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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1915 OF 2025

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Aniruddh Nikhil Makhecha

Age-39 years, Occ.-Business,
A5/1002, Vikas Complex,
Castle Mill Naka, Thane West 400 601

... Petitioner

V/s.

- 1 **Joint Charity Commissioner-2,**
Mumbai
- 2 **Ratanshi Premji Charitable Trust,**
R/o. Shop No.8, Dwarkadas Ratanshi
Mansion, Subhash Path, Near Kadva Lane
Near Collector Office Thane (W) 400 601
- 3 **Nikhil R. Makhecha,**
Managing Trustee
Age: Adult, Occ: Business
Having Office At Shop No.8 Dwarkadas
Ratanshi Mansion, Subhashpath, Near
Kadva Lane, Thane (W)- 400 601
- 4 **Sneha Nikhil Makhecha**
Age: Adult, Occ: Housewife
Having Office At Shop No.8 Dwarkadas
Ratanshi Mansion, Subhashpath, Near
Kadva Lane, Thane (W)- 400 601
- 5 **Haresh M. Panchal**
Age. Adult, Occ: Business
Having Office At Shop No.8 Dwarkadas
Ratanshi Mansion, Subhashpath, Near
Kadva Lane, Thane (W)- 400 601

6 Bharti Kishor Adhia

Age: Adult, Occ: Housewife
 Having Office At Shop No.8 Dwarkadas
 Ratanshi Mansion, Subhashpath, Near
 Kadva Lane, Thane (W)- 400 601

7 Umang Nikhil Makhecha

Age: Adult Occ: Busniess
 Having Office At Shop No.8 Dwarkadas
 Ratanshi Mansion, Subhashpath, Near
 Kadva Lane, Thane (W)- 400 601

8 M/s. Fenkin Infotech LLP,

404, Centrum IT Park,
 Wagle Estate, Thane 400 604

... Respondents

Mr. Veerendra Tulzapurkar, Senior Advocate with Mr. Chaitanya Chavan i/by Mr. Omkar Nagwekar for the petitioner.

Ms. A. A. Nadkarni, AGP for the State.

Mr. Sachin Mandlik with Ms. Yogi Joshi for respondent Nos.2 to 7.

Mr. Atul Damle, Senior Advocate with Jaideep Singh Khattar and Janhavi Kalpesh Pise i/by the Fort Circle Advocates & Solicitors for respondent No.8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 7, 2025

JUDGMENT:

1. The petitioner, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, has approached this Court assailing the legality and propriety of the order dated 8th July 2024 passed by the Joint Charity Commissioner-2, Maharashtra State, Mumbai, in Application

No.51 of 2024. By the said order, respondent No.2-Trust has been granted permission to alienate and dispose of the properties delineated in the application.

2. The factual matrix leading to the institution of the present writ petition unfolds as follows:

3. Respondent No.2-Trust, a charitable entity, stands registered under the provisions of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as "the Act, 1950") pursuant to a Trust Deed dated 21st January 1958, with its registration completed in the year 1961. The primary objectives of respondent No.2-Trust encompass the impartation of education, the provision of medical health facilities, and engagement in religious and social welfare activities. Over the years, respondent No.2-Trust has acquired various parcels of land, including substantial holdings in Thane, more particularly in the village of Vadavli in Owale.

4. On 8th July 2024, respondent Nos.2 to 7 jointly preferred Application No.51 of 2024 under Section 36(1)(a) of the Act, 1950, seeking the sanction of respondent No.1 for the sale of the properties as specified in paragraph 6 of the said application. The apparent rationale furnished in justification of the proposed alienation was that the subject properties were situated in a hilly and marshy terrain, characterized by their uneven topography, rendering them largely inaccessible and unsuitable for productive use in furtherance of the objectives of the Trust.

