

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.9936 OF 2018****(@ SPECIAL LEAVE PETITION [C] NO.35049 OF 2013)****SHRI AMBADEVI SANSTHA & ORS.****... APPELLANT(S)****VERSUS****JOINT CHARITY COMMISSIONER & ORS.****... RESPONDENTS****WITH****C.A. NO.9938 OF 2018 @ S.L.P. [C] NO.35050 OF 2013****AND****C.A. NO.9937 OF 2018 @ S.L.P. [C] NO.35051 OF 2013****J U D G M E N T****ARUN MISHRA, J.**

1. The appellant-Shri Ambadevi Sanstha, a registered Public Trust under the Bombay Public Trusts Act, 1950 (hereinafter referred as the "Act of 1950"), has filed the instant appeals against the judgments and orders dated 3.5.2013 and 10.5.2013 passed by the High Court of Judicature at Bombay, dismissing the writ petitions filed by the appellant herein and confirming the order dated 8.10.1998 of the Joint Charity Commissioner with respect to sale of the properties of the Trust. The Trust had been permitted to execute sale deeds of field Survey No.270/A/1 of village Khar, Talegaon, admeasuring 11 acres and 28

gunthas and field Survey No.11 of Chandpur, admeasuring 4 acres and 8 gunthas to Mr. J.M. Karwa, field Survey No.202 of Khar, Talegaon, admeasuring 16 acres to Mr. Manish Jaikishore Karwa and 15 acres and 33 gunthas out of field Survey No.202 of Khar, Talegaon to Shri Ashish Jaikishore Karwa and 15 acres and 15 gunthas from Survey No.12 of Chandpur to Shri Girish Jaikishore Karwa at the rate of Rs.7,651/- per acre.

2. The permission had also been granted by Joint Charity Commissioner to sell the immovable properties belonging to Trust i.e., House No.210, Plot No.228, Sheet No. 92-A, admeasuring 174.8 sq. meters situated in Ward No.15 in Bhaji Bazar Mohalla at Amravati for Rs.3,11,000.

3. Permission had also been granted by the Joint Charity Commissioner to sell House No.998 in Ward No.59 Taluka Bedmaru, District Amravati for sum of Rs.1,00,000/- (Rupees One Lakh Only).

4. The erstwhile Secretary of the old body of Trust had applied to the Joint Charity Commissioner for grant of permission to sell the properties of Trust. At least two persons had raised objections before the Joint Charity Commissioner that they were ready to purchase the land at a much higher price up to Rs.25,000/- and Rs.11,000/- per acre. The newly elected body of the Trust approached the Joint Charity

Commissioner and 15 trustees stated that Trust does not want to sell the properties. Despite the objection, the Joint Charity Commissioner had granted permission to sell the properties. Aggrieved thereby, the writ petitions were filed before the High Court by the Trust. The High Court vide impugned judgments and orders has dismissed the writ petitions. Hence, the appeals have been preferred.

5. The Trust has raised the ground that Joint Charity Commissioner did not act as per intendment of Section 36 of the Act of 1950. The Joint Charity Commissioner has failed to observe that when the Trustees have stated on behalf of Trust that the properties should not be sold, the Joint Charity Commissioner ought not have passed the order directing sale of the properties. The principles governing exercise of power under Section 36 had not been adhered to. There was no necessity to sell the Trust properties. Apart from that, the permission for sale of properties for a meagre amount was not at all in the interest of the Trust. The objections were rejected by the Joint Charity Commissioner for no good reason. The High Court has also committed illegality in dismissing the writ petitions.

6. It was contended on behalf of respondents that permission was granted to sell properties in the interest of the Trust as the Trust was not having proper income. The land is situated at a distance of 25 kms from Amravati. Three out of four lands are situated about 5 kms away

from the locality of Khar Talegaon. The Trust wanted to construct a hospital. The Trust was in dire need of money and had decided to invite tenders on 1.6.1994 by advertisement for the sale of land and only one offer from Mr. Naresh Laxmanrao Bhatkar was received for purchase of land admeasuring 15 acres 15 gunthas at Chandpur at the rate of Rs.4,500/- per acre. However, the said offer was not accepted by the Trust in the meeting dated 9.8.1994. Thereafter, second advertisement was published in the local newspapers in November and December, 1994. Varying offers for land between Rs.6,000/- to Rs.9,000/- per acre were received. Late Mr. Jaikishore Karwa submitted offer of Rs.7,651/- per acre for purchase of the entire land of the Trust i.e., 63 acres 4 gunthas, whereas the offer of Mr. M.K. Lakde was for Rs.9,000/- per acre for certain piece of land i.e., 11 acres 28 gunthas. The offer of Late Mr. Jaikishore Karwa, husband of respondent no.2-Smt. Tarabai, was accepted. The entire land was sold as indicated by Mr. Jaikishore Karwa in the names of several persons. The Trust in its meeting dated 13.3.1995 passed a resolution and accepted earnest money also.

