(2008) 08 BOM CK 0150

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 2377 of 2007

Theor Developers Private Limited APPELLANT

Vs

All India Soverdia Sangram and Others RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 36, 36(1)

Citation : (2008) 6 ALLMR 710 : (2008) 110 BOMLR 2873

Hon'ble Judges : Swatanter Kumar, C.J;V.M. Kanade, J

Bench : Division Bench

Advocate : P.A. Sawant, instructed by Khaitan and Jaykar, for the Appellant; F. Devitre and Kamal Khata, instructed by Bagla Dandekar and Co. for Respondent No. 1, Pravin Samdani, Hemant Mehta, S. Nagvadaria and Dipti Shah, instructed by Mehta and Co. for Respondent No. 2, S.S. Shah and Pradeep Jadhav, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—By this petition, the petitioner is challenging orders dated 21st June, 2006 and 26th July, 2006 passed by the Charity Commissioner in Application No. J-4/127/2005 and for a direction directing the respondent No. 1 to invite fresh bids upon such relaxed/modified terms and conditions as imposed by this Court. Brief facts in a nutshell are as under:

2. The petitioner herein is carrying on business as a developer and builder. Respondent No. 1 is a public charitable trust registered under the provisions of Bombay Pualic Trusts Act and Respondent No. 2 also carries on business as builders and developers. By the impugned orders, respondent No. 4 Charitable Commissioner has sanctioned sale of respondent No. 1''s lands in favour of respondent No. 2. Respondent No. 3 is an Association of Residents of Durga Nagar Rahivasi Sangh which is a settlement or slum dwellers who have encroached upon the property belonging to respondent No. 1 trust.

3. The trust is the owner of land bearing CTS No. 57 (part), 60 (part), 62B, 63

and 82 situated at Village Mulgaon, Taluka Andheri, within the registration sub district of Mumbai District. Within the property of the said trust, there is another property bearing CTS No. 61 which is encircled from all sides by the properties of the said trust. The said CTS No. 61 is fully encroached upon by the residents of respondent No. 3 - Durga Nagar Rahivasi Sangh. The trust sometime in the year 2005 decided to acquire survey No. 61 and for that purpose, decided to sell CTS No. 82 and accordingly decided to invite public bids from the builders and developers who will be willing to relocate/shift the encroachments from CTS No. 61 and the trust property immediately surrounding CTS No. 61. The tender was invited by the trust in which certain conditions were imposed. The offer was published in certain newspapers in Nagpur and one bid was received from respondent No. 2. Accordingly, a Memorandum of Understanding was executed between the trust and respondent No. 2 on 25th June, 2006.

4. After the execution of the said MOU, the trust filed an application u/s 36(1) of the Bombay Public Trusts Act. The Charity Commissioner considered the various affidavits filed by the parties. During the pendency of the said proceedings before the Charity Commissioner, an application was made by the trust for deleting all references to the said CTS No. 61. The Charity Commissioner allowed the said application and by order dated 21st June, 2006 allowed the amendment and permitted the trust to delete all references to CTS No. 61. Thereafter, by order dated 26th July, 2006, an application filed by the trust u/s 36(1) was allowed and the sanction was granted to the sale of CTS No. 82 in favour of respondent No. 2 for a consideration of Rs. 3.40 crores.

5. When the matter was pending before the Charity Commissioner, another developer M/s. Shailesh Developers had filed an application for intervention. However, his application was rejected. He, therefore, filed writ petition in this Court being Writ Petition No. 2320 of 2006. This writ petition was also rejected. The petitioner thereafter has filed this petition challenging the impugned order passed by the Charity Commissioner dated 21st June, 2006 and 26th July, 2006.

6. Thereafter, respondent No. 1 trust entered into an agreement with respondent No. 2 on 26th December, 2006. Thereafter, an application was made by the developer for getting the plan sanctioned for development of CTS No. 82. It is the case of the petitioner that in October, 2007, he came to know that the plan of CTS No. 82 did not provide for rehousing of the slum dwellers. Thereafter, the present petition was filed.

7. Shri Sawant, learned Counsel appearing on behalf of the petitioner submitted that the trust property was sold at the throw away price. He submitted that it was the duty of the Charity Commissioner to satisfy himself from the adequacy of the price offered keeping in mind the interest of the trust. He submitted that the trust deliberately and dishonestly made false statements and made representations and made application for sanction and suppressed the relevant facts from the Charity Commissioner. It was submitted that the first respondent had agreed to enter into an agreement with respondent No. 2 before giving an