5. Upon due consideration of the application, respondent No.1, vide the impugned order, accorded permission for the sale of the

said properties in favour of respondent No.8 for a total consideration of Rs.75,05,00,000/-, stipulating that the transaction should be consummated within a period of six months from the date of the order. Additionally, the Joint Charity Commissioner-2, Maharashtra State, Mumbai, while granting such permission, imposed certain regulatory conditions governing the sale, inter alia, mandating that the expenses pertaining to the execution of the sale deed, such as stamp duty and registration charges, shall be borne by respondent No.8. The proceeds derived from the sale were directed to be deposited in a fixed deposit account in a nationalized bank for a long-term duration, to be utilized exclusively for achieving the objects of the Trust. Furthermore, the order categorically restrained the utilization of the fixed deposit without prior approval from the Charity Commissioner and proscribed the creation of any encumbrance, including the procurement of loans, against the said deposit.

6. Aggrieved by the said order and contending that the permission granted for the alienation of Trust properties is in derogation of the principles governing the administration of charitable trusts, the petitioner, claiming status as a former trustee, has instituted the present writ petition, seeking judicial intervention to annul the impugned order and to forestall any irreversible consequences that may ensue from its implementation.

7. Mr. Tulzapurkar, learned Senior Advocate appearing for the petitioner, vehemently contended that respondent No.1 failed to undertake an objective and comprehensive adjudication of the market valuation of the properties in question. Drawing the

attention of this Court to the valuation certificate issued by Span Arch dated 22nd May 2024, he submitted that the valuation erroneously accounted for the total saleable area as 94,860 square metres, whereas the aggregate area of the property stood at 1,78,140 square metres. The extent of land affected by reservation under CRZ-II from Survey Nos. 83 to 87 had not been precisely delineated. The valuer's report, according to learned Senior Advocate, vaguely indicated that certain plots fell within CRZ-II and CRZ-IB zones, and based on these factors, assumed negative weightages of 60% for Shallow Water Park Reservation No.3 and 20% for plots falling within CRZ-II and CRZ-IB. Consequently, the total negative weightage assumed by the valuer was 80% of the Ready Reckoner value, which was pegged at Rs.19,900/- per square metre, thereby reducing the valuation rate for the five plots to Rs.3,980/- per square metre. Furthermore, he pointed out that the valuer factored in Transferable Development Rights (TDR) generated for the surrendered area amounting to 1,64,500 square metres and, based on these calculations, concluded that the market value of the five plots stood at Rs.65,47,10,000/-.

8. Additionally, referring to the tender conditions, he submitted that the successful bidder failed to satisfy the prescribed eligibility criteria, particularly in relation to the net-worth requirement, and that the associate entity considered for qualification purposes was erroneously assumed to meet the requisite financial strength. He further submitted that the bank guarantee of Rs.74 crores was issued by a non-banking financial company whose net-worth was about 3 crores. The process, according to him, was conducted with

undue haste, as the applications were invited on 18th May 2024, with bids required to be submitted before 1st June 2024.

9. Learned Senior Advocate further contended that while determining the market price of the property, due regard was required to be given to the entitlement of an owner whose plot is affected by reservation and is eligible for development under the Pradhan Mantri Awas Yojana. He relied upon Regulation Nos. 14.1.1 and 14.4.2, emphasizing that these considerations were completely overlooked by respondent No.1. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in *Shri Ambadevi Sanstha & Ors. v. Joint Charity Commissioner & Ors.*, (2019) 17 SCC 419.

10. Per contra, Mr. Damle, learned Senior Advocate appearing for respondent No.8, sought to justify the impugned order, contending that the topography of the land in question is unsuitable and marshy, further aggravated by encroachments by antisocial elements. He submitted that considerable expenditure would be required for maintaining and safeguarding the property, thus warranting its sale. He emphasized that the income derived from the transaction would be legally appropriated for the benefit of the Trust, and that the decision was taken in consultation with the Auditor and Legal Consultant. He asserted that the valuation of Rs.70,90,10,000/- was fair and reasonable, being based on the assessment of a duly qualified expert.

11. Mr. Mandlik, learned Advocate for respondent Nos.2 to 7, echoed the submissions advanced on behalf of respondent No.8,

supporting the impugned order. He contended that the Trust was experiencing financial distress, as reflected in the income tax records indicating operational losses. The due process of publishing notices and inviting tenders was scrupulously adhered to. He further submitted that the financial capacity of the successful bidder met the requisite eligibility criteria. In addition to the valuer's report examined by respondent No.1, another valuation report prepared by a government-registered valuer corroborated the market price assessment. He, therefore, urged this Court to refrain from interfering with the well-reasoned order passed by respondent No.1.