7. It was further contended on behalf of respondents that the price offered was proper and valuation report was called from Talathi with respect to the land in question. Talathi had indicated that the market value of the land was Rs.8,000/- per acre at Khar Talegaon and Rs.5,000/- per acre at Chandpur, at the time of issuance of

advertisement in the year 1994. The Joint Charity Commissioner has considered the valuation report of the Talathi and the offer made by Mr. Jaikishore Karwa was found to be proper.

8. It was contended by the respondents that Joint Charity Commissioner did not grant permission in a mechanical way. Two objectors namely Mr. Vinod Tank and Mr. Vijay Jaiswal had submitted their higher offers before the Joint Charity Commissioner during the pendency of the application. Mr. Vinod Tank had neither participated in the tender process. It was not proper for him to submit a higher offer once the earnest money had been paid. The offer of Mr. Vinod Tank was rightly rejected. Similarly, the offer made by Mr. Narayanprasad Jaiswal and Mr. Shankarlal Jaiswal of Rs.25,000/- per acre after 2 ½ years from the date of acceptance of earnest money by the Trusts, was also rightly rejected. The Joint Charity Commissioner did not allow the objection raised by 15 newly added trustees as there was a dispute between old and the new trustees. The land was sold by the previous body of the Trust, as such the objection raised by the new body was rightly rejected. The Trust, in fact, had not passed any resolution dated 27.9.2018 before the decision was rendered by the Joint Charity Commissioner, not to sell the properties. Resolution dated 27.9.1998 was not submitted before the Joint Charity Commissioner. The Trustees did not pray before the Joint Charity Commissioner to withdraw the application filed for grant of

permission to sell the properties. The Trust did not file the aforesaid resolution dated 27.09.1998 even before the High Court. No meeting was held on the aforesaid date. It was also contended on behalf of respondents that Trust has filed false and fabricated affidavit dated 18.11.1997, which was not filed by the Trust before the Joint Charity Commissioner. The objectors Mr. Vinod Tank and others have not approached the High Court against the order of Joint Charity Commissioner. In other appeals also, it was contended that order of Joint Charity Commissioner was appropriate and in accordance with law.

9. This Court has considered the duty of a Charity Commissioner under Section 36 of the Act of 1950 in the recent decision in *Cyrus Rustom Patel v. Charity Commissioner Maharashtra*, (2017) 13 SCALE 44. This Court has observed that three classic requirements have to be considered by the Charity Commissioner i.e., the interest, benefit and protection of Trust. The Charity Commissioner has to be objectively satisfied that there is necessity to dispose of the property in the interest of public Trust. The power of Charity Commissioner extends to inviting offers from members of public and can also direct the trustees to sell or transfer the trust property to a person whose bid or quotation is the best.

10. In *Chenchu Rami Reddy v. Govt. of Andhra Pradesh*, (1986) 3 SCC 391, it was observed that there has to be full application of mind while granting permission to sell by the competent authority and the disposal of public property should normally be done by public auction. The public-minded citizens have to show exemplary vigilance and the property of religious and charitable institutions or endowment must be jealously protected. Property should be sold by public auction after fixing reserve price. This Court observed:

“10. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is the *raison d'etre* of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorized to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment. With these words of caution we close the matter.”

(emphasis supplied)

11. In *R. Venugopala Naidu v. Venkatarayulu Naidu Chairities*, 1989 *Supp (2) SCC 356*, this Court has reiterated that sale should be free from

suspicion and reserved price should be fixed after ascertaining the market value. This Court has observed:

“13. The subordinate court and the High Court did not go into the merits of the case as the appellants were non-suited on the ground of locus standi. We would have normally remanded the case for decision on merits but in the facts and circumstances of this case we are satisfied that the value of the property which the trust got was not the market value. Two persons namely S.M. Mohamed Yaaseen ad S.N.M. Ubayadully have filed affidavit offering Rs. 9 lakhs and Rs. 10 lakhs respectively for these properties. In support of their bona fides they have deposited 10 per cent of the offer in this Court. This Court in *Chenchu Ram Reddy v. Government of Andhra Pradesh*, (1986) 3 SCC 391, has held that the property of religious and charitable endowments or institutions must be jealously protected because a large segment of the community has beneficial interest therein. Sale by private negotiations which is not visible to the public eye and may even give rise to public suspicion should not, therefore, be permitted unless there are special reasons to justify the same. It has further been held that care must be taken to fix the reserve price after ascertaining the market value for safeguarding the interest of the endowment.”

