

(1982) 03 BOM CK 0071

Bombay High Court

Case No: F.A. No. 468 of 1975

Govardhandhari Devasthan

APPELLANT

Vs

Collector of Ahmednagar and
Others

RESPONDENT

Date of Decision: March 1, 1982

Acts Referred:

- Bombay Public Trusts Act, 1950 - Section 32, 34, 36, 56B
- Land Acquisition Act, 1894 - Section 23, 31, 31(1), 32

Citation: AIR 1982 Bom 332 : (1982) MhLJ 390

Hon'ble Judges: Bharucha, J

Bench: Single Bench

Advocate: V.D. Govilkar, for the Appellant; M.R. Kotwal, Govt. Pleader and C.D. Shenoy, Asst. Govt. Pleader, for the Respondent

Judgement

Masodkar, J.

This appeal and the suo motu notice issued to the charity commissioner have reference to the compensation proceedings under the provisions of the Land Acquisition Act, 1894 with regards to the lands belonging to the public trust , being Shri. Govardhandhari Devasthan, Kopargaon , bearing survey no. 238 (13 acres) and survey No. 31 (6 acres and 36 gunthas) . Section 4 notification was issued on January 9, 1969 . The Special Land Acquisition Officer , Good Project , Ahmednagar , made an award u/s 11 of the L.A. Act, under which compensation against survey No. 238, being Rs. 72,152/-, was directed to be credited into the Government Treasury with a rider that the proposal for payment of cash allowance be submitted to the commissioner , Poona Division , Poona through the Collector , Ahmednagar , by the Tahsildar Kopargaon. Thus, he virtually seized the amount in favour of the Government and put the same in the custody of the Tahsildar for the purpose of permitting payment of cash allowance to the trustee. He determined the compensation for survey No.31 at Rs. 25,392/- being the two-thirds value of the

market price. This determination u/s 11 of the L.A.Act , in this manner, was subjected to reference u/s 18 of the L.A.Act by the trustees and the reference was tried by the Civil Judge , Senior Division , Ahmednagar.

2. By the impunged judgment under appeal at the behest of the trustees , the learned trial judge rejected the reference , firstly holding that the two-thirds market price for survey No.31 was proper in view of the Government resolution with regard to restricted tenures . With regard to the compensation awarded in respect of the other land , it was found , on the basis of the evidence , that the compensation was adequate , the rate being Rs. 4,800/- per acre. It does not appear that any notice as required by Section 56B of the Bombay Public Trusts Act, 1950 was issued to the Charity Commissioner , nor does it appear that the direction with regard to the holding of the compensation money in favour of the Government was properly considered in the light of the law applicable to such matters.

3. When the appeal came up for hearing because of the admitted position that the lands belonged to the public trust and that the original claimants and the appellants before us were the trustees thereof, we thought it fit to issue a suo motu notice u/s 56B of the Bombay Public Trusts Act, 1950 to the Charity Commissioner. A faint submission was made on behalf of the Collector objecting to such issuance of the notice , but, as the decision in the present appeal would show, such an objection is without any merit . In fact if the compensation is payable to the persons who are the trustees governed by the provisions of the Bombay Public Trusts Act ,1950 , the special Land Acquisition Officer could not have consigned the compensation money to the Government Treasury nor could have conferred authority by giving direction for the purpose of cash allowance payable upon the recommendation of the Tahsildar routed through the collector . As we see section 31 of the L.A. Act enjoined that in such matters , he had to follow the procedure indicated by the sub-section (2) of section 31 by the deposit of the compensation with the court competent to hear the reference u/s 18 of the L.A.Act. The appeal, admittedly arises , out of the proceedings u/s 18 itself and we do not find any impediment in exercise of our jurisdiction in dealing with the direction with regard to the converted property of the public trust as a result of the land acquisition . Only because as a result of the acquisition the corpus is transformed into a cash compensation from that of the lands , it does not cease to be the trust property , nor does it cease to be governed by the provisions of the Bombay Public Trusts Act and the original instrument of trust . Thus, we overrule the objection of the learned Government pleader with regard to the issuance of the notice and hearing the matter in the presence of the Charity Commissioner.

