
(2012) 10 BOM CK 0021

In the Bombay High Court

Case No : Letters Patent Appeal No. 101 of 2012 in Writ Petition No. 1332 of 2012 with Civil Application No. 143 of 2012 (For Stay)

Raunak Corporation

APPELLANT

Vs

Sanjay Manohar Kastur and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 36

Citation : (2013) 2 ALLMR 235 : (2013) 1 BomCR 903 : (2012) 6 MhLj 629

Hon'ble Judges : Mohit S. Shah, C.J.;N.M. Jamdar, J

Bench : Division Bench

Advocate : P.K. Dhakephalkar, instructed by Rajesh S. Datar, in LPA No. 101/2012 and LPA 102/2012, Mr. Harshad Bhadbhade, in LPA No. 103/2012 and Mr. Dinyar Madon, assisted with Mr. Snehal K. Shah and Mr. Ashutosh Gavnekar and Ramchandran N. instructed by Narayanan and Narayanan and Co., in LPA No. 105/ 2012 and LPA No. 108/2012, for the Appellant; P.G. Karande, for Respondent Nos. 1 to 3, Mr. R.M. Patne, AGP, for respondent State, Mr. Dinyar Madon a/w Mr. Snehal K.Shah and Mr. Ashutosh Gavnekar and Ramchandran N. instructed by y Narayanan and Narayanan and Co. for Respondent Nos. 10 to 17 in LPA No. 101/2012 and for Respondent Nos. 1 to 8 in LPA No. 102/2012 and LPA No. 103/2012 and Mr. Sanjay Jain a/w Mr. H.S. Khokhawala instructed by y Nankani and Associates for Respondent No. 1 and 2 in LPA No. 102/2012 and LPA No. 103/2012, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—These Letters Patent Appeals arise from Writ petitions which were heard together and disposed of by a common judgment and order by the learned Single Judge on 29 March 2012. The subject matter of the dispute is the property of a public trust. On an application made by the trustees u/s 36 of the Bombay Public Trust Act, the Charity Commissioner granted sanction for development-cum-sale of the trust property to a developer. The learned Single Judge by the impugned order found that the sanction was not properly granted, and as there was no advertisement issued the matter needs to be remanded to

the Charity Commissioner and an advertisement needs to be issued. The developer and trustees have filed these appeals challenging the judgment and order of the Single Judge.

2. The trust is called "Late Rao Bahadur Anant Shivaji Desai Topiwala Charity". It is in existence since the year 1926. The Trust was registered as a public Trust on 20 March 1956, after the Bombay Public Trust Act, 1956 was enacted. The settler of the trust was late Shri Narayanrao Anant Desai Topiwalla. He formed the Trust for promotion and benefit of his community-Kudaldeshkar Adya Gaud Brahmins. The Trust owns properties situated at C.T.S. No. 145-A, 1A, 145-4, 145-B, C, D, E, F, G, bearing city survey No. 1443 at Gurgaon, Mumbai, admeasuring 3343.53 sq. metres. There are various tenements in the buildings which have been let out to individual tenants and most of the tenants belong to the abovementioned community. The premises are old and are in need of redevelopment. Since the property has tenants, redevelopment will be governed by Regulation No. 33(7) of Development Control Regulation of Greater Mumbai- (DCR) which confers certain benefits on the developer, and requires cooperation of tenants/occupants.

