(2000) 01 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 222 of 2000

Prakash Rasiklal Dhariwal — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:
Bombay Public Trusts Act, 1950 — Section 36

Citation : AIR 2000 Bom 341 : (2000) 2 ALLMR 478

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Virendra V. Tulzapurkar and Prachi Nimbalkar, for the Appellant; V.M. Parshurani, A.G.P. (for Nos. 1 and 2), A.R. Kini, (for No. 3), V.R. Manohar and S.D. Mongre, (for No. 4), A.G. Damle, (for No. 5), Y.S. Jahagirdar and G.S. Godbole, (for No. 6) and K.Y. Mandlik, (for No. 8), for the Respondent

Final Decision : Dismissed

Judgement

T.K. Chandrashekhara Das, J.—Rule, Returnable forthwith. Heard both sides.

2. The petitioner approached this Court by way of this writ petition with the following prayers.

(a) That this Hon''ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ. Order or direction calling for the record of the petitioner''s case and after examining legality, validity and propriety thereof, to quash and/or set aside the impugned orders dated 25th Feb. 1999, 8th March, 1999 and 13th April, 1999. (Exhibits ''F'', ''G'' and ''J'' respectively) as well as the conveyance dated 21st April, 1999 executed in favour of respondent No. 4 KPDL and their nominees :

(b) That this Hon''ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction restraining respondent No. 4 KPDL from acting in furtherance of the impugned orders dated 25th Feb. 1999, 8th March, 1999 and 13th April 1999, (Exhibits

''F'', ''G'' and ''J'' respectively) as well as the conveyance dated 21st April 1999 and from in any manner whatsoever taking any steps in furtherance of the same and to further, direct the 2nd respondent to recall the sanction as well as the modifications granted by the 2nd respondent and to cancel the conveyance dated 21st April, 1999 executed in favour of the 4th respondent KPDL and/or their nominees;

(c) Pending the hearing and final disposal of the above petition, this Hon''ble Court may be pleased to restrain respondent No. 4 KDPL from acting in furtherance of the impugned orders dated 25th Feb. 1999, 8th March, 1999 and 13th April. 1999. (Exhibits ''F, ''G'' and ''J'' respectively) an well as the conveyance dated 21st April, 1999 and from in any manner whatsoever taking any steps in furtherance of the same and to further direct the 2nd respondent to recall the sanction as well as the modifications granted by the 2nd respondent and to cancel the conveyance dated 21st April, 1999 executed in favour of the 4th respondent KDPL and/or their nominees ;

(d) For ad-interim relief in terms of prayer Clause (c) above and for costs.

3. The facts in nutshell for the purposes of this writ petition can be stated thus :--

4. Bombay Diocesan Trust Association Pvt. Ltd. is a public trust registered under the Bombay Public Trust Act. The property bearing survey Nos. 23, 170A and 170B admeasuring 12 acres and 34 gunthas situated in Pune Municipal Corporation belonging to the trust were offered for sale. Accordingly as early as on 6-5-1991 an advertisement was made for inviting offer. In response to the public notice four offers were received and the same were opened on 5th June 1991. The highest offer received was for Rs. 1.02 crores. Agreement of sale was executed subject to the sanction of the Charity Commissioner. Charity Commissioner declined the sanction for that sale and directed to give fresh advertisement. Accordingly on 3-6-1994 another advertisement was published for sale of the aforesaid properties, pursuant to which certain offers were received.

5. On 7th August, 1994 the trustees, in pursuance of that offer decided to accept the offer of M/s. KPS Associates, the 6th respondent, for Rs. 2.18 crores subject to the sanction of the Charity Commissioner. When the matter went for sanction before the Charity Commissioner, the respondent No. 8 made an offer for Rs. 2.04 crores and Charity Commissioner then directed all the parties to submit their offers and also to deposit Rs. 12.5 lakhs to prove their bona fide. Only two parties have made such deposits. On 6-11-1997 Charity Commissioner asked amongst these offerers, whether they are willing to further enhance the offer. Respondent No. 8 refused to enhance the offer. Respondent No. 6 has also refused to enhance the offer. In the meantime other offers were withdrawn. On 3-12-1997 Charity Commissioner passed an order permitting the transfer to sell the property to SEPL respondent No. 8 for a consideration of Rs. 2.25 corers.