4. This takes us to the debated question in the appeal and the notice.

5. On behalf of the appellants , Mr. Govilkar contended that the compensation awarded at the rate of Rs. 4,800/- per acre is inadequate and the value should have been worked out on per sq. Ft basis . Secondly , he contended that the

compensation could not have been deducted to the extent of one-third of the price on the basis of the restricted tenure with regard to survey No. 31 and paid only to the extent of two-thirds . According to him , the trustees are entitled to the entire compensation .

6. As against this, the learned government pleader supported the award of compensation , as is made by the impugned judgment , and, in his view , the direction in the award was simply to protect the property of the trust.

7. As for the Charity Commissioner , Mrs. Shenoy , the learned Assistant Government Pleader , on the other hand , contended that the direction in the award was contrary to the law and was given without even notice to the charity Commissioner . She contended that the true position is that the trustees being the persons not competent to alienate the property the moneys, should have been deposited under the civil court under the section 31(2) to be dealt with u/s 32 of the L.A.Act . Several provisions of the Bombay Public Trusts Act ,1950 were brought to our notice with regard to the incapacity of the trustees to deal with the property . Reliance was placed on certain decisions by the learned counsel in this regard to which we will make reference during the course of the judgment .

8. Turning first to the contention of Mr. Govilkar , as far as the evidence is concerned , it does not admit of doubt that the property acquired is agricultural lands and as such would be valued on that basis. The evidence of Ranganath and Khanderao can hardly be relied upon to hold that they had agreed to purchase the property on the sq. Ft basis . Similarly, the evidence tendered with regard to the lease deeds in respect of 24 gunthas of survey No. 226 and 1 acre and 20 gunthas of survey No.238, which, admittedly , were made after a period of about 20 months from the date of section 4 notification , does not bear any scrutiny for the purpose of fair valuation . The only evidence that has been rightly accepted by the learned trial judge is that of Dr. John , who purchased the property on July 27th ,1967 from Yeshwant Pawar . The sale deed at Ex 85 shows that Rs. 41,000/- were paid for 8 acres and 33 gunthas . There is nothing to doubt the transaction evidenced by that sale deed. The transaction being a comparable one , the view taken by the learned trial judge that the compensation works out fairly to Rs. 4,800/- per acre will have to be affirmed .

9. As far as the deduction introduced as against the compensation for survey No. 31 and the payment only of the two-thirds to the claimants are concerned, we find that the said deduction is impermissible , particularly in view of our decision in First Appeal No. 567 of 1976, The State of Maharashtra Vs. Ganpatrao Amritrao Deshpande, We have found that in the land acquisition proceedings, what is determinable is the market price and there is hardly any scope for introducing arbitrary deductions on the basis of restricted tenures . Only because survey No. 31 was originally Kazi inam land was regretted to the Devasthan in a new tenure and it was that of restricted character in the matter of alienation , it does not follow that

the market price of this land would be less than Rs. 4,800/- per acre. The non-payment of one-third of the compensation and its deduction by Special Land Acquisition Officer on that count will have to be set aside.

10. Turning to the remaining submissions, which arise mainly upon the submissions of Mrs. Shenoy appearing for the Charity Commissioner , it is necessary to look into the provisions the Bombay Public Trusts Act , 1950 and the provisions of the L.A. Act and particularly of Sections 31 and 32 thereof . So as to find out the validity of the direction contained in the land acquisition award made by the Special Land Acquisition Officer.

