

(1988) 12 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 1763 of 1986

Shri Mahadeo Deosthan Wadali

APPELLANT

Vs

Joint Charity Commissioner

RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:

Constitution of India, 1950 — Article 246

Citation : (1988) 90 BOMLR 649 : (1989) MhLj 269

Hon'ble Judges : S.W. Puranik, J;B.G. Deo, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.G. Deo, J.—A question of some importance that is raised in this writ petition is whether the Joint Charity Commissioner can, u/s 36(2) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act"), revoke the sanction given to a public trust for alienation of its immovable property by a sale deed, after the sale deed is executed pursuant to the sanction granted u/s 36(i) of the Act and the property alienated by the trust no longer retains the character of property as that of a public trust. In other words, can the Joint Charity Commissioner invoke the power u/s 36(2) of the Act for revoking the sanction after the sanction merges into the sale-deed and there remains nothing to" be revoked. The facts necessary to understand the controversy involved in this petition may be briefly summarised thus.

2. Shri Mahadeo Deosthan, Wadali" is a registered Public Trust. The petitioners 2 to 5 and respondent No. 2 are the trustees of the said trust. The trust owned Survey No. 1/1 of village Wadali, tahsil and district Amravati. The field measured 12 acres and 26 gunthas. An application dated February 13, 1984 was made by the trust before respondent No. 1, the Joint Charity Commissioner, Nagpur, u/s 36 of the Act, for obtaining sanction for transfer of 10 acres of land from Survey No. 1/1 to the petitioner No. 6 Rajesh-war Trading Company, Amravati. The said land was in possession of a protected tenant named Namdeorao Uke. The lease

money was Rs. 400/- per year. The lease money had remained unpaid since the last five or six years. The board of Trustees had passed a resolution resolving to sell 10 acres of land from the aforesaid field. An advertisement was issued for the same in the local newspapers. Four offers including that of the petitioner No. 6 Rajeshwar Trading Company, Amravati were received. Out of them, three persons making the offer refused, to purchase the land on the ground that it was encumbered with tenancy rights. The petitioner No. 6 Rajeshwar Trading Company, however, agreed to purchase the land at Rs. 38,000/- per acre. The market price of the land, as gathered from the certificate of Patwari, was approximately Rs. 35,000/- per acre. The trustees found that the offer of Rs. 38,000/- per acre made by petitioner No. 6 who had agreed to purchase the same with the liability of tenancy rights was reasonable and was in the interest of the Trust, especially when in lieu of an annual income of lease money of Rs. 400/- only, the Trust was likely to be benefited by getting Rs. 45,000/- as yearly interest if the sale-proceeds were invested in the Bank. All the aforesaid facts were brought to the notice of the Joint Charity Commissioner by the application dated February 13, 1984 (Annexure A) to this petition. The Joint Charity Commissioner, after making necessary enquiries, granted sanction by his order dated May 11, 1984 which is at Annexure B.

3. A deal was struck between the tenant and the intending purchaser Rajeshwar Trading Company, petitioner No. 6, after the aforesaid sanction and the Trust was informed that the tenant had agreed to surrender his tenancy rights, A surrender deed dated July 3, 1984 was executed by the tenant and an application was filed on the same date before the Tahsildar u/s 20 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 for verification of the surrender. While the said proceedings were still pending, the Trust executed a registered sale-deed of the property in favour of petitioner No. 6 on July 26, 1984. A mention that the tenant had agreed to surrender the tenancy rights was made in the sale-deed. The Tahsildar passed an order dated August 4, 1984 verifying the surrender as valid and directing the Trust to be put in possession of the land. Accordingly, on August 20, 1984, i.e. a month after the sale-deed was executed, the Trust executed a possession receipt in favour of the purchaser i.e. petitioner No. 6 and the entire transaction was completed.

4. The respondent No. 2, the remaining trustee of the Public Trust, along with three other persons namely respondents 3, 4 and 5 from village Wadali, filed an application u/s 36(2) of the Act, for revoking the sanction already granted on May 11, 1984 and in pursuance of which a sale-deed was also executed on July 26, 1984, transferring the title in respect of the land in favour of the purchaser-petitioner No. 6. The application for revocation of the sanction was made on the ground that while obtaining sanction, the other trustees had grossly undervalued the property by suppressing the fact that the land had a great potential as non-agricultural land. The petitioners were noticed and they filed their replies (Annexures D and E) before the Joint Charity Commissioner denying the contention of the respondents 2 to 5 that the sanction was granted by grossly

undervaluing the property and by concealing from the Joint Charity Commissioner the non-agricultural potential of the land. According to them, as a matter of fact, a certificate from Patwari had also been obtained to the effect that market price of the land was Rs. 35,000/- per acre, that it was pointed out to the Joint Charity Commissioner that the land was in possession of a protected tenant and the price was also ascertained by issuing a public advertisement. The petitioners also raised a question about the main tenability of the application u/s 36(2) of the Act and the jurisdiction of the Joint Charity Commissioner to revoke the sanction after the sale-deed was executed exhausting the sanction already granted.