6. A writ petition was filed as Writ Petition No. 82/98 challenging the proceedings

of the Charity Commissioner by one Shri A.V. Patil, who expressed his willingness to raise the offer to Rs. 2.50 crores. By order dated 27-4-1998, this Court has directed the petitioner therein to deposit Rs. 2.60 crores within six weeks and remanded the matter back to Charity Commissioner, against which it appears that a SLP was filed before the Supreme Court of India and the same was dismissed. On the dismissal of the SLP the remand made by this Court has to act upon and the Charity Commissioner once again scrutinised the bids and offer and directed the parties to enhance the same. The petitioner gave his bid for Rs. 4.06 crores and respondent No. 4 gave an offer of Rs. 5.10 crores. Charity Commissioner by order dated 25-2-1999 accepted that offer and accorded sanction to sell the property in favour of KPDL respondent No. 4 herein. I made the above survey about the past history of the case in detail just to bring out how the litigation at the instance of profit mongers do frustrate the attempt of a charitable Trust to sell their properties which, started in 1991. This writ petition is also as part of such adventurism which tried with the profit motive.

7. Coming back to the facts of the case, according to the sanction given by the Charity Commissioner the entire property has to be sold to KPDL, respondent No. 4. KPDL moved a petition before the Charity Commissioner for modification of that order so as to enable them to execute the sale deed in different parcels of the property to their nominees. That petition is produced as Exh. x in this writ petition. Respondent No. 4 has stated in the petition before the Charity Commissioner that they were under the impression that the Urban Ceiling Regulation Act, 1976 applies only to the lands which are in the development zone and that the land in question is not included in the Development zone and therefore, they bona fide believe that Urban Ceiling Regulation Act is not applicable to the land in question. But when they approached the competent authority at Pune it was revealed that the Ceiling and Regulation Act will apply to the land offered for sale. If that is so, the sale cannot be effected in one lot in terms of order of sanction. Therefore the petition sought modification of the order of sanction to enable the offerer, the respondent No. 4 to take sale deed in favour of their nominees also, so that they can register the sale deed in small parcels of the land in different names. This device is adopted obviously to avoid the amplitude of Urban Ceiling Regulations Act. The trust had no objection to this modification, because they do not sustain any loss. Accordingly the Charity Commissioner passed an order Exh. 3 dated 13-4-1999 where the sanction is accorded to sell the property either to respondent No. 4 or to their nominees.

8. The petitioner challenges the order Exh. J mainly on three grounds. Firstly according to the petitioner, the Charity Commissioner does not have such power to modify the condition and the terms, once he accorded sanction. Secondly, the petitioner has contended that the sanction given to this item of property in a lot to a particular individual by a single sale deed and if it is to be reviewed as done in the modified order, the petitioner could have been given an opportunity of being heard. Thirdly, petitioner contended that if such opportunity had been given he would have enhanced his offer than that of respondent No. 4, in failure

of which Charity Commissioner and Trustees incurred loss to the Trust.

9. I find no substance in the contention of the petitioner. The Charity Commissioner has been treated under the Act as a guardian of the Trust and its properties. Whenever there is a mismanagement of the trust property by the trustees or any illegality is committed by the trustees, the Charity Commissioner will step in and exercise his power to correct the wrong. Identical view was expressed by this Court in Girdhar C Nichani v. Rev. E.H. Lewellen reported in 1991 M LJ 891. This Court in para 6 observes thus :--

"Proceedings u/s 36 of the Act are not a lis between the parties to adjudicate the contesting claim. Mandate of Section 36 is that no transfer of the Trust Property shall be valid unless approved by the Charity Commissioner with a previous sanction. The Charity Commissioner as per the scheme has to accord sanction, having regard to the interest or benefit of the trust. The Charity Commissioner in these proceedings after enquiry has to record a satisfaction in that behalf. Section 36 merely authorises the Charity Commissioner to ascertain as to whether the trustees acted in the best Interest of the trust.