11. Admittedly, the property belongs to the Devasthan, which is a public trust registered under the provisions of the Bombay public Trusts atc, 1950. Under that Act, section 19 permits inquiry and section 22B requires registration of the register to be maintained by the charity commissioner. Section 22C deals with particulars of immovable property of such trust. Section 30 provides that the particulars of the property so entered are deemed to be known to any person acquiring any immovable property belonging to a public trust. Section 36 further puts an embargo on the entitlement of the trustees to sell, exchange gift or lease out any immovable property belonging to the public trust without the previous sanction of the charity commissioner, notwithstanding anything contained in the instrument of trust in that regard. The charity commissioner is enabled to accord sanction upon such conditions as he may think fit to impose, regard being had to the interest, benefit or protection of the trust The term "trust" by itself is not defined, though there is a definition (13) of the Bombay public Trusts Act.,1950. The Indian Trust Act, 1882 defines the term "trust" as being an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another, or of another and the owner.

12. These provisions indicate that the Bombay public Trusts Act is a self-contained statute with regard to the matters of public trust and its property and whatever may be the instrument of trust conferring the competency upon the trustees, its alienation, which is the subject-matter of section 36, cannot be validly effected without the proves sanction of the statutory authority, that is, the charity commissioner. Thus in the case of trustees of a public trust government by the provisions of the Bombay public Trusts Act, 1950, they do not possess unqualified power to alienate the trust property and, on the other hand, it is made statutorily contingent upon the previous sanction being accorded by the charity commissioner upon such conditions as may be necessary for the protection and furtherance of the trust.

13. The concept of trust, juridical, is well-settled. When the property is vested in a trust and there under the ownership and vesting is conferred upon the trustees, in law a peculiar relation arises between the holder of such property and his capacity

to deal with the same. The trust creates a sort of duplicate ownership. The trust property, in law, is owned not only by the trustees but also by the beneficiaries and the relation between them is governed by the obligation annexed to the ownership which enjoins upon the trustee to apply and use the same in the fulfillment and discharge of that obligation for the benefit of the other. That is why the trust ownership is qualified by the annexed obligations and is not an absolute ownership is qualified by the annexed obligations and is not an absolute ownership known to law. (See Halsbury's Laws of England, Volume 33, page 87, and Salmon on Jurisprudence, 9th Edition, page 349). When there arises such a dual or duplicate ownership in the matter of the property, the resultant is the trust, the trustee's ownership being a matter of form rather than of substance, it being nominal rather than real. In legal theory no doubt, the position of the trustee is that of an owner subjected to the obligation by the instrument of trust to apply and use the property vested in him for the purposes and for the benefit of the real owner. Between the trustee and the beneficiary in substance, the property belongs to the beneficiary though for its application and use it vests in the trustee. However qua third person, fiction of ownership continues to prevail in favour of the trustee. The trustee, thus, gets the right and entitlement to represent the beneficiary in dealings with the world at large. In such matters of dealings, the question of his capacity to alienate or otherwise deal with the trust property depends upon the intent of the instrument of trust and purposes thereof.

14. The provisions enacted by S.36 of the Bombay Public Trusts Act, 1950 are in the nature of statutory rider over the power of the trustee to alienate the trust property. In the light of this statutory rider, when the property belongs to the trust, the question of necessity must arise whether the trustee has the power to alienate the land. Such question will have to be first answered by looking to the nature of the trust as well as the instrument thereof and the statutory conditions like the one available in S.36 of the Bombay Public Trusts Act. Juridical the trust being of conditional ownership and by its very nature being limited, the trustee is not the absolute or full owner of the trust property; in the sense he is not free to deal with it as he likes nor can he dispose of the same at his sweet will. Both these incidents, that is the capacity to enjoy and capacity to alienate, are eclipsed because of the trust and the confidence reposed for the benefit of the beneficiaries. In case the instrument of trust indicates that the trust is created without any fetter with regard to disposition of the property, the question is different, but in case the capacity to alienate is fettered, then notwithstanding the vesting of the property, the trustee could not be equated with the owner of the property. Ordinarily, we think that looking to the juridical character of the trust qua the property, the trustee is a person who cannot be said to be free to alienate the property at his sweet will and for any purpose.

