(2018) 07 MP CK 0161

In the Madhya Pradesh High Court

Case No : Writ Petition No.23231 Of 2017

Parsi Zoroastrian Anjuman, Mhow APPELLANT

Vs

Sdo Indore / Registrar Public Trust & Another RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36

Citation : (2018) 07 MP CK 0161

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : A. K. Chitale, Rishi Tiwari, Vivek Patwa, Rohinton T. Thanewala

Final Decision : Dismissed

Judgement

S.No,Property,Description,Occupation Status,Condition

1,"366

Plowden

Road,

Mhow","Two storey building

plus small cottage

and small open land","Lying vacant. Partially in

possession of a tenant

against whom an eviction

suit has been pending

since 2013.

u n d e r threat of

encroachment","Dilapidated and

not fit for

occupation.

2,"401

Gopalji

Marg,

Mhow",Two Storey building,"Lying vacant for over 15

years. Under threat of

encroachment.","Dilapidated and

not fit for

occupation.

3,"102

Simrole

Road,

Mhow","Triangular open land

and two garages

admeasuring 2317.2

Sq.ft.","T h e open land is

sandwiched between

other private properties on

two sides.","Garages are in

dilapidated

condition.

4,"13/14

Main

Street

Mhow","Two Storey building

with adjoining shop

and garage.","Partially in possession of

an absentee tenant who

has locked the premises

and left Mhow. Partially

in possession of an

absentee tenant against

whom an eviction suit is

pending since 1999.

Partially in possession of

non- Parsi commercial

tenants who will never

surrender the premises.",

5,"319/320

Main

Street

Mhow",Two storey building,"First floor vacant, Ground

floor in possession of two

nonparsi commercial

tenants who will never

surrender the premises.",Require repairs.

might be the market value of the land only for the limited purposes of ascertaining the market value of the land. The said view was rightly criticised,,,,

before us by pointing out that if Charity Commissioner was to invite offers only for the purpose of ascertaining the market value of the property no,,,,

genuine buyer or purchaser will come forward and offer a genuinely competitive price. It was submitted that no genuine buyer would be interested in,,,,

coming forward with the offer if his offer is to be considered only for a limited purpose of finding out as to what the market value was on the relevant,,,,

date. If offers are invited only for this purpose, there is every possibility that the offers will not be bonafide and genuine.",,,,

28. While exercising power either under Clause (b) or Clause (c), the Charity Commissioner can impose conditions having regard to the interest,",,,,

benefit or protection of the trust.,,,,

Before passing an order of sanction or authorization, the Charity Commissioner has to be satisfied that the trust property is required to be alienated.",,,,

Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary and in the interest of the trust or for the benefit of the,,,,

trust or for the protection of the trust it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to,,,,

grant sanction to a particular proposal of the trustees or to reject it. 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 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 facts and circumstances of each case? In a given,,,,

case, while alienating the trust property, the trustees may provide that as a part of the consideration for alienation, the purchaser should construct a",,,,

building on a part of the trust property for the use by the trustees for the objects of the trust. In such a case, it may be necessary to ascertain the",,,,

reputation and capacity of the purchaser apart from the consideration offered. When the charity Commissioner is satisfied that trust property needs to,,,,

be alienated and when he finds that the offer received by the trustees may not be the best offer, he can always direct that bids be invited by a public",,,,

notice. When a better offer is received in public bidding or auction, it is very difficult to say that the power of the Charity Commissioner is restricted",,,,

and he cannot enjoin the trustees to sell or transfer the trust property to a third party who has given an offer which is the best in the interest of the,,,,

trust. The Trustees approach the Charity Commissioner only when they are satisfied that there is a necessity to alienate the trust property. The,,,,

trustees hold the property for the benefit of the beneficiaries and therefore once they express desire to alienate the property, it is obvious that Charity",,,,

Commissioner can always impose condition while granting sanction that the property shall be sold or transferred to a person who has come with an,,,,

offer which is the best offer in the interest of the trust. The Section gives a power to the Charity Commissioner to impose conditions and the said,,,,

conditions will include a requirement of selling or transferring or alienating the trust property to a purchaser who has offered the best deal having,,,, regard to the interest and benefit of the beneficiaries and the protection of the trust. The power to impose conditions cannot be a limited power when,,,,

the law requires Charity Commissioner to exercise the said power having regard to the interest, benefit, and protection of the trust. Once the Charity",,,,

