
(2005) 09 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 5797 of 2005

Pudhari Publications Pvt. Ltd.

APPELLANT

Vs

Sri Kikabhai Premchand Trust and Others

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 4 ALLMR 941 : (2006) 2 BomCR 663 : (2005) 4 MhLj 1149

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Tejas Deshpande, for the Appellant; V.V. Tulzapurkar, Ramesh Soni and Iyer, instructed by Doijode Associates for Respondent Nos. 1 to 7 and V.A. Thorat, Ameet Harian and Khatri, instructed by Hariani and Co., for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Mr. Soni, Advocate waives service of rule for respondents Nos. 1 to 7. Mr. Hariani, Advocate waives service of rule for the respondent No.8.

2. Heard by consent.

3. The petitioner, who is a builder, has challenged the order dated 31st May, 2005, granting permission to the respondent No.1 -Sir Kikabhai Premchand Trust Settlement No.VI; hereinafter referred to as "the Trust" to alienate its property for a consideration of Rs.35,70,00,000/-(Rupees Thirty Five Crores Seventy lakh only) to the Respondent No.8 -M/s. Premsagar Hotels Pvt.Ltd.. The said property admeasures 5,39,595 sq.ft. and is situated at Yerawada, Tal. Haveli, Dist. Pune, falls within the limits of Pune Municipal Corporation. The respondent No.1 Trust obtained offers from about six parties for sale of its property. These offers were not invited in pursuance of any advertisement in the newspapers due to past experience of the respondent Trust, which is set out in its affidavit in paragraph 6. In short, the reason is that on an earlier occasion when it attempted to

dispose of the property in question, the compound walls were broken by encroachers and the temporary dwellings were put up inside of the property.

4. The respondent Trust received offers as follows :

S.No.	Name of the offerer	Date of	Amount of Offer	Per Square	the the offer
feet(Rs.)	-----				
					1.
	Ramesh Builders	31.12.03	581/-		2. Premsagar Hotel
					02.01.04 661/- Private
	Ltd.				3. Kumar Builder
		05.01.04	650/-		4. Goel Ganga Group
					06.01.04 650/-
	5. Sadhu Vaswani Mission	20.01.04	425/-		6. DNV Group
					16.04.04 463/-

5. The Trust decided to sell its property to the highest offerer i.e. Respondent No.8. It entered into a memorandum of understanding on 28th September, 2004 under which the respondent No.8 paid earnest amount of Rs.1,80,00,000/-and agreed to pay the balance of Rs. 33,90,00,000/- within 90 days of receiving permission from the Charity Commissioner. The Trust thereafter applied for permission to the Charity Commissioner on 5th October, 2004.

6. Interestingly, the petitioner company having learnt of the permission having been sought from the Charity Commissioner, did only one thing. It wrote a letter on 25th April, 2005 to the Charity Commissioner that it has come to know about the permission sought by the Trust. The Director of the petitioner company then added a sentence to the following effect in the said letter :

"I am willing to give the highest offer which will benefit the Trust."

Admittedly, thereafter the petitioner did not bother to participate in the proceeding or quantify its offer before the Charity Commissioner.

7. The Charity Commissioner being under no duty, legal or otherwise, to ask the petitioner to quantify its offer, proceeded to consider the permission of the Trust and passed the impugned order, granting the permission to sell the property in question to the respondent No.8. This order is impugned by the petitioner in this petition.

8. In pursuance of the order of the Charity Commissioner, the Trust has executed a conveyance in favour of the respondent No.8 on 08.06.2005 upon payment of the consideration of Rs.35,70,00,000/-. The respondent also submitted the steps that have been taken upon acquisition of the property, such as demolition of the two buildings and shanties erected on the said premises. They have also commenced excavation of the said property. Thus the permission has been acted upon.