advertisement in the newspaper. It was submitted that the trust had suppressed the most relevant facts from the Charity Commissioner that the said land had been converted from the industrial zone to commercial zone on 17th October, 2005 prior to Charity Commissioner granting sanction on 26th July, 2006. It was further submitted that the trust had already decided to sell the CTS No. 82 to the respondent No. 2. It was submitted that the subsequent steps taken by the trust to invite public offers were only a facade to create a false impression and public offers had been invited. It was further submitted that the impugned order did not impose the condition on the purchaser (1) to relocate the slum dwellers on the said CTS No. 82, (2) acquire and convey vacant possession of CTS No. 61 in favour of respondent No. 1 trust by relocating slum dwellers in the said CTS No. 82. It was then submitted that the most onerous condition in the public advertisement was relaxed and the purchaser was no longer required to rehouse the slum dwellers in the CTS No. 82. It was submitted that since the trust had decided to modify the terms of sale, the trust ought to have invited fresh bids from the public. Lastly, it was submitted that in the order of the Charity Commissioner, the costs of relocating the slum dwellers was quantified at Rs. 1.65 crores whereas the purchaser was given an option of paying only Rs. 1.10 crores etc. to the trust without the obligation of relocating the slum dwellers.

8. The learned Counsel for the petitioner relied on judgment of the Apex Court in the case of Mehrwan Homi Irani and Another Vs. Charity Commissioner, Bombay and Others, and Full Bench judgment of this Court in the case of Shailesh Developers and Anr. v. Joint Charity Commissioner, Maharashtra and Ors. reported in 2007(3) Mh.L.J. 717.

9. The learned Counsel appearing on behalf of respondent No. 2 submitted that the petitioner had no locus to challenge the order of Charity Commissioner. It is submitted that the petitioner was neither a person interested in the trust nor had acquired any interest in the trust property. Secondly, it was submitted that there was gross delay on the part of the petitioner in filing this petition and on the ground of gross of delay and laches, the petition was liable to be dismissed. It was further submitted that after the order passed by the Charity Commissioner had been implemented, the CTS No. 61 was conveyed in favour of the trust. Secondly, the trust has entered into a development agreement with respondent No. 2 which was duly registered. The building plans in respect of CTS No. 82 were sanctioned. Respondent No. 2 thereafter had entered into a joint development agreement with M/s. Aditi Construction. Respondent No. 2 had settled with 28 slum dwellers who had agreed to accept the commercial premises in CTS No. 82 in place of residential premises.

10. We have heard the learned Counsel appearing for the petitioner and the respondent at length. The submission made by the Counsel appearing for the petitioner cannot be accepted. Firstly, the petitioner has no locus to file the present petition. The petitioner was aware of the proposed sale by trust which is evident from the averments made in para 3.7. However, he chose not to

purchase the tender and to bid by filing tender form with the trust. The petitioner did not interfere in the petition which was filed by another Developer viz. Shailesh Developers when they filed writ petition in this Court being Writ Petition No. 2320 of 2006. The Full Bench of this Court in the case of Shailesh Developers and Anr. v. Joint Charity Commissioner, Maharashtra and Ors. was called upon to decide the following questions:

i) Whether the power vesting in the Charity Commissioner u/s 36 of the Bombay Public Trusts Act, 1950 is confined to grant or refusal of sanction to a particular sale transaction which the trustees propose to make or it extends to compelling trustees to sell or transfer the property to another party who participates in the proceedings u/s 36 and gives his offer?

ii) Whether the party who comes forward to submit his offer directly before the Charity Commissioner in a pending application u/s 36 of the said Act of 1950 has locus standi to challenge the order passed in a proceeding u/s 36?

The Full Bench held that the said party has locus to challenge the final order passed in proceedings u/s 36 of the Act. Reliance was placed by the learned Counsel appearing on behalf of the petitioner on the said judgment. The ratio of the said judgment will not apply to the facts of the present case since in the said case, an application for intervention was made before the Charity Commissioner and thereafter, an order passed by the Charity Commissioner was challenged and under the said circumstances, the Court of Full Bench was of the view that such a party could challenge the final order passed under provisions of Section 36 of the Act. In the present case, it is an admitted position that the petitioner had not filled the tender form nor it filed an application for intervention before the Charity Commissioner and thereafter, it filed the writ petition directly in this Court.

11. Secondly, there is much substance in the submission made by the respondent that there is gross delay in filing the present petition. The impugned orders were passed on 21st June, 2006 and 26th July, 2006. The petition is filed in October, 2007 which is after a lapse of one year and three months. Further, the petitioner was aware that another developer had filed a petition challenging the impugned orders. The said writ petition No. 2320 of 2006 was dismissed on 17th October, 2006 and thereafter, the present petition is filed after the dismissal of the said writ petition. Pursuant to the impugned order passed by the Charity Commissioner, the parties have altered their position to their detriment. Respondent No. 2 has conveyed CTS No. 61 to the trust and had applied for sanction of the building plan in respect of CTS No. 82 and sanction was granted by the Corporation. Development agreement has been executed between respondent No. 2 and the trust. A huge amount has been spent by the respondent No. 2 in pursuance to the development agreement between the trust and the respondent No. 2. It is, therefore, seen that the petition has not been filed bonafide. The only inference that can be drawn that the petitioner was keeping watch over the proceedings before the Charity Commissioner and the proceedings which were pending in the High Court. At no point of time, he filed

an application for intervention and only after the petition filed by the other developer i.e. Shailesh Developers was dismissed by this Court, thereafter, the present petition has been filed. The petition of the petitioner, therefore, cannot be entertained on the ground of delay and laches.