Commissioner accepts the necessity of alienating the trust property, the trustees cannot insist that the property should be sold only to a person of their",,,,

choice, though the offer given by the person may not be the best offer. The property may be vested in the trustees, but the vesting is for the benefit of",,,,

the beneficiaries. The Charity Commissioner has jurisdiction to ensure that the property is sold or transferred in such a manner that the maximum,,,,

benefits are available to the beneficiaries of the trust. Under clause (b) of Section 36of the said act, the Charity Commissioner has jurisdiction to",,,,

decide whether it is in the interest of the trust that the property of the trust be sold or transferred. Once the learned Charity Commissioner is to be,,,,

satisfied that the property is required to be transferred or sold in the interest of the Trust, the learned Charity Commissioner cannot remain a silent",,,,

spectator when he finds that the transaction proposed by the Trustees is not in the interest of the Trust or its beneficiaries. Once the necessity of sale,,,,

or transfer is established, the Charity Commissioner can certainly ensure that best available offer is accepted, so that the transaction is for the benefit",,,,

of the trust. If the trustees were to be the final authority to judge as to what is in the interest of the Trust, the legislature would not have enacted",,,,

provision requiring prior sanction. While deciding which is the best offer, the learned Charity Commissioner is bound to take into consideration various",,,,

factors, which cannot be exhaustively listed. However, the paramount consideration is the interest, benefit, and protection of the trust. It is obvious",,,,

from the scheme of Section 36that the legislature never intended that trustees could sell or transfer the trust property vesting in them as if it was their,,,,

personal property. It is the duty of Charity Commissioner to ensure that the property should be alienated in such a manner that maximum benefits are,,,,

accrued to the trust. The Charity Commissioner, while considering an application under Section 36(1) of the said Act of 1950, in a given case, can opt",,,,

for public auction or can invite bids.,,,,

30. Hence, we answer the questions referred to our decision as under:",,,,

(i) The power vesting in the Charity Commissioner under Section36 of the

Bombay Public Trusts Act 1950 is not confined merely to grant or refusal,,,,

sanction to a particular sale transaction in respect of which sanction is sought under Section 36of the said Act. The power of the Charity,,,,

Commissioner extends to inviting offers from the members of the public and directing the trustees to sell or transfer the trust property to a person,,,,

whose bid or quotation is the best, having regard to the interest, benefit, and protection of the trust. Hence we declare that the decision of the Division",,,,

Bench of this Court in the case of Jigna Construction Co. Mumbai v. State of Maharashtra and Ors. does not lay down correct law.,,,,

(ii) The party, who comes forward and submits his offer directlybefore the Charity Commissioner and complies with other requirements as may be laid",,,,

down by the Charity Commissioner in a pending application under Section 36of the said Act of 1950 has a locus standi to challenge the final order,,,,

passed in a proceeding under Section 36. However, the scope of the challenge will be limited as indicated in paragraph 29 above.",,,,

(iii) We direct the Office to place the Writ Petitions before theappropriate Benches for deciding the same in accordance with law.,,,,

28. As discussed, this Court has directed a number of times that sale of trust property, which is like public property, if at all necessary, is not",,,,

permissible by way of private negotiations; could be done only in exceptional circumstances, for reasons to be recorded. There was no exceptional",,,,

circumstance, no urgency to throw away the valuable property of the trust, which was derogatory to its interest and would have defeated the very",,,,

object of the creation of the trust for the preservation and protection of religion and Parsi culture.,,,,

This Court has carefully gone through the trust deed as well as the bye-laws which are on record. The properties in question, undisputedly, are old",,,,

buildings and as informed, they are more than 100 years old. The Registrar Public Trust has taken note of all the factors and in order to ensure that",,,,

the interest of the Trust is protected, has passed the impugned order. Sale of the property of those Parsies who have donated it to the trust can never",,,,

be said to be in the interest of trust. In all fairness, the trust should made all possible endeavour to repair the buildings which are trust properties and to",,,,

ensure that the rich cultural heritage of the Parsies which is still alive in the township of Mhow, is not destroyed by selling it to builders and to other",,,, persons at throw away price and, therefore, this Court is of the considered opinion that the Registrar, Public Trust was certainly justified in rejecting",,,,

the application filed by the Trust. No case for interference is made out in the matter. The present Writ Petition is dismissed.,,,,