3. On 21 June 2011, the trustees made an application u/s 36 of the Trust Act to the Charity Commissioner, Mumbai, for sanction for the proposal for redevelopment-cum-sale of the Trust property. The trustees annexed the scheme of the Trust showing it's objects. The scheme showed that the object of the Trust was to work for the benefit of the Kudaldeshkar Adya Gaud Brahmin Community (the Community) and to provide accommodation to the members of this Community. About 122 tenants reside in the Trust property, mostly belonging to the Community. The trustees stressed the need to redevelop the property since the buildings are more than 75 years old, and some portion has even collapsed. The Trust stated that the tenants desire the redevelopment be undertaken by a Maharashtrian developer as they are apprehensive that a non-Maharashtrian developer might cheat them. Accordingly they have searched for a suitable developer who is willing to take up the project. Out of responses received from four developers, they have found appellant-Raunak Corporation to be the suitable candidate for entrusting the work of redevelopment. Accordingly, the trustees, by their application sought permission from the Charity Commissioner to alienate the Trust property for development and sale in favour of Raunak Corporation. Admittedly there was no advertisement given in any newspaper inviting applications from prospective developers.

4. The application was filed on 21 June 2011. The application was heard by the Charity Commissioner on 2 August 2011 and 10 August 2011 and matter was closed for orders. The application was allowed by the Charity Commissioner by his order dated 2 September 2011. The operative portion of the order reads as under-

(1) Application is allowed.

(2) Sanction is hereby accorded to the trustees of "The Late Rao Bahadur Anant

Shivaji Desai Topiwalla Charity, Mumbai", P.T.R. No. A/751/Mumbai for development cum sale of the trust property, viz. CTS No. 145A, 1A, 145-4, 145B, C, D, E, F, G. bearing C.S. No. 1443 admeasuring 3999 sq.yards equivalent to 3343.57 sq.mtrs. or thereabout together with structures known as "Kudaldeshkar Brahmin Niwas", in favour of M/s. Raunak Corporation, a registered partnership firm at Laxmi Narayan Residency, Unnathi Gardens III, Opp. Ma Niketan, Pokhran Road No. 2, Thane (West)-400 610 for the monetary consideration of Rs. 6,00,00,000/- (Rupees Six Crores Only) along with developed area of 4000 sq. ft. built up to be given to the trust, free of costs, and minimum 460 sq. ft. useable carpet area including flower beds, inches and service ducts to the tenants, free of costs, in terms of the Memorandum of Understanding dated 23-05-2011 and on the following additional terms and conditions:-

- a) The deed for development cum sale of the trust property is to be executed within a period six months from the date of this order.
- b) All expenses for stamp duty and registration charges and other incidental expenses shall be borne by the developer.
- c) The amount of monetary consideration of Rs. 6,00 Crores shall form part of the corpus of the trust, which shall remain invested in any of the Nationalised Banks/Approved Securities in long term deposits and should not be withdrawn without prior permission of this authority. Trustees shall be at liberty to use only the interest amount, which will be accrued on a sum invested towards accomplishment of the objects of the trust.
- d) This permission shall be subject to all the relevant laws and rule applicable to the development cum sale transaction and the property as well.
- e) Trustees of the trust to report the change u/s 22 after completion of the development cum sale transaction to the concerned Assistant/Deputy Charity Commissioner, Greater Mumbai Region.

5. Another developer-Siddhivinayak Constructions Ltd. and some tenants challenged the decision of the Charity Commissioner by filing Writ Petitions. Writ Petition No. 11070 of 2011 was filed by Siddhivinayak Construction Private Ltd. Writ Petition No. 1332 of 2012 was filed by Sanjay Manohar Kastur and others-the tenants. Siddhivinayak Constructions Pvt. Ltd. contended that it is also engaged in the business of builders and developers and inspite of it submitting voluntary offers to the trustees for redevelopment of the Trust property the offer was not considered. Some of the tenants who had filed the Writ petition contended that there were several irregularities in the transaction and consents of tenants were fraudulent. Two Civil applications were also taken out in the said Writ petitions by persons who opposed the petitioners as well as by those in support of petitioners. The petitions and Civil applications were heard together by the learned Single Judge.