12. I have given anxious consideration to the rival submissions and carefully scrutinized the material placed on record. The determination of the controversy necessitates a meticulous examination of the relevant statutory provisions governing the alienation of trust properties.

13. The Maharashtra Public Trusts Act, 1950, and the Maharashtra Public Trusts Rules, 1951, enclose the statutory framework within which the Charity Commissioner exercises jurisdiction in matters concerning the disposal of immovable properties belonging to a public trust. A careful reading of the scheme of the Act indicates that the Maharashtra Public Trusts Act, 1950, and the accompanying Rules, impose stringent restrictions on the sale, mortgage, exchange, or lease of immovable properties belonging to a public trust. Section 36 of the Maharashtra Public Trusts Act, 1950, which regulates the alienation of immovable properties of public trusts, stipulates that no sale, exchange, or gift

of immovable property belonging to a trust shall be valid without the prior sanction of the Charity Commissioner. The provision underscores the necessity for a rigorous scrutiny of such transactions to ensure that they are undertaken in furtherance of the interests, benefit, and protection of the trust. The Charity Commissioner is empowered to impose conditions while granting such sanction, having regard to the welfare of the trust. Section 36 of the Act explicitly stipulates that any alienation of trust property, including transactions exceeding certain time thresholds in respect of agricultural or non-agricultural land, is rendered invalid in the absence of prior sanction from the Charity Commissioner.

14. The statutory framework further delineates that the Charity Commissioner, while exercising powers to grant sanction, must be guided by three core considerations—(i) the interest of the trust, (ii) its benefit, and (iii) its protection. The phraseology employed in Section 36(1)(b) and Section 36(1)(c) of the Act, to the effect that the sanction "may be accorded subject to such conditions as the Charity Commissioner may think fit," vests considerable discretion in the authority. However, such discretion is neither absolute nor unbridled; it is circumscribed by the trust's objectives and the imperative of ensuring that the proposed alienation is effectuated in a manner conducive to advancing these objectives.

15. Equally significant is the principle that the sale of trust property must be necessitated by considerations of genuine need, such as discharging legitimate debts, preserving the trust from legal or financial jeopardy, or fulfilling the legitimate obligations that arise from the trust's activities. It is impermissible for trustees

to alienate immovable property purely to enhance profitability or to speculate in the real estate market. The concept of "legal necessity," deeply rooted in common law principles pertaining to religious endowments, mandates that any encumbrance or alienation should remain confined to the extent strictly required for meeting the immediate and justifiable needs of the trust.

16. It is settled law that the trustees hold trust property in a fiduciary capacity, for the beneficiaries of the trust and for the realization of the trust's objects. The trustees act as guardians of the trust's corpus and must discharge their duties with the highest degree of prudence and loyalty. Consequently, trustees are bound to manage and administer the property in a manner that subserves the welfare of the trust, rather than their personal interests or conveniences. They cannot deal with trust property as though it were their personal asset.

17. Immovable trust properties are, by their very nature, to be zealously safeguarded and preserved. While the law does acknowledge situations where alienation becomes inevitable or is deemed beneficial for fulfilling the trust's objectives, such measures must be invoked sparingly and only after thorough deliberation. Any decision on the sale or mortgage of trust assets necessitates careful appraisal by the Charity Commissioner and must be backed by cogent reasons evidencing that the transaction truly advances the interests of the trust.

18. The overarching legal premise, therefore, is that the power of the trustees to dispose of trust property is neither unfettered nor

absolute. Instead, it is defined by necessity, guided by the principle of prudent management, and aimed at ensuring that the trust's objectives are realized without undermining its long-term viability. In the event a trustee proposes to incur debts or create encumbrances for the maintenance, expansion, or preservation of the trust property, it is incumbent upon the trustee to demonstrate that such measures are indispensable. It is upon these axiomatic principles that this Court shall consider the impugned order, to ascertain whether the proposed alienation is indeed propelled by genuine necessity and is in the paramount interest of the Trust.