12. In *Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society*, (2013) 11 SCC 531, this Court took note of the fact that Trustees and petitioners had been indulging in a flip-flop and taking advantage of the absence of any clear-cut statutory measures designed to prevent abuse of the process of law. The Charity Commissioner was justified in rejecting the application for permission to sell for two reasons, firstly since the Trustees were not voluntarily selling the Trust land and secondly, in the given circumstances, the sale transaction was not for the benefit and in the interest of the Trust. It was further observed that lack of bonafide of trustees could not have been overlooked by the High Court. Due to passage of time, the value of

the Trust land had increased considerably and it was necessary to have made efforts for obtaining maximum price from the open market. This Court observed:

“53. In *Mehrwan Homi Irani v. Charity Commr.*, (2001) 5 SCC 305, it was categorically held that the Charity Commissioner, while granting sanction under Section 36 of the Act, must explore the possibility of getting the best price for the trust properties. In keeping with this, the Charity Commissioner was directed to issue a fresh advertisement for leasing out the trust property and "formulate and impose just and proper conditions so that it may serve the best interests of the Trust." The observations of this Court and directions given are as follows:

“9.... In the best interests of the Trust and its objects, we feel it appropriate that Respondents 2 to 4 should explore the further possibility of having agreements with better terms. The objects of the Trust should be accomplished in the best of its interests. Leasing out of a major portion of the land for other purposes may not be in the best interests of the Trust. The Charity Commissioner while granting permission under Section 36 of the Bombay Public Trusts Act could have explored these possibilities. Therefore, we are constrained to remit the matter to the Charity Commissioner to take a fresh decision in the matter. There could be fresh advertisements inviting fresh proposals and the proposal of the 5th respondent could also be considered. The Charity Commissioner may himself formulate and impose just and proper conditions so that it may serve the best interests of the Trust. We direct that the Charity Commissioner shall take a decision at the earliest.”

13. In *Cyrus Rustom Patel (supra)*, the Court observed that previous sanction of the Charity Commissioner has to be obtained for sale of the Trust property:

“24. It is apparent from the provisions of Section 36 that sale, exchange or gift of any immovable property or lease, extending beyond ten years in the case of agricultural land, or for a period exceeding three years in the case of non-agricultural land or a building, belonging to a public trust shall not be valid without previous sanction of the Charity Commissioner.

25. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. "the interest, benefit, and protection" of the Trust. The expression that sanction may be accorded subject to such conditions as Charity Commissioner may think fit under Section 31(1)(b) and Section 36(1)(c). The Charity Commissioner has to be objectively satisfied that property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account aforesaid triple classic requirements. It is also open to the Charity Commissioner, in exercise of power of Section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of Section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to sub-serve the interest, benefit, and protection of the Trust and its property."

(emphasis supplied)

The Court has also observed that the trustees hold the property for the benefit of the beneficiaries. In case the Charity Commissioner accepts the necessity of alienating the trust property, the trustees cannot insist that the property should be sold only to a person of their choice, though the offer given by the person may not be the best offer. The property may be vested in the trustees, but the vesting is for the benefit of the beneficiaries. Best available offer should be accepted in the case of sale.

14. When we consider the order passed by the Joint Charity Commissioner on 8.10.1998 in the instant case, several applications were decided by common order. The Joint Charity Commissioner noted that objection was raised by 15 newly elected Trustees not to sell the properties. It was incumbent upon the Joint Charity Commissioner to

ascertain the proper valuation of the properties. In the case of time barred transaction, it was held that it was not for the Joint Charity Commissioner to reject the offer on the ground that transaction had become time barred, but it was for the Civil Court to consider the said aspect for transaction entered into in 1990 and 1994 for which the applications for grant of permission were filed in 1997/1998.

15. The reserved price of various properties was also not fixed in the instant matter and the Joint Charity Commissioner has failed to consider what was the actual price as on the date of grant of permission and when transactions were entered into. The permission to sell the properties had been granted in mechanical manner ignoring illegality of transactions. The action of the Trust seeking permission to sell after accepting the earnest money was wholly improper and impermissible. The transactions could not have been finalised nor possession could have been handed over before filing application to Joint Charity Commissioner under Section 36 of the Act of 1950. Prior sanction was necessary to create any right in the properties.