6. Before the learned Single Judge it was an admitted position that the buildings of the Trust require redevelopment and that redevelopment will be governed by Regulation No. 33(7) of Development Control Regulations of Greater Mumbai. It was also not disputed that co-operation from tenants would be required for the redevelopment under DCR 33(7). It was also admitted position that no advertisement was issued by the trustees for inviting applications from interested developers and upon an application filed for dispensing with public notice the Charity Commissioner did not direct issuance of any public notice.

7. On behalf of the petitioners, it was urged before the learned Single Judge that re-development cum sale of property of a public Trust cannot strictly be in the realm of private law and there has to be transparency in disposal of trust properties, and trustees must act bonafide. It was urged that reason for giving redevelopment work to Raunak Corporation that the tenants desire a Maharashtrian developer is a complete eye-wash. The entire procedure for grant of sanction was pushed through in great haste and inspite of Siddhivinayak developers giving voluntary offer, they were kept in dark. By placing reliance on the roznama, it was sought to be urged that the proceedings before the Charity Commissioner were unusually expedited. These submissions were countered by the trustees and Raunak Corporation by contending that Siddhivinayak developers was not party before the Charity Commissioner and it cannot raise any grievance in the Writ petition. It was further urged that there is no mandatory requirement in law for giving advertisement. It was urged that for redevelopment to be undertaken under the DCR there are sufficient safeguards and the developer in whom the trustees and tenants have confidence needs to be selected. It was also urged that since more than 70 per cent tenants have chosen Raunak Corporation, the decision of the Charity Commissioner should not be interfered with.

8. The learned Single Judge heard the petitions finally and came to the conclusion that there was a need for publication of advertisement before assigning any rights in favour of Raunak Corporation for development of the Trust property, so as to secure best possible offers. The learned Single Judge noted that none of the reasons given by the trustees for not issuing advertisement appear to be genuine. The learned Single Judge considered the judgment relied upon by the parties more particularly the decision of the Full Bench in the case of Sailesh Developers, a registered Partnership Firm and Mr. Ramesh Bhavarlal Nahar Vs. The Joint Charity Commissioner Maharashtra, Greater Mumbai Region and Others, and came to the conclusion that the impugned order needs to be set aside and advertisements need to be issued inviting applications from interested developers. Accordingly, the learned Single Judge was pleased to quash and set aside the order passed by the Charity Commissioner and remand the application back to the Charity Commissioner with a direction to the Charity Commissioner to direct the trustees to publish an advertisement in reputed newspapers. The learned Judge disposed of the petitions by directing as under-

33. ... I am therefore inclined to set aside the impugned order partly to the extent it grants sanction to alienate the property in favour of the Respondent No. 9 and remand the application back. The Charity Commissioner shall thereafter direct the trustees to publish an advertisement in reputed newspapers like Times of India, Maharashtra Times, Indian Express and Loksatta and invite bids from the developers for the redevelopment and sale of the property of the trust. The bid submitted by the Respondent No. 9 which has been accepted by the Charity Commissioner should form the reserve price. Thus, the advertisement will indicate that any bidder who desires to bid must fulfill the following minimum criteria:

- (a) Monetary consideration of Rs. 6 Crores to the trust;
- (b) Developed area of 4000 sq. ft. built up (3418 sq. ft. carpet area) to be given free of costs to the trust;
- (c) usable carpet area of 460 sq. ft. to individual tenants including flower bed, niches and service ducts.
- (d) Corpus fund for the tenant society of such sum, as may be determined by the Charity Commissioner.
- (e) 20 Bank Guarantee of Rs. 50 Lakhs each as offered by Respondent No. 9.
- (f) Additional consideration of Rs. One Crore to the trust in case FSI is enhanced from 2.5. to 3.

34. After the bids are received by the trustees in sealed envelopes, the same shall be opened before the Charity Commissioner and thereafter notices should be sent to all the bidders to take part in bidding before the Charity Commissioner so as to enable individual bidders to improve upon their bids.

35. Highest bidder who is fulfilling all the aforesaid criteria will thereafter be chosen and a sanction for alienation of the trust property shall be granted in favour of such highest bidder.