5. The question of maintainability of the application u/s 36(2) of the Act was decided by the Joint Charity Commissioner by his order dated April 18, 1985 which is at Annexure F. The Joint Charity Commissioner was of the view that there was a power to give sanction u/s 36 of the Act and that very section gave power to revoke it without limiting it by any time on the ground that the sanction was obtained by fraud, mis-representation or concealment. The said power cannot be curtailed and the application for revocation was maintainable despite the earlier execution of the sale-deed. On merits, as to whether the sanction was got obtained by grossly undervaluing the property, the learned Joint Charity Commissioner, having received evidence led by both the parties, came to the conclusion that the earlier sanction was obtained by concealment of material facts and revoked the sanction by his order dated July 23, 1986 which is at Annexure G. Both the aforesaid orders dated April 18, 1985 and July 23, 1986 (Annexure F and G) are under challenge in this writ petition.

6. The learned Counsel Shri Manohar contended that both the orders be quashed and set aside for the simple reason that once a sale-deed is executed pursuant to the sanction granted, the sanction, has served its purpose and the Joint Charity Commissioner ceases to have any power or jurisdiction over the land in question. The authority of the Joint Charity Commissioner created by Bombay Public Trusts Act can exercise powers under the said Act, only qua the property of a public trust. Once the property ceases to have the character of a public trust in view of the alienation made with sanction, no power for revocation of the same sanction vests with the Joint Charity Commissioner since the Joint Charity Commissioner has no power to cancel or set aside the alienation, once the trust property changes its character and vests in alienee whose interest intervenes.

7. As against this, the learned Counsel for respondents 2 to 5 Shri A.M. Gordey, contended that u/s 36(1) of the Act, no sale, exchange or gift of any immovable property belonging to a public trust shall be valid without the previous sanction of the Joint Charity Commissioner and u/s 36(2) of the Act, such a sanction can be revoked by the Joint Charity Commissioner on the ground that the sanction was obtained by fraud or misrepresentation made to him or by concealing from him the facts material for the purpose of giving sanction. There is nothing in the aforesaid Sub-section (2) of Section 36 of the Act, according to Shri Gordey,

which limits the power of the Joint Charity Commissioner to revoke the sanction if the said sanction was obtained by fraud or misrepresentation. Such a power of revocation can be exercised, according to Shri Gordey, at any time irrespective of the sale made by virtue of the said sanction and if any limitation is imposed on this power, there would be no protection to the property of a trust which is likely to be dissipated by way of mismanagement or fraud. He contended that to impose such a limitation on the power is to render nugatory the said power if following the sanction a sale is executed post-haste and a fraud is perpetuated in respect of the trust property. A plain reading of the power of revocation contained in Section 36(2) of the Act does not admit of any interpretation which, according to him, limits the sanction up to a point of execution of a sale-deed pursuant to the sanction.

8. In order to appreciate the rival contentions, it is necessary to reproduce Sections 36(1)(a), 36(2) and 36(3) which read as under:

36. (1) Notwithstanding anything contained in the instrument of trust

(a) no sale, exchange or gift of any immovable property, and

(b) ...

(c) ...

(2) The Charity Commissioner may revoke the sanction given under Clause (a) or Clause (b) of Sub-section (1) on the ground that such sanction was obtained by fraud or misrepresentation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

(3) No sanction shall be revoked under this section unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show cause why the sanction should not be revoked.

9. Section 36 was renumbered as Sub-section (1) by Maharashtra Act No. 20 of 1971. The power to revoke a sanction was given for the first time in 1971. The Act was enacted for making a better provision for the administration of Public and Charitable Trusts in the State of Bombay. The contention that the Act makes provision in respect of trust property and not any other property carries considerable force, in view of the fact that the legislative competence was only in respect of the trust property. Under Article 246(2) of the Constitution, a Legislature of any State has power to make laws in respect of any of the matters enumerated in List III in Seventh Schedule which, in the Constitution, has been referred as the concurrent list. Item No. (10) of the concurrent list i.e. List III of the Seventh Schedule refers to "trust and trustees". There is no gainsaying of the fact that the expression "trust and trustees" would include the trust property.