16. The offers were invited for land in 1994 and the applications were filed in the year 1997-98 for grant of permission to sell the properties of the Trust. The prices of 1994, thus, could not have been considered to be the value as on the date the permission was applied for. Apart from that, no serious efforts were made by the Joint Charity Commissioner to

ascertain the value of the properties in the years 1990, 1994 or 1998. After the advertisement inviting offer was issued in respect to lands, it is apparent that the offer of Mr.M.K. Lakde was for Rs.9,000/- per acre for a part of land, nonetheless it was much more than the value accepted by the Joint Charity Commissioner. Merely on the ground that Trust had accepted the earnest money from Mr. Jaikishore Karwa of Rs.21,000/-, no equity was created in his favour to purchase the property. It was not open to the Joint Charity Commissioner to permit the sale on the ground of receipt of earnest money in illegal manner. Before permission to sell no such agreement could have been entered into. The same indicated predisposition of Trust to sell it in illegal manner. The valuation report from Talathi was based on *ipse dixit* indicated the value of the land as Rs.8,000/- per acre. The offer could not have been accepted in view of the available higher offers. The Joint Charity Commissioner has failed to protect the interest of the Trust.

17. Mere statement by the Trust that earnest money was received from prospective purchasers of house in the year 1990, thus, it should be sold to them, could not be said to be a legally permissible approach. It was not legally permissible to receive earnest money or to create any interest without grant of prior permission to sale. Thus, no equitable consideration could have arisen in favour of purchasers by the payment of earnest money of Rs.1,60,000/- in the year 1990.

18. The Joint Charity Commissioner had also observed in its order that if the request of Trust to sell the land to prospective purchaser was rejected, the Trust was likely to be forced to face litigation at the instance of the prospective purchasers as they claimed to be in possession of the land for which they have paid the earnest money. This kind of illegal transaction could not have been sanctioned by the Joint Charity Commissioner. It was wholly impermissible and violative of intendment of the provisions contained under Section 36 of the Act of 1950.

19. No effort was made to ascertain the valuation of the house and no reserved price was fixed, thus, the sale of the properties was wholly impermissible. The Joint Charity Commissioner has also observed that it was not for him to consider the effect of enormous delay in approaching for grant of permission. No such delayed application could have been entertained to validate illegal transaction. The Joint Charity Commissioner has failed to consider the interest, benefit and the protection of the property of the Trust. The permission to sale with respect to agricultural lands as well as the house was granted illegally.

20. In view of the above, it is not necessary to go into the question that newly elected body of the Trust had opposed the sale of the Trust properties by old trustees. When there was such a dispute between old

and new body, the Joint Charity Commissioner was required to be on the guard and in view of the objection raised by 15 Trustees by presenting themselves before the Joint Charity Commissioner that Trust properties should not be sold as recorded by the Joint Charity Commissioner could have waited and should have ascertained the genuineness of the objection and need for sale of properties and whether sale was in the interest of Trust. The High Court had also recorded that the resolution was passed on 27.9.1998 not to proceed with sale. Though, it was disputed that it was not actually passed. Be that as it may. Fact remains that Trustees themselves presented before the Joint Charity Commissioner before arguments were heard and, in the circumstances, it was not at all proper or justified to sell the properties of the Trust. No necessity for sale of the properties was made out. Thus, the sale of the Trust properties was wholly uncalled for.

21. In view of the above, we direct the Trust not to fritter away with the properties in the manner in which it has been done. In future also, let the properties of the Trust and its legacy be protected and guarded and it should not be sold away in the manner as has been done in the present case. We allow the civil appeals and set aside the judgments and orders passed by the High Court and that of the Joint Charity Commissioner. Transactions of sale are annulled.

22. It was contended on behalf of purchasers that they have made the land cultivable by spending the amount and have levelled it also. As a matter of fact, under an illegal sale, they have enjoyed the properties for more than two decades. It was wholly impermissible and they have earned more than the value of the land as in the Land Acquisition Act, the compensation is granted in the absence of exemplar sale evidence on the basis of usufruct of 10 years. They have enjoyed the properties for more than two decades, thus there is absolutely no equity in their favour and they are not entitled to retain the possession of the same. Let the possession be restored forthwith within a period of two months, failing which we direct the concerned authority to take the possession of land and houses with the help of police authorities. Let compliance of order be reported to this Court within 10 weeks.

.....J.
(Arun Mishra)

New Delhi;
September 25, 2018.

.....J.
(Vineet Saran)