10. It is in this legal setting that the Charity Commissioner has given power u/s 36 to intervene with any transactions in which substantial interest of the Trust is involved. The section also enjoins that any sale of the property of the trust can be made only with the previous sanction of the Charity Commissioner. Here the Charity Commissioner has given sanction for the sale. If the Charity Commissioner has power to sanction the sale, it is futile to contend that he has no power to modify that order if situation warrants. It is a well settled principle of law that if an authority has power to pass an order, definitely the said authority has got inherent power to modify that order in order to avert obstacles to implement that order. Therefore, I find no legal basis in challenging the power of the Charity Commissioner to modify the order. So far as the modification is done without any mala fide intention, and to safeguard the interest of the Trust, this Court cannot interfere in such a order which was legally passed by the Charity Commissioner.

11. The argument of the learned counsel for the petitioner that if the properties are fragmented more than what has been fragmented by the respondent No. 4, more price would have been fetched. According to me this is a speculative argument. We shall not forget that the petitioner did not make this suggestion when he himself made the offer. Now he changed his stand presumably to undermine the offer made by the respondent No. 4 and to delay the sale. A writ ''petition would not sustain that based on a speculative argument and the Charity Commissioner also cannot take note of such an argument. One important factor we have to notice is that it is the prerogative of the trustee to sell the property when the offer has been finalised. It goes without saying that the contract of sale is concluded when the Trust accepted the offer of respondent No. 4. A Rider provided in the law, u/s 36 is that such sale should not be executed without previous sanction of the Charity Commissioner and the scope of Charity

Commissioner intervening such sale is only very limited. He can object to it only, where the interest of the trust is in jeopardy. Therefore when the Charity Commissioner gives sanction it has to be presumed, unless it is shown that it is done with any mala fide intention, that the interest of the trust has been safeguarded by the Charity Commissioner. The petitioner or any other busy body has no locus standi to question such a decision of the Charity Commissioner.

12. At this juncture it is profitable to refer to a decision cited by the learned counsel for respondent No. 4, which is reported in 1979 M LJ 104 Arunodaya Prefab v. M.D. Kambli. This Court in similar situation has held in the above case in para 9 thus :

"Looked at in that light, it is clear that the Charity Commissioner owned no legal duty to the petitioners, and, merely by sending offers to him for purchase of the said property, the petitioners acquired no legal rights. It would not be correct to hold as Mr. Rana has urged me to do, that the Charity Commissioner was obliged to associate the petitioners with the enquiry that he was required to institute or that he was obliged to consider the offers made by the petitioners. In my view, the petitioners have no legal right which has been infringed by the impugned order and the Charity Commissioner owed no legal duty to the petitioners."

13. This view has been followed by a decision of this Court in 1991 M LJ 891 (supra) where this Court has clearly laid down that even if there is an impropriety or illegality on the part of the Trustee, the person like the petitioner who is having no interest in the Trust, has no right to challenge the decision of the Charity Commissioner as envisaged u/s 36 of the Act.

14. In view of the proposition and the law laid down by the Court, I do not find that the writ petition is maintainable at the instance of the petitioner. It is the petitioner''s argument that before modification made by the Charity Commissioner the petitioner would have been entitled to be heard. In view of the aforesaid observation made by this Court, I am afraid whether such contention is worth consideration.

15. In view of this, I do not find any merit in this writ petition. Writ petition is therefore dismissed. Rule is accordingly discharged.

Certified copy expedited.

Parties to act on the ordinary copy of this order issued by P.A. and authenticated by the Sheristedar of this Court.