A "trustee" has been defined as a person in whom the trust property is vested. It follows, therefore, that the provisions made in the Act are qua the property which is a trust property and the legislative competence necessarily refers to the trust property and not to any other property. The need for interpretation of Section 36, under which the Joint Charity Commissioner gets power to sanction the alienation of immovable property of public trust and the power to revoke that sanction arises as the said power has not been specifically limited by any condition. Rules of natural justice demand that when a sanction is to be revoked, the person who has been benefited by the said sanction has to be given an opportunity to show cause why the sanction should not be revoked. If it is held that Section 36(2) gives the Joint Charity Commissioner power to revoke a sanction granted by him earlier for alienation of the property of a public trust, rules of natural justice are likely to be infringed. Section 36(5) no doubt provides that no sanction shall be revoked under this section unless the person, in whose favour such sanction has been made, has been given a reasonable opportunity to show cause why the sanction should not be revoked. This refers to an opportunity granted to the person asking for the sanction i.e. the trustees and not aliens. The argument that an alienee is also covered by Sub-section (5) of Section 36 as he benefits by the same and that, therefore, sanction should also be construed as a sanction in his favour need only be stated for being refuted. Section 36(5) does not in terms make it obligatory for the Joint Charity Commissioner to give a reasonable opportunity to the alienee before revoking such sanction. In *New India Sugar Mills Ltd, v. Commissioner of Sales Tax, Bihar*¹, a recognised rule of interpretation of statute has been referred to by Their Lordships of the Supreme Court in para. 8 as follows:

It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid. If the narrow and technical concept of sale is discarded and it be assumed that the Legislature sought to use the expression sale in a wider sense as including transactions in which property was transferred for consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object. It is manifest that the Bihar Legislature intended to erect machinery within the frame-work of the Act for levying sales-tax on transactions of the sale and the power of the Legislature being restricted to imposing tax on sales in the limited sense, it could not be presumed to have deliberately legislated outside its competence. In the definition of the expression "sale" in Section 2(g) of the Bihar Sales Tax Act it must be regarded as implicit that the transaction was to have all the elements which constitute a sale within

the meaning of the Sale of Goods Act.

An intention on the part of the Legislature to intentionally transgress the limitations imposed by the Constitution cannot be inferred at all. In the instant case, Section 36 should be interpreted in such a way that it harmonizes the intention of the Legislature and also is not in conflict with the rule of natural justice. This can be achieved by reading Sub-section (2) of Section 36 to the effect that the Joint Charity Commissioner may revoke the sanction granted for alienation of a trust property on the ground of fraud or misrepresentation so long as the property retains the character as that of a trust property and not after the property vests in persons other than a Trust. Otherwise, there will be no sanctity to the sale transactions even after obtaining a sanction, for sale transactions made at any time after the sanction and made successively by the transferees also would be liable to be set aside at any time, if it is held that the sanction u/s 36(2) is an unlimited sanction which can be exercised at any time, even without notice to the person in whose favour the property stands vested.

10. That the sanction should not have spent itself, at the time of its revocation, is evident from the provision made in Section 36(3) which provides that no sanction shall be revoked unless the person, in whose favour such sanction has been made, has been given a reasonable opportunity to show cause why the sanction should not be revoked. This person is necessarily a person who obtained sanction and in whose favour the trust property vests. It is he who has to be granted a reasonable opportunity before revoking the sanction and taking appropriate action. The power of revocation has to be exercised before the sanction has been acted upon by that person. The reason is not far to seek. In the first place, if in pursuant to the sanction, a sale-deed is executed, the property would be divested of the character as a trust property and interest would be created in the purchaser who may not get an opportunity to show why the sanction should not be revoked. A property may change hands several times and if a sanction granted in respect of a trust property could be revoked at any time even after) successive sale-deeds and even after it changes its character as the trust property, a chaotic condition is likely to be created. A sanction, therefore, has to be granted to alienate the trust property and has to be revoked only for the trust property i.e. while the property retains the character as the trust property and not after the public trust is divested of that property and interest in the said property is created in persons other than trustees. Rule of natural justice otherwise would be followed only in its breach. Once the interest of third party is created, the purpose of the sanction is fulfilled and the Joint Charity Commissioner, thereafter, cannot himself declare the sale-deed as void or is not in a position to set aside the sale-deed. Revoking of sanction granted long back, therefore, would be of no avail, after its dive station. The power of revocation, therefore, in the interest of harmony, has to be exercised only when the sanction remains alive and does not get itself merged m the sale-deed. We, therefore, find that the power granted to the Joint Charity Commissioner u/s 36(2) of the Act cannot be invoked by the Joint Charity Commissioner to revoke