Petitions were accordingly disposed of by Judgment and order dated 29 March 2012.

9. Being aggrieved, Raunak Corporation and the Trustees are before us in their respective appeals. We have heard Shri P.K. Dhakephalkar, learned Senior advocate, Mr. Dinyar Madon, learned Senior advocate and Mr. Harshad Bhadbhade learned advocate for the appellants and Mr. P.G. Karande and Mr. Sanjay Jain learned advocates for the respondents.

10. Learned counsel for the appellants urged:

The principle on which the learned Single Judge has proceeded to quash the order of Charity Commissioner, that the trustees must give advertisement prior to sanction of Charity Commissioner, is not an absolute requirement in law. The dominant object of seeking sanction from the Charity Commissioner before

alienating the Trust property is to ensure that the said transaction is in the interest of the Trust. In the present case, since the majority of tenants are in favour of the appellant Raunak Corporation, interest of the Trust will be best served by entrusting the work of redevelopment to Raunak Corporation. The development work is governed by D.C. Regulation No. 33(7) which requires consent of 70 per cent tenants and once consent of 70 per cent tenants is obtained, a developer who does not have the said consents cannot be foisted on the tenants and the trustees. There was no need to issue any advertisement as tenants expressed their desire that the property be redeveloped through a Maharashtra developer. Pursuant to this the trustees made all attempts to get proposals from such developers and Raunak Corporation was found to be suitable. The judgment of Full Bench in was misconstrued by the learned Single Judge which in fact is in favour of the appellants. In the case of Mehrwan Homi Irani and Another Vs. Charity Commissioner, Bombay and Others, the Apex Court has laid down a that the most important factor to be ascertained is whether the action of the trustees should is in the interest of the Trust.

11. On the other hand, learned counsel for the respondents contended:

Admittedly, there was no advertisement issued calling for applications from other developers so there is no way of knowing whether the offer of Raunak Corporation is the best offer for the trust. There are no reasons given why publicity was not given for the intention of the Trust for redevelopment of the property. The reason that the tenants desire development through a Maharashtra developer is an eyewash as the directors of Raunak Corporation do not even satisfy the criteria. The trustees had predetermined to grant the work of redevelopment to Raunak Corporation and the ground of "Maharashtrian developer" for not calling for applications is just to justify the decision already taken. The manner in which the application was presented and was disposed of in great haste creates doubt about the bonafides of the trustees. The trustees do not have absolute right to dispose of the property to any person and in the manner they wish. The Charity Commissioner ought to have performed his statutory duty to ensure that there was transparency in the decision. Ultimately, what the learned Single Judge has done is to only remand the matter back to the Charity Commissioner with a direction to give an advertisement pursuant to which there will be best possible offers. The trustees and the tenants cannot possibly have any objection to such course of action, which will be in the interest of the Trust. The learned Single Judge has correctly exercised his jurisdiction and the appeals deserve to be dismissed.

12. Before we consider the rival contentions, nature of the property in question needs to be noticed. The property admeasures 3343 sq. metres, contains buildings which houses several tenants. The buildings are situated at Girgaum in Mumbai which is in the heart of the city in the prime commercial and residential area. Prices of immovable properties in this area are very high. The redevelopment of the property, being a tenanted, is governed by Development

Control Regulations. These rules permit a developer to exploit additional FSI after rehousing the tenants. Considering the prices of properties in this area the financial stakes involved in the transaction are extremely high. What trustees are seeking to alienate are not just old dilapidated buildings but are of substantially high value in the property redevelopment market.