15. The provisions of S.36 of the Bombay Public Trusts Act 1950 abundantly make it clear that in spite of capacity in favor of the trustee to alienate the property by sale,

exchange or gift or leasing it out for a period exceeding 10 years or 3 years as the case may be, those provisions statutory fetter the authority of the trustee in the matter of dealing with the property belonging to the public trust and no such alienation's is spoken to in that section, can be validly made without the previous sanction of the charity commissioner. It is not enough that the instrument of trust permits sale, exchange or gift or leases for the given period of immovable property. It is further to be shown for a valid alienation that there had been the previous sanction by the charity commissioner of such alienation. It is significant that the purpose in enacting the provisions of S.36 is primarily to protect the trust itself; and the conditions imposed are required to be in the interest and benefit of such. The provisions are thus made in public interest and their rider will have to be kept in view while administering or dealing with the property of the trust.

16. Having said so, we must turn to the relevant provisions of the LA Act, 1894. It is not necessary to have the feed back of all the provisions. Suffice it to say, after S. 9 notices are served, the collector has to make an award after holding an inquiry. By that award, he makes an offer with regard to the compensation as against the immovable property. Upon making such award, S. 31 enjoins the collector to tender payment of the compensation to the persons interested and entailed thereto and he is required to pay it to them unless prevented by one or more of the contingencies mentioned in sub-sec. (2) The contingencies contemplated by sub-sec. (2) of S. 31 are four in number, being the persons interested do not consent to receive it or such persons are not competent to alienate the land which is the subject matter of acquisition or there be any dispute as to the title to receive the compensation, or there any dispute with regard to the apportionment of the compensation money. In all such matters, the collector has to deposit the amount of the compensation in the court competent to decide references u/s. 18 of the LA Act. With regard to the class of persons who have no power to alienate the immovable property under acquisition, sub-se. (1) of S. 32 provides how the court has to deal with the deposited money. Thereunder class. (A) and (b) indicate how the court will deal, by making an order with the said deposit.

17. The critical phrase with which we are concerned covers the class of persons who are not competent to alienate the land. It raises, indeed, a question of fact to be determined on the basis of the material available to the collector and thereafter to the court u/s. 32 of the L.A, Act, but if the matters are clear, in that the class of persons are not competent to alienate the land, then the collector has no other option but to follow the provisions of S. 31 of the L.A. Act by depositing the compensation money in the court. The provisions of Ss. 31 and 32 in this regard further the statutory policy and are enacted in public interest. Every acquisition results in extinguishing the title of the owners of the property and the law enjoins that the person whose property Is being so acquired is entitled to statutory compensation. As is provided by the provisions of the L.A. Act. Unless such compensation, is awarded and paid, there is no statutory extinction of the title. It is

to have statutory discharge by payment of compensation as against the title-holder that the provisions of S. 31 enjoin upon the collector to tender payment of compensation in the manner provided by sub-sec. (1) of S. 31

18. It is well settled that if the entitlement as well as the liability are prescribed by law and the procedure, mode and manner for working out the same are also prescribed, then the statutory authority can act only in the manner so provide by the statute, any other manner being impermissible to be followed. We do not find in the text of the L.A. Act any authority in the collector to cosign the compensation in the Government Treasury, as is done in the present case, with a rider that cash allowance should be paid to the trustees upon recommendation by the Tahsildar routed through the collector. Such a direction on the face of it is ultra vires the provisions of S. 31(1) of the L.A. Act and must be treated asd non est. For all purposes, the collector is bound, in the case of class of persons who are not competent to alienate the land, to deposit the amount of compensation in the court to which a reference u/s. 18 would be submitted. In no other manner he can get a statutory discharge by payment of compensation with regard to the property belonging to such class of persons.

