendra G. Wadhwani, whose quotation was for Rupees 50,000/ -. The Trustees expressed a preference for the bid offered by the petitioner and approached the then Charity Commissioner for sanction u/s 36(1) of the Act. The order passed on 17th March, 1982 by the then Charity Commissioner is at Exh. B. The learned Officer sanctioned the proposal to sell the property to the petitioner for a consideration of Rs.40,000/-. On 15th June, 1982, a conveyance in favour of the petitioner was

executed by the Trustees and the registration took place on 6th July, 1983. The deceased respondent No. 12 in June, 1983 moved the application u/s 36(2) of the Act, the order passed whereon has occasioned the present petition.

3. In the application u/s 36(2) the 12th respondent's case was that the Trustees had obtained the sanction dated 17th March, 1982 by practice of fraud and misrepresentation and also concealment of the offer of Wadhwani to purchase the property for Rs. 50,000/- which sum was 25% in excess of that offered by the petitioner. Had Wadhwani's offer been placed before the Charity Commissioner, he would not have accorded the sanction dated 17th March, 1982. The application was opposed by the other Trustees as also the petitioner. The stand taken by them was that nothing had been concealed from the predecessor of the Charity Commissioner hearing the application. In fact the petitioner had to recover from the Trust a sum of near about Rs. 24,000/- which she had spent on carrying out repairs to the property. Regard being had to this factor and also the conditions and obligations annexed to the offers of others including Wadhwani, the Trust had done the prudent thing by acceptance of the petitioner's offer.

4. The second respondent held that the Trustees had concealed the true state of affairs vis-a-vis a vital fact from his learned predecessor by keeping back from that officer the letter dated 4th February, 1981. Had that letter been produced, the sanction for sale would not have been granted in favour of the petitioner. Holding that a case for invoking of sub-sec. (2) of S. 36 had been made out, the 2nd respondent allowed the application and directed the Trustees to take appropriate steps for the annulment of the sale made in favour of the petitioner.

5. The only party contesting this petition is the 2nd respondent. Respondent No. 12 is dead and respondents Nos. 3 to 11 or whosoever from amongst them be alive, have engaged a counsel to state that they will submit to the orders of this Court. On behalf of the petitioner Mr. Rao canvassed two points which are discussed below :

6. The first contention raised by the learned counsel is that the sanction dated 17th March, 1982 is after an appraisal of all the letters sent by Wadhwani pertaining to his offer to purchase the property. That being the position, it was an error for the 2nd respondent to hold that the Trustees had concealed letter dated 4th February, 1981 from his learned predecessor. Letter dated 4th February, 1981 has been annexed at Exh. D and it is no more than a reproduction of what was stated by Wadhwani in his letter of 13th March, 1981, an extract from which letter has been reproduced by the Charity Commissioner in his impugned order. What is clear from Exh. D and the reiteration made in the letter dated 13th March, 1981 is that Wadhwani offering Rs. 50,000/- for the property on an as is where is basis, though he was prepared to pay more if the Trust could secure permission for additional F.S.I. Irrespective of whether or not additional F.S.I. was permitted, Wadhwani was willing to purchase the property for Rs. 50,000/-. No condition was laid down by Wadhwani except that he wanted the select to give a clear title unto him. The Trust owned the property and

subject to the grant of permission under S. 36(1) of the Act, there was no impediment to its right to dispose of the same. It was in this sense that Wadhwani pleaded for the conveyance of a clear title unto him. He was not asking for a deletion of the user earmarked for the said property in the Development Plan. In that plan the property had been reserved for the purpose of a garden. Neither was Wadhwani saying that he would not purchase the property for Rs. 50,000/- unless the Trust obtained permission for additional F.S.I. This has to be clearly understood for the order dated 17th March, 1982 gives the impression of Wadhwani having imposed some conditions which made the petitioner preferable as compared to him. In so holding the then Charity Commissioner appears to have misread the letters of 4th February, 1981 as also 13th March, 1981. Mr. Surana says and rightly so that the other reasons given by the Charity Commissioner to accept the petitioner's quotation were without substance. According to the Charity Commissioner, the petitioner stood in the preferential position because she was a tenant of the property. I do not see how this could confer any preferential right upon her. The right of preemption in respect of an urban property does not exist and the tenants as a class do not at least till now have any Such preference of which cognisance was taken by the Charity Commissioner to hold in favour of the petitioner. The next reason given by the Charity Commissioner was his acceptance of the tenant's claim that she had spent Rs. 24,000/- to effect repairs to the property which amount she was entitled to recover from the Trust. This was a bare assertion of the tenant though supported by the Trustees. Merely because the tenant said so and the Trustees agreed, did not mean that (i) the amount had been actually spent; (ii) that it was recoverable from the Trust and (iii) that it was an element favouring the bid offered by the petitioner, though the quotation given by the petitioner was Rs. 10,000/-less than that offered by Wadhwani. Even so Mr. Rao is right in his submission that the power under S. 36(2) can be invoked only if there be fraud, misrepresentation or concealment of material facts vitiating the sanction granted under S. 36(1) of the Act. In the instant case the entire material was before the Charity Commissioner. If he had misread or drawn wrong inferences on the basis thereof, respondent or Wadhwani had other remedies but could not take recourse to the right to seek revocation of the sanction under S. 36(2) of the Act. This submission is entirely correct and the 2nd respondent was in error in holding (i) that letter dated 4th February, 1981 had been concealed and (ii) that its concealment, assuming the same had taken place, was concealment of a material fact. The second reason requires some explanation and that is to be found in the fact that the Charity Commissioner on the first occasion knew of the existence of letter dated 13th March, 1981 which letter reiterated the offer made in letter of 4th February, 1981. Mr. Surana submits and with great justification that the transaction in favour of the petitioner was rigged down by the Trustees to benefit her. But this would not justify the affirmance of the impugned order for the power conferred under S. 36(2) of the Act is not a power to review an order passed under S. 36(1) except for the factors specified in sub-sec. (2).

7. Mr. Rao's next submission is that the power to revoke a sanction granted under S. 36(1) could not be invoked after the execution of the sale deed. As said earlier, the conveyance had been executed on 15th June, 1982. Changes had been made in the records in July, 1983 and it was about a month prior thereto i.e. the latter event, that the deceased respondent No. 12 moved the application under S. 36(2). In an identical case, a Division Bench of this High Court sitting at Nagpur held in a case reported in 1989 Mah LJ 269, that the power granted to the Charity Commissioner under S. 36(2) of the Act could not be invoked to review a sanction granted under S. 36(1) after the sanction had merged into a sale deed. The sale deed had the effect of making the property ceased to have the character of a Trust property. The power of revocation could be exercised only in respect of a property owned by the Trust and not after the sale deed and for them the Trust is divested of the ownership to the property. This decision being that of a Division Bench binds me and Mr. Rao's submission will have to be upheld.

8. The result of the foregoing discussion is that the petition has to be allowed and the impugned order quashed. Rule in these terms is made absolute with parties being left to bear their own costs. Upon a request made by Mr. Surana, the petitioner is directed to maintain the status quo for a period of 8 weeks as from today.

Petition allowed.