19. The statutory scheme, thus, visualises a structured and stringent scrutiny of transactions involving trust properties, ensuring that they are undertaken in good faith, in furtherance of the objectives of the trust, and devoid of any element of impropriety. The provisions, when read conjointly, underscore the paramountcy of the trust's interest and the fiduciary obligations cast upon the trustees in managing its assets. Any deviation from the prescribed legal framework or circumvention of the safeguards stipulated under the law would vitiate the transaction and invite judicial interference.

20. Notably, Section 36(2) recognizes the authority of the Charity Commissioner to revoke a previously granted sanction if it is demonstrated that the sanction was obtained through fraud, misrepresentation, or suppression of material facts. In *A.A. Gopalakrishnan v. Cochin Devaswom Board*, (2007) 7 SCC 482, the Hon'ble Supreme Court underscored the importance of protecting religious and charitable properties and cautioned that

trustees and statutory authorities must act with utmost vigilance to safeguard trust assets. The salutary objective of the revocation provision is to ensure the interests, benefit, and protection of the trust and its properties. This legislative design prevents the misuse of trust assets and serves as a constant reminder that trustees, or any person acting on behalf of the trust, must proceed with transparency and good faith, failing which the law provides a robust corrective mechanism.

21. Furthermore, Rule 24 of the Maharashtra Public Trusts Rules, 1951, prescribes the procedural framework governing applications under Section 36. It mandates that every application seeking sanction for alienation must disclose pertinent details, including the necessity of the proposed transaction, its beneficial impact on the trust, and any encumbrances on the subject property. The provision further stipulates that the application must, as far as practicable, be accompanied by a valuation report of an expert. The Charity Commissioner is vested with discretion to conduct inquiries as deemed necessary and to impose conditions while granting or refusing sanction.

22. Bearing these legal principles in mind, I now proceed to adjudicate upon the specific issues raised in the present petition.

23. From a perusal of the impugned order, it appears that the fair market value arrived at by the Joint Charity Commissioner is grounded in a valuation report dated 22nd May 2024. However, the scrutiny of that valuation report reveals multiple infirmities. In particular, the reduction of the Ready Reckoner price by 80%, the

reliance on 94,860 square metres as against the actual 1,78,140 square metres, and the unexplained rationale behind assigning negative weightages of 60% and 20% are matters that should have been rigorously examined. Moreover, the basis for concluding that TDR could be valued at 1,64,500 square metres is equally unclear. The Charity Commissioner must adopt a scrupulous approach in verifying valuations to ensure the trust property's disposal is not marred by underpricing or lack of transparency.

24. The Charity Commissioner, while granting sanction, is under a statutory duty to assess the necessity for the proposed sale and whether such alienation will indeed be in the best interest of the trust. This duty includes a careful determination of the fair market value through transparent procedures, such as auction or competitive bidding, ensuring wide publicity so that all potential bidders are aware of the proposed sale. In *Sailesh Developers and Another Vs. Joint Charity Commissioner, Maharashtra and Others.*, 2007 (3) Mh.L.J. 717 (FB), the Full Bench of this Court emphasized that a public advertisement inviting bids is a preferred mechanism to ascertain the true market value of trust properties, thus safeguarding against inadequate valuations.

25. Before sanctioning the sale of trust property, the Charity Commissioner is mandated to arrive at clear findings on the following aspects: (i) the trust's genuine need to sell the properties; (ii) whether the alienation is in the trust's best interest and beneficial to its objectives; and (iii) whether the sale is both necessary and expedient in the broader scheme of managing the trust. As repeatedly held, including in *Sailesh Developers* (supra),

the Charity Commissioner should adhere to a transparent procedure, typically involving a public advertisement or an auction, to ensure the property fetches its fair market value and to guard against any potential undervaluation or collusive bidding.

26. It is true that the property's shallow terrain, encroachments, and significant expenses for legal proceedings may constitute a legitimate cause for trustees to seek its disposal. Nonetheless, such factors must be substantiated by tangible proof, and the ultimate decision on alienation has to be based on a reasoned analysis of whether, on balance, the trust's interests are optimally served by the proposed sale.