19. The juridical character the ownership of the trustees being a qualified one and fettered by the terms of the trust, *prima facie*, we think that when the property belongs to the trust, the trustees would be the persons of that class which falls within the provisions of sub-sec. (2) described by the terms "if there be no person competent to alienate the land". Though ordinarily, the trustees would fall in this class and for statutory satisfaction in the matter of payment of compensation the collector would be enjoined to follow the procedure required to be followed by sub sec (1) if S. 31 cases may arise where the collector could be satisfied that the trustees have full authority to alienate the land. The law of trusts is not averse to clothe the trustees in all cases with the competency to alienate the land. It gives rise to finding the facts in each case with regard to the competency of the trustees to alienate the land. If the fetters are irremovable and the competency is qualified, either by the terms of the instrument of trust or by reason of the necessary intendment of the obligations flowing therefrom, then the legal procedure required to be followed is indicated by sub-sec. (1) of S. 31. It is obvious that for the purposes of compensation deposit, once the trust property is transformed in to the compensation money, the court is made the *custodia legis* and it is by the order of the court, as is required to be done u/s. 32, the monies are further to be applied either by investing in the purchase of other lands to be held in the similar title and subject to the similar conditions, or if such a purchase cannot be effected forthwith, then by putting the same in the Government or other securities as the court may think fit. It is the court which has to direct the payment of the interest of other proceeds arising from such investments to the person or persons who would, for the time being be entailed to possession of the immovable property which is acquired under the provisions of the L.A. Act. The deposit has to remain so invested

until the same is applied in the purchase of a similar property or in payment to the beneficiaries who become absolutely entitled thereto. This scheme clearly is intended to protect the initial trust and further its object. As far as possible, basically, the property in trust has to be protected and administered as such. The result of compulsive acquisition is to transform the property into that of compensation money, but, because of the provisions of S. 32, it has to be invested, as far as possible, in acquiring immoral corpus which was the subject of the trust. Once such corpus is acquired, S. 32 and the scheme thereunder stands fully satisfied. In case the obligations are fulfilled by payments to the beneficiaries, the scheme comes to an end. The statutory scheme of S. 32, thus, in the matters of trust is of prime importance and is to further the public interest when obviously it relates to the property of the public trust.

20. Now we may turn to the decisions which are relevant for the purpose of determining the controversy. S. 32 of the LA Act came for construction in the context of the widow's estate in the case of *mrinalini Dasi v. Abinash chandra Dutt*, (1910) 14 cal WN 1024, and the Calcutta High court found that when the property was the window's estate, the matter was governed by S. 32 and the person who had taken away the money of compensation could be compelled to refund the money into court for the purpose of investment and the court had authority to give directions for the proper investment of the money in the interest of the reversions in accordance with the rules of justice, equity and good conscience in the absence of any statutory power. The provision was applied because Hindu widows had no authority to alienate the property. It is significant to observe that in that case, the principle underlying S. 32 was stated to be the one intended to protect the interest in property of the reversionary heirs whose land was taken in compulsive acquisition for public purpose. The same High court in the case of *Kamini Devi v. Promotha Nath mookerjee*, ilr(1912) cal 33 , applied the provisions of S. 32 to rebuttal property in the hands of shebait following the principle laid down by *mrinalini Dasi*'s case, holding that the land dedicated to an idol or to religious and charitable purposes is land belonging to the shebait or trustee who had no power to alienate the same and that compensation money was required to be invested in approved security and that the provisions of S. 32 of the L.A. Act were attracted . In a different context before the same High Court in the case of *K.C. Banerjee, official Receiver, In re In Re: K.C. Bannerjee, Official Receiver*, , the question arose u/s 32 as to the character of the compensation money paid for acquisition of the property to a person not competent to alienate the same. The facts in that case were that a portion of immovable property belonging to debater estate of certain idols was acquired under the L.A. Act and the compensation was deposited with the Calcutta improvement Tribunal u/s. 31 of the Act. After referring to the earlier judgments and also to the judgment of the privy council in *jagaindra Nath Roy v. Hemanta Kumari Devi* (1904) 31 Ind App 203, to the effect that although an idol may be regarded as a juridical person capable of holding properties, it is only true in an ideal sense and

the matter of fact is that the possession and management of the dedicated properties belonged to shebaits, the court observed that the compensation money represented the estate of an incompetent person but partook of the nature of real property and did not lose its character as such only because it had been transformed in shape. The money in deposit remained the debuttar property.