13. At the outset we wish to make it clear that we are not considering any absolute proposition of law whether it is mandatory to issue advertisements in respect of every alienation of properties of trust. We are confining the Judgment only to ascertain whether the issuance of advertisement was required in the facts of the case. Though impugned Judgment is assailed on the ground that the learned Single Judge has elevated the requirement of prior advertisement to a mandatory status, we do not propose to read the judgment of the learned Single Judge that way. Learned Single judge has only found that the issuance of advertisement was necessary in the facts of the present case. The Judgment of Full Bench in *Sailesh developers* (supra) and various other pronouncements on the subject make it clear that the Charity Commissioner, before granting sanction for alienation of the Trust property will consider totality of facts and circumstances of each case. The decision to the Charity Commissioner regarding need to issue public advertisement before seeking alienation, will depend on the facts and circumstances of each case. The Charity Commissioner must however take into consideration the object of the Act stressing the need for supervision and must rest his decision on cogent grounds. The decision cannot be arbitrary, should be guided by prudence and realities of the situation and should be reasoned one so that it is correctable by higher forums. In the following paragraphs we have indicated the broad legislative policy and some of the facts as that may provide guidance to the Charity Commissioner while taking this decision.

14. Charitable Public Trusts are administered by trustees. In law the trustees are not the owners of the properties but guardians and custodians. It was long noticed that not all trustees acted bonafide. There were complaints of misuse by the trustees as regards funds and properties of the trusts. The legislature stepped in enacted the Trust Act to regulate the activities of the trustees. That was in the year 1956. In recent decades, the need for regulatory mechanism has become stronger as property prices have shot up, especially in urban areas. The trusts which was formed with charitable goals, treated it's properties as mere tools for propagating the charitable work. However with spiraling real estate prices properties have acquired immense value by themselves. Such lucrative properties create temptations for the trustees to stray away from the charitable intentions. Often the trustees, far removed in time from the noble intentions of the original settler, fall prey to these temptations and deal with the properties for their private gains. The object of legislature of investing the Charity Commissioner with power to supervise the alienation of properties, has now become more relevant. The Legislature has not only conferred powers on the Charity Commissioner but more importantly has cast a duty on him to ensure

that the trust properties are not misused.

15. To achieve the above object the Trust Act contains elaborate mechanism to supervise actions of the trustees. Merely because the trustees assert that the action that they propose to take is in the interest of the trust, their word is not treated as final. The Charity Commissioner is empowered, albeit, duty bound to scrutinise and approve the proposal submitted by the trustees. The Charity Commissioner is expected to ascertain whether the alienation of the property is required in the interest of the trust in the first place and how best the interest can be achieved. He also needs to ensure that trustees are not trying to jettison the interest of the trust in furtherance of their private agenda. He has to find out whether the proposed action is in the interest of the public trust and not in the private interest of the trustees. Often these two are in conflict. The Charity Commissioner therefore, cannot go by mere words of the trustees, and has to ascertain their bonafides.

16. One of the indicators of the bonafides is the manner in which trustees arrive at a decision to alienate the property. It reflects whether due care was taken to subserve the interest of the Trust and the trustees are not acting in their private interest. If the trustees give widest possible publicity to their decision and call for the best offers, proceeding in transparent manner then the Charity Commissioner is prima facie assured that the trustees are acting in the interest of the Trust. If the trustees take decisions behind closed doors and arbitrarily select buyers/ developers of their choice, the Charity Commissioner will have to be doubly cautious. Where the properties are of immense value, the trustees from the beginning narrow down their search with a tailor-made criteria, then that may raise a doubt and in such cases the Charity Commissioner will have to be on guard. Of course, there may be cases where expenses involved, nature of the property, absolute lack of prospective purchasers and such other cogent reasons, it may not be practicable or necessary to give widest possible publicity. However, in those cases also it is open for the Charity Commissioner to arrive at appropriate decision and satisfy himself that the reasons are genuine.

17. The present case has two facets. First is the dispute between the parties. The second is the need to ensure transparency in the proceedings regarding dealings of properties of public trust. The second aspect is relatable to object with which supervisory mechanism was enacted under the Act. While considering the impugned order, we are not only required to consider the dispute interse, but also the need to make the mechanism to prevent misuse of the trust properties more effective.