a sanction granted u/s 36(1) of the Act alter the sanction merges itself into a sale-deed and the property loses the character as that of a trust property. Such a power of revocation has to be exercised only qua the property of the trust and not after the sale-deed for the simple reason that when a sale-deed is executed, the trust is then divested of that property and interests of third parties intervene. The property no longer then remains a trust property and the Joint Charity Commissioner loses jurisdiction over that property. The petition has, therefore, to be allowed on this ground itself.

11. On facts, it was contended that the sanction was obtained by practicing fraud, misrepresentation and by concealing the fact that the potential value of the property was much more than Rs. 35,000/- per acre and an understanding had already been arrived at that the property would be free of tenancy rights. The material facts, which according to the Joint Charity Commissioner were concealed while obtaining his sanction, are, in his words, as follows:

22. Thus I find that there is a suppression of this material fact that the field would be ultimately sold to No. 5 free from the tenancy rights and secondly that one of the trustees was not a party to the resolution in the meeting held on December 31, 1983.

Having perused the record, we find that the Trust never intended to sell the land to the purchaser free from the tenancy rights. Offers were invited and publication was made by making it known that the land was in possession of a tenant and that the Trust would sell the land with the tenancy rights. It was after the sanction was granted that petitioner No. 6 had approached the tenant and had arrived at an understanding with the tenant that he would surrender tenancy rights. When the sale-deed was executed on July 26, 1984, the surrender was yet to be verified. It can, therefore, least be said that the trust had sold the land to petitioner No. 6 free from encumbrance or with a knowledge that the land would be ultimately free from encumbrance. When the sanction was made, tenant was very much there on the land. The alienation of the land was also known to all the intending purchasers, including the petitioners, and nobody had offered a better price. The surrender had to be accepted by an authority and it could not be assumed by the trustees or the purchaser that the surrender would also be accepted. Besides, on the date when the application was made for obtaining sanction and on the date when the sanction was granted, the trustees cannot be said to be aware of the fact that the tenants were to surrender their rights. A sanction could be revoked by the Joint Charity Commissioner if it was obtained by fraud or misrepresentation of facts or when the facts material, for giving such sanction were concealed from him. The only contention raised by the respondents at Annexure "C" was that the trustees concealed from respondent No. 1 that the market price of the land was about Rs. 1,00,000/- per acre. No other allegations were made in the application. The trust had published an advertisement in a newspaper, had obtained offers from willing purchasers. The highest offer for the land that could be received was Rs. 35,000/- per acre, the

Patwari had also certified that the market price was Rs. 35,000/- per acre and it could not be said at that time that the tenant would ultimately agree for the surrender and above all that the surrender would be accepted by the authorities concerned. By no stretch of imagination, therefore, can it be said that the aforesaid facts which were not in existence at that time were concealed from the Joint Charity Commissioner, so that the sanction may be granted by him. Sanction could not also be granted on the ground that the application was couched in such a manner as to show that only first four non-applicants constitute the Body of Trustees. The impugned order itself shows that the Joint Charity Commissioner was aware that a xerox copy of the entries was in the record of the Public Trusts Register which showed that five trustees were there and a copy of the meeting dated December 31, 1983 showed that four trustees were present and one was absent. There was, therefore, no question of a show of unanimity being made so that a vital fact may be concealed from the Joint Charity Commissioner, so that he may revoke "the sanction. On facts also, therefore, the impugned order revoking the sanction also appears to have been the result of misdirection.

12. We have already found that the sanction given by the Joint Charity Commissioner u/s 36(1) of the Act cannot be revoked after the sale-deed is executed for more reasons than one. The power of the Joint Charity Commissioner has to be invoked only qua the property of the trust. It cannot, therefore be invoked after the trust is divested of that property and interests of third parties are created. After the sale-deed, a sanction merges in the sale-deed and there remains nothing which can be revoked by the Joint Charity Commissioner. The petition has, therefore, to be allowed.

13. Rule is made absolute. Petition is hereby allowed. The order dated April 18, 1985 (Annexure "F") and the order dated July 23, 1986 (Annexure "G") passed by the Joint Charity Commissioner, Nagpur on Application No. 2 of 1984 u/s 36(2) of the Act, are hereby quashed and set aside as being without