21. In the madras High court too the same principle appears to have been stated and applied. In the case of *shirvaRao v. Nagappa* ILR(1906) mad 117, the madras High court was considering the case of a family charity. It held that the properties set apart for charities are *prima facie* inalienable and where such properties are acquired under the L.A. Act, the award made thereunder may direct the investment of the compensation money in Government securities. It is not clear from that judgment as to whether the investment was directed by the court or not. The case of *Special Deputy collector, Ramned v. Rajah of Ramned* AIR 1935 Mad 215 , related to the acquisition of an imitable estate and the holder of such estate was found to be not the absolute owner of the same and by reason of that, the court held, that the provisions of Ss. 31 and 32 of the L.A. Act, *prima facie*, were attracted. The court observed that in the ordinary sense of the words available in Ss. 31 and 32, the holder of such imitable estate was incompetent to alienate the lands and the compensation money could not be paid over to him but was required to be converted into other land to form part of the imitable estate. After noticing the judgment of this court rendered in the case of [The Assistant Collector Vs. Vithaldas Vallavadas](#), the madras High court found it difficult to follow the distinction and stated the law to be that if person is entitled to land which by reason of some enactment he cannot alienate, he is incompetent to alienate it. It may be stated that after considering the judgment of this court in Vithaldas Vallavadas's case, the madras High Court found that that decision did not afford real parallel to the case that was for decision before it.

22. We do not find that there is any substantial departure from the principle which is basic to S.s 31 and 32 of the L.A. Act available in the decision of this court in vithaldas vallavadas's case (supra). That case arose in appeal, which was raised by the Assistant Collector of Kaira against an order made by the land Acquisition court u/s 18 of the L.A. Act. The property in that case was governed by the provisions of S. 3 of the Bhagdari and Narvadari Tenures Act, which provided that it was not lawful to alienate any portion of any bhag or share in any Bhagdari or Narvadari village other than a recognised sub-division of such bhag or share. The submission in that case was that the holders of such land were incompetent to alienate the land. The trial court rejected the said contention by pointing out that S. 32 of the L.A. Act applied to cases where the possessor of the land had a limited interest in it, e.g., a tenant for life, guardian, trustee, widow, administrator, etc. But not to persons called narvadars holding a portion of land of a narva. After considering the provisions of S. 32, which uses the phrase "if it appears that the land belonged to any person who had no power to alienate the same", both the learned Judges (Bachelor, J, and

Hyaword, J.) found that the section contemplates an absolute disability to alienate in the person to whom the land belonged and that the disability of the narvadar was not absolute. On the other hand, it was found that the navadar, could alienate any portion of the holding in certain circumstances, provided, for instance he jointed with it another parcel so that the whole subject of alienation was recognized sub-division. Hayword, J. Made it clear by pointing out that the case was not one of inability attached to the holder of the land but a sort of disability attached to the land.

23. Suffice it to say that the judgment in vithaldas [The Assistant Collector Vs. Vithaldas Vallavadas](#), recognises the principle that if there be the holder under disability to alienate the land, then the provisions of S. 32 are attracted. On the interpretation of the provisions of the Tenancy Act (Bombay Act V of 1892), the court found that the disability was only contingent with regard to certain circumstances and not absolute. In other words, circumstances not being present, the property was capable of being alienated; the impediment was in the matter of working out the alienation and not operative upon the capacity to alienate the property.

24. All the above decisions, in our view highlight the principles underlying the provisions of Ss. 31 and 32 of the L.A. Act 1894 with regard to property taken in acquisition in the hands of person having limited power to deal with it and further having no capacity to alienate the same. Trustees qua property are the persons who are not, ordinarily, possessed of such capacity. Therefore, for the purpose of working out the provisions of getting statutory satisfaction in the matter of payment of compensation the collector is bound, nay obliged, to follow the procedure as is required by Ss. 31 and 32 of the L.A. Act.