9. The first question that arises for consideration is the locus standing of the petitioner, who is a builder and who admittedly did not make any specific offer before the Charity Commissioner except to state that he is willing to make a higher offer. The question of locus of such a person has been considered on two occasions by this court. In Arunodaya Prefab vs. M.D. Kambli & Ors. reported in

1979 Mh. L.J. 104, a learned single Judge of this Court, Bharucha J., as he then was, dealt with a case where the petitioner had made an uninvited offer to the Charity Commissioner. The petitioner had sent an offer to the Charity Commissioner for purchase of the property in question. His offer not having been accepted and the Charity Commissioner having accorded permission to the Trust, the petitioner challenged the permission by way of a writ petition. This court held that the Charity Commissioner owed no legal duty to petitioner who had acquired no right merely on sending an offer. The court also held that the Charity Commissioner was not obliged to associate the petitioner with any enquiry which he was required to institute or to consider the offers made by the petitioner.

10. The court also rejected the contention on behalf of the petitioner that since the Trust was a public charitable trust, it was a matter of public interest since it affected a large number of people. The court observed that it only affected the restricted class of its beneficiaries and it was not a case where public interest in its wide sense is concerned, i.e. where the public rights of a large, almost unrestricted body of individuals are similarly affected. The court concluded that no prejudice can be said to have been caused to the petitioner by the impugned order in respect of which they can legitimately seek a writ, since no public interest was involved. A similar view was taken by another single Judge of this court, Desai J., in the case of Girdhar C. Nichani vs. Rev. E.H. Lewellen , reported in 1991 Mh. L.J. 891, where a builder, such as the petitioner in this case, had challenged the permission granted by the Charity Commissioner to the public Trust. This court held that the proceedings u/s 36 of the Act are not a lis between the parties to adjudicate a contested claim and the petitioner, though he had made an offer to the trust, was neither a necessary or nor a proper party to the proceedings u/s 36 and was not entitled to invoke Article 227 of the Constitution to canvass his grievance against the sanction accorded under sub-section 1 of section 36 of the Act.

11. Mr. Deshpande, the learned counsel for the petitioner, who argued the case with ability, submitted that the petitioner must be held to have locus since in fact the petitioner has been denied even an opportunity to make a bid, since the respondent has failed to invite offers by way of a public notice, which is contrary to the law laid down by the Supreme Court. The learned counsel relied on the decision of the Supreme Court in Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, , where the court observed that the property of religious and charitable endowments or institutions must be jealously protected since a large segment of the community has beneficial interest in it. This decision in my view has no application in the present case since in that case the Government had permitted a religious endowment in exercise of powers under proviso to clause (c) of sub-section (1) of Section 74 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 to sell certain lands belonging to the math by private negotiations. The Supreme Court held that the order was not in accordance with law in view of proviso to section 74(1)(c), which required :

(1) That the government must be satisfied that it is in the interest of the institution or endowment to permit the sale of these lands otherwise than by public auction.

(2) That reasons for reaching this satisfaction must be recorded in the order.

3. The aforesaid two pre-conditions are clearly spelled out by the relevant provision (proviso to Section 74(1)(c) which may be quoted in extenso:

(c) Every sale of any such immovable property sanctioned by the Commissioner under clause

(b) shall be effected by public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed :

Provided that the government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction.

12. In this view of the matter, I am of view that the petitioner has no locus standing to challenge the permission and in any case having perused the order, I am satisfied that there does not appear anything extraordinary or suspicious in the order granting permission of the fact that the sale was not made to the persons who have stalled the offers and the price has been sanctioned by the Charity Commissioner on the basis of the valuation report of the Government valuer, who has given description of the property, stating that the property is in the form of plot alongwith old bungalows. He has ascertained the market value of the property at Rs.27,47,40,000/-as on 21.12.2004. In these circumstances, the Charity Commissioner has sanctioned the sale at the highest offer of respondent No.8 of Rs. 35,70,00,000/- at the rate of Rs. 661/- per square feet. This rate has been found to be more than the sale instances obtained from the office of Sub-Registrar, Pune in respect of the property situated in the vicinity.

13. In this view of the matter, the petition is dismissed.