12. The petition is expressly malafide and purely motivated. The petitioner who, admittedly, is a builder and developer and is obviously competitor, has filed this petition after the dismissal of the petition of M/s. Shailesh Developers. On merits also, no case is made out by the petitioner. In this context, it is necessary to briefly consider the relevant facts. On 24th May, 2005, the trust issued public notice and invited offers for sale of CTS No. 82. One condition was imposed that the offerer would have to acquire CTS No. 61 and convey the same to the trust as also to remove encroachments from CTS No. 61 and other trust encroachment area. Respondent No. 2 made an offer which is accepted by the trust and MOU was executed on 25th June, 2005. An application was filed by the trust to the Charity Commissioner u/s 36 of the Bombay Public Trusts Act for sanction on 4th July, 2005. The slum dwellers occupying the CTS No. 61 filed an application before the Charity Commissioner and raised an objection regarding CTS No. 61 being referred to the application for sanction. He has, therefore, made an application deleting the reference to plot bearing CTS No. 61. Consequently, on 21st June, 2006, the Charity Commissioner allowed the said application. Thereafter, on 26th July, 2006, the Charity Commissioner sanctioned the sale. The operative part of the order reads thus:

1. Application is allowed.

1. The applicant trust is permitted to sell CTS No. 82 to M/s. Dream Developers for consideration of Rs. 3.40 Crores (Rupees Three crores forty lacs only).

2. In case, the purchaser transfers the vacant possession of CTS No. 61, to the applicant trust, the purchaser shall pay the consideration of Rs. 2.30 crores (Rupees two crores thirty lacs only) to the applicant trust.

3. Sale proceeds shall form the part of the corpus of the applicant trust.

4. The applicant trust shall put the sale proceeds in any Nationalised Banks or in Government approved securities of their own choice. The interest accrued on the sale proceeds shall be utilized to achieve the objects of the trust.

5. This permission is subject to all the laws and rules applicable to the present transaction.

6. The Purchaser shall bear the expenses of stamp duty, registration charges, etc.

7. This transaction is valid for a period of one year. Necessary change report u/s 22 of the Bombay Public Trusts Act, 1950, should be submitted to the concerned authority.

13. Thereafter, on 4th August, 2006, respondent No. 2 caused CTS No. 61 to be conveyed to the trust by registered Conveyance from the owners. Thereafter, the

writ petition which was filed by M/s. Shailesh Developers being Writ Petition No. 2320 of 2006 was rejected by the Division Bench of this Court on 17th October, 2006. The Division Bench observed thus:

Considering the above background, the question is whether after the Respondent No. 9 in terms of the MOU entered into MOU with the Respondent No. 3 has taken steps to convey CTS No. 61 in favour of the Respondent No. 3. Whether this Court should intervene in the exercise of its extra-ordinary jurisdiction. The order of sanction resulted in the trust being entitled to Rs. 3.40 Crores. However, in the event Respondent No. 9 conveyed CTS No. 61 in favour of Respondent No. 3. The consideration was to be Rs. 3.30 Crores. Apart from that Respondent No. 9 had to remove encroachment. Respondent No. 9 pursuant to the sanction has already taken steps and even otherwise, we do less find that the offer made by the Petitioner. Respondent No. 9 had also entered into MOU with the Respondent No. 3. These are considerations which must weigh in favour of Respondent No. 9. We do not think in these circumstances that this is a fit case where we should exercise our extra ordinary jurisdiction. Hence, petition rejected.

14. It is an admitted position that CTS No. 61 is already conveyed to the trust. The terms of the public notice and the terms and conditions of the tender document have to be read together. Thus, the condition is that acquirer of CTS No. 82 is required to shift or relocate the slum dwellers of CTS No. 61 not necessarily on CTS No. 82 but anywhere else. The petitioner was very well aware that CTS No. 61 was conveyed in favour of the trust since a reference had been made to this fact in the order passed by the Division Bench in Writ Petition No. 2320 of 2005. Thus, there is no substance in the submission made by the learned Counsel for the petitioner. Writ petition is, accordingly, liable to be dismissed.

15. Under the circumstances, writ petition is dismissed. There shall be no order as to costs.