25. At this stage, a mention may be made of the provisions S.56B of the Bombay public Trusts Act, 1950, read with the provisions of S.36 thereof. We have already indicated that notwithstanding anything contained in the instrument of trust, the trustees of the property belonging to the public trust cannot validly alienate the same except with the previous sanction of the charity commissioner laying down the conditions in keeping and in furtherance of the trust. The transformation of the corpus in the shape of compensation money does not affect the character of the trust not the character of the property. The principles underlying the provisions of S. 32 of the L.A. Act require that, as far as possible, the compensation money should be utilised for restoring the corpus in the original form, being a similar immovable property, and in case of failure, by investment in Government or public securities till such property is available. As incapacity to alienate arises, notwithstanding the instrument of trust, by the provisions of S.36 of the Bombay public Trusts Act, we think that in keeping with the principles underlying S.56B of that Act, the collector for the purpose of making proper order should, in the case of acquisition of properties belonging to public trusts, give notice to the charity commissioner. No doubt, S.56B speaks of the notice being given by the court, meaning any civil court

of competent jurisdiction in the state of Maharashtra (sub-sec. (3)) but the principle underlying S.56B is that the charity commissioner, in whom the power to supervise the charities has been conferred by the statute, has to be heard whenever the matter arises affecting a public, religious or charitable trust in any legal proceedings. The making of the award for the purpose of compensation and its payment clearly is a legal proceeding of civil character giving rise to civil consequences and in view of the provisions of S.36 of the Bombay public Trusts Act under which the charity commissioner can give the sanction for the purpose of alienation of the given property by putting conditions which may be similar as are enacted by section 32 of the L.A. Act, we think that the statutory satisfaction by payment of compensation money can be worked out. Therefore, if validly a notice is given u/s.36 by laying down the conditions for the purpose of alienation of the given property, the charity commissioner permits the trustees to act in consonance with the principles underlying S. 32 of the L.A. Act, then substantially the procedure required by S. 31(1) of the L.A. Act would not required to be followed, for then the case would be answered by showing that the trustees possessed the capacity to alienate the property in keeping with the provisions of S.36 or the Bombay public Trusts Act. In all other case, where either because the notice is not given or because there was no valid sanction in favour of the trustees even otherwise capable to alienate the property, the collector will have to have recourse to the provisions of Ss. 31 and 32 of the L.A. Act. In such case also. When the matter goes to court under sub-sec (2) of S. 31 the court is bound to give notice, as is required by S. 56B of the Bombay public Trusts Act, to the charity commissioner.

26. Neither of these procedures has been followed in the present case and quite an anomalous and unsustainable deduction with regard to the compensation money has been made. The said part of the award is, thus, liable to be set aside.

27. On the basis of the above discussion, we make the following order :-

The compensation in respect of survey No.238, being the sum of Rupees 72, 152/- along with interest at 4 per cent per annum, is payable to the trustees in the manner indicated above and so also the unpaid compensation of Rs. 12, 696/- along with 4 per cent interest as against survey No.31. The interest is payable from the date of taking possession till the money is paid by deposit in the trial court. The trustees represented by Mr. Govilkar have undertaken that, with the previous sanction of the charity commissioner and upon such conditions as the charity commissioner may impose with regard to the investment of the said money,they will, upon receipt of the same, invest the same, firstly, for the purpose of acquiring a similar property and/or, if that be not possible, invest the same in Government or public securities. In our view, this undertaking satisfies the requirements of both S.36 of the L.A.ACt The monies so payable are directed to be deposited within four weeks in the trial court. The appeal to this extent is allowed. There would be no order as to costs in the appeal.

28. In the suo motu notice issued to the charity commissioner, we quantify the council's fees at Rs. 7,00/- payable by the collector, the first respondent herein.

29. Appeal partly allowed.