18. The learned counsel for the respondents urged that when the trustees made application before the Charity Commissioner, consents of only 25 persons were annexed to the application. Considering that there were 122 tenants, the number was not substantial. Counsel contended that there is serious doubt about the validity of the consents as there are no particulars of notaries, no identification by advocates. Sometimes three consent letters have been produced from one

tenement. Notarisation also seems to be done earlier to signing of the consents. In short, it is submitted that the assumption that 70 per cent occupants are with the trustees and developers is itself not correct. It is further submitted that out of the 112 tenants, seven tenements are under control of Trust therefore, the balance comes to 105. Two tenants have not given their consent. Furthermore, 11 tenants have revoked their consent therefore, at the most the number of consenting tenants is 65 which is less than 70 per cent. Be that as it may, we are not commenting on those numbers. We are only examining the absolute claim of trustees that it will be needless to look for any other developer. We are considering this fact situation only to ascertain whether issuance of advertisement would be a futile exercise as contended. To hold so, it must be satisfactorily demonstrated before us that there is no semblance of doubt and that it will be needless to call for best offers.

19. The first authority to satisfy itself with these grounds is the Charity Commissioner. As discussed earlier when the proposals of this magnitude are presented before the Charity Commissioner without any advertisement then the Charity Commissioner is required to satisfy himself why such exercise was not done. The trustees must give reasons why widest possible publicity was not given and best offers were not called for.

20. We have gone through the application for sanction. It appears that the reason given for not giving advertisement was that the tenants wanted a "Maharashtrian" developer to develop the property and Raunak Corporation was the best candidate. This ground was seriously objected to by the respondents. According to them such demand is obnoxious. The respondents urge that when a "Maharashtrian" developer is referred to, it would mean its directors and all directors of Raunak Corporation are not "Maharashtrians", and even the phrase "Maharashtrian" is vague as it would include everyone who is staying in Maharashtra. We are not commenting on the morality and legality of such demand. However it was not as if a public advertisement was issued, and out of best comparable offers, an application of one was found to be suitable on the ground that the tenants had confidence in him on the ground of regionality. Such case would stand on different footing but whether such ground can be taken even in that fact situation, is something which we are not called upon to decide as that is not the present case. What we are examining is whether such a ground was a credible reason in the fact of the present case or it was a mere front to justify the decision taken by the trustees to alienate the property in favour of a developer already chosen.

21. If the trustees genuinely wanted to entrust the work of development in whom they and tenants had confidence, nothing stopped them from calling for best offers and then narrowing down the choice. There are several reputed developers in Mumbai, who irrespective of their regionality, have acquired reputation through integrity and honesty. If widest possible choice of best offers from all such developers was presented before all concerned then the decision to

select Raunak Corporation may or may not have been taken. The selection of Raunak Corporation on the basis that it is the best developer is based on an inadequate data.

22. To ascertain whether this was the best option for the Trust there would have to be a credible data on record of the Charity Commissioner. To reach to this conclusion it will have to be considered whether it was a well thought-of and informed decision. The trustees and developers are placing the tenants in the fore-front and contending that it is the tenants' desire that they want a "Maharashtrian" developer. Admittedly the tenants are staying in the dilapidated chawls for years and do not belong to a very rich class. They may or may not have any idea what is the true worth of the property when it is exploited commercially by a developer. The intricate calculation of FSI, TDR and the manner in which they can be commercially exploited are better known to developers. It is on the basis of these calculations that offers are made for redevelopment of the property. Tenants may know that the property is worth substantial amount but may not know exactly how much, something which a developer would certainly know. If they perceive the property to be worth Rs. 100/- and if someone offers Rs. 150/- then they may happily accept such proposal. But if proposals come from several other developers quoting Rs. 500/- then the occupants may or may not go by their original decision and may even abandon their original demand of having a builder of particular regionality.