27. The Joint Charity Commissioner should have scrutinized, in depth, whether the necessity asserted by the trustees is indeed bonafide, and whether, by divesting itself of the said property, the trust would be advancing or jeopardizing its long-term mission. The factual and legal materials placed by the parties deserved a more meticulous evaluation.

28. In the present case, the reasons cited for alienation, such as the property's topographical challenges and encroachments during protracted litigation, might well be valid considerations. Even so, the onus remains on the Charity Commissioner to conduct a probing inquiry to ascertain whether the purported need is both genuine and urgent, and whether the transaction genuinely subserves the objects of the trust. The trust property must be preserved unless an overwhelming necessity is established, lest the trust be divested of its beneficial interests without substantial

justification.

29. In light of the foregoing, it emerges that the Joint Charity Commissioner has neither explained nor adequately examined the basis for the drastic reduction in the Ready Reckoner valuation and the adoption of 94,860 square metres as the saleable area. Further, the TDR valuation lacks clarity, and there is no detailed discussion as to how these negative weightages align with the property's actual ground realities. The relevant factor of what a willing purchaser might offer, considering both the advantages and disadvantages of the property—particularly its TDR potential—has not been appraised comprehensively. An objective scrutiny is thus found wanting.

30. In summation, the Joint Charity Commissioner must formulate a conclusive view on whether the trust's expressed requirement to sell the property is meritorious and, if so, whether that disposition would unequivocally promote the trust's welfare and purpose. Where it is shown that the property is burdensome or incapable of yielding any reasonable return, thereby justifying a sale, the authority must nonetheless ascertain that the trust receives the best possible value.

31. Further, upon a finding in favor of disposing of the trust properties, the Joint Charity Commissioner is duty-bound to ensure that the sale is conducted through a transparent, competitive process, typically by publishing notices and inviting bids from interested parties. Such measures are indispensable to safeguard the trust's interest in obtaining a fair and equitable price

for its asset.

32. In the absence of these requisite steps, the impugned order stands vitiated for want of thorough inquiry and reasoned deliberation. Considering the nature of the irregularities, it is deemed necessary to remit the matter back to the Joint Charity Commissioner for a fresh adjudication, strictly adhering to the principles articulated in the statutory framework and the authoritative pronouncements of this Court.

33. Since this Court, by the present judgment, has set aside the order dated 8th July 2024 passed by respondent No.1, whereby permission was granted under Section 36 of the Act, it follows as a necessary corollary that all consequential actions taken in furtherance thereof, including the execution and registration of the conveyance deed dated 6th September 2024, cannot be sustained in law. The conveyance deed being a derivative act emanating from the impugned order, which has now been nullified, lacks legal efficacy and is rendered void ab initio. Consequently, for the purpose of restoring status quo ante, the said conveyance deed dated 6th September 2024 is also required to be quashed and set aside, thereby ensuring that the ownership and possession of the property in question revert to the trust, as it stood prior to the impugned transaction.

34. In the result, I pass the following order:

- (i) The impugned judgment and order dated 8th July 2024, passed by the Joint Charity Commissioner-2, Maharashtra State, Mumbai in Application No.51 of 2024, is

quashed and set aside.

(ii) In view of the foregoing discussion, the conveyance deed dated 6th September 2024 stands annulled and cancelled in law, as its very foundation, being the permission granted under Section 36 of the Act, has been adjudged as legally untenable and stands set aside.

(iii) The proceedings are remanded back to the Joint Charity Commissioner-2, Maharashtra State, Mumbai for a de novo consideration.

(iv) The Joint Charity Commissioner-2, Maharashtra State, Mumbai shall decide Application No.51 of 2024 afresh, after providing an opportunity of hearing to all concerned parties, and permitting them to place any further material relevant for the inquiry under Section 36 of the Act, 1950.

(v) In view of the protracted nature of the litigation and the significance of the trust's interest, the Joint Charity Commissioner-2, Maharashtra State, Mumbai shall endeavor to conclude the proceedings and pass a final reasoned order within six months from today.

35. The writ petition stands disposed of in above terms. No costs.

36. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)