23. These are matters of speculation but what needs to be stated is that it is when properties such as the present one, i.e. old dilapidated buildings in the heart of commercial areas consisting of tenants, are put up for alienation, only when competitive bids are invited that all concerned will have a good idea of what is the true worth of the properties and how much corpus will be available. Tenants/occupiers may get tenements of fixed area but competitive bids may push up the corpus and offer several other amenities. Then they may discover that it is the builder of their chosen regionality was in fact cheating them. In the present case the tenants were not exposed to the true worth of the properties in their possession and the monies they would receive. Their decision could not be treated as a well informed one. This decision cannot certainly be advanced as a reason for the trustees and the developers to dispense with public advertisement. It appears to be more of an attempt by trustees to whip up emotive issues to keep the tenants in dark about the true worth of the properties.

24. The high value of property and no publicity ought to have put the Charity Commissioner on guard. However unfortunately the Charity Commissioner mechanically approved the proposal of Raunak Corporation. The only reason that is given by the Charity Commissioner in respect of not calling public advertisement is in paragraph 12 of the order which reads as under:-

12. It was argued by the learned advocate on behalf of the trust that trustees had made strong efforts to search for the developer who shall meet the demands of the tenants as well as the trust to ensure that the redevelopment of the trust

property is completed successfully. It was therefore incumbent on the part of the trustees to personally explain the demands of the tenants as well as situation to the prospective developers by personal meeting with them. It was therefore not possible for the trust to give public notice in news papers as purpose of the redevelopment of tenanted trust property can be achieved by personal meetings and negotiations only. In these circumstances, I am of the view that the application filed by the appellants for dispensing with public notice for development cum sale of the trust property at Exh. 3 be allowed.

This reason to say the least, is highly unsatisfactory and virtually amounts to abdication of the duty to supervise. There are absolutely no reasons as to why when such lucrative property is being alienated, action of not calling for best offer was justified. If the word of trustees in these matters is to be accepted as gospel truth then there is no need to have a supervisory mechanism. The reason given can apply to almost all cases of alienation. The Charity Commissioner ought to have been more circumspect.

25. It is also urged before us that the entire proceedings was conducted by the Charity Commissioner on two dates and the application was disposed of within one month after taking it on board. It was urged that normally the application u/s 36 take months if not years to be decided. We do not find that merely on this ground the order passed by the Charity Commissioner is vitiated. But what we do note is that the Charity Commissioner has not considered the totality of circumstances to find out whether the action of the trustees in not calling for advertisements was bonafide. If the observations of the Charity Commissioner are approved it would mean that in no case a public advertisement is required. If the Charity Commissioner is invested with an authority to decide these requirements in facts and circumstances of each case then it is expected that he would apply his mind and record his independent reasons. This has not been done. The learned Judge considered the facts on record and found that public advertisement was desirable in the facts of the case.

26. Considering the totality of the circumstances such as the nature of the property, location, valuation, object of the Act, duties of the trustees, reasons for not giving advertisements, we find that the direction of the Single Judge of remand and advertisement was justified. The learned Single Judge was not in error in directing the Charity Commissioner to call for advertisement from all interested developers. Such course of action cannot be said to be against the interest of the Trust. Such course of action will not only be in the interest of Trust but would dispel all doubts. However, we make it clear that we have not considered the merits of Raunak Corporation as a developer. The learned Single Judge has kept it open for Raunak Corporation to bid pursuant to the advertisements. We also do so.

In view of the above, the appeals are dismissed. Civil Applications stand disposed of accordingly.

After the Judgment is pronounced, learned counsel for the appellants pray for extension of ad-interim relief which was operating during pendency of the appeals, in order to take further recourse in accordance with law. Hence the ad-interim relief which was operating during pendency of the appeals, is extended for a period of six weeks from today.

Record and Proceedings shall be sent back to the Charity Commissioner.