

(1978) 11 BOM CK 0015

Bombay High Court

Case No: Miscellaneous Petition No"s. 415 and 485 of 1974

Arunodaya Prefab

APPELLANT

Vs

M.D. Kambli

RESPONDENT

Date of Decision: Nov. 17, 1978

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1980) 82 BOMLR 284 : (1979) MhLj 104

Hon'ble Judges: Bharucha, J

Bench: Single Bench

Judgement

Bharucha, J.

To grant the reliefs sought in these Petitions would be to open the flood-gates of litigation to all those who are disappointed in purchasing property proposed to be sold by a public charitable trust.

2. Respondents Nos. 3 to 9 in these petitions are the trustees of a public charitable trust registered under the provisions of the Bombay Public Trust Act. The trust owns inter alia, land situated at New Marine Lines, Bombay, which was in days gone by used as a cemetery for Scotmen dying in Bombay. On December 13, 1972 the trustees entered into an agreement to sell to respondent No. 2 the said land, admeasuring about 4.000 sq. yds., at the rate of Rs. 65 per sq. ft. The agreement provided that the respondent No. 2 would accept the title of the trustees and would not administer requisitions thereon. It provided also that the second respondent would pay all taxes and outgoings of the said land upon being put into possession and the costs and the stamp duty pertaining to the sale. On the same day, a supplemental agreement was entered into between the trustees and the respondent No. 2 whereunder the respondent No. 2 undertook the obligation of removing at his cost the tombstones standing upon the said land and re-erecting them, in one case at the Wilson College, Bombay, and in the remaining cases at the Sewree Cemetery, Bombay. The respondent No. 2 agreed to make available to the

Municipal Corporation of Greater Bombay for use for public benefit 3,000 sq. ft. in the building to be erected by him on the said land free of cost and 9,000 sq. ft. therein to the Nalanda Dance Academy, connected with the University of Bombay, free of charge. On February 11, 1973 the trustees applied to the Charity Commissioner (the first respondent) for sanction of the proposed sale under the provisions of Section 36 of the Bombay Public Trust Act. On June 30, 1973 the Charity Commissioner directed the trustees to advertise the said land for sale. The trustees did not do so. On their own initiative the petitioners in the first petition made an offer for the said land on* October 18, 1973 in the sum of Rs. 75 lakhs, which they stated they would be willing to enhance; the said offer was subject to the trustees making out a marketable title. The offer was sent to the Charity Commissioner with a copy to the trustees. On December 24, 1973 the Charity Commissioner called a meeting to consider the application for sanction whereat he invited the petitioners in the first petition to remain present. It is contended in the first petition that a representative of these petitioners were present at that meeting and raised their offer to Rs. 85 lakhs. In an affidavit filed on behalf of the Charity Commissioner, based upon the minutes of that meeting, it is denied that any representative of the first petitioner was present at that meeting. The trustees did not attend the meeting. On December 31, 1973 the Charity Commissioner wrote to the trustees asking them to comply with his directions to advertise the said land for sale. On March 12, 1974 the trustees wrote to the Charity Commissioner declining to advertise the said land for sale contending that this would be contrary to their religious tenets and that they had morally committed themselves to sell the said land to respondents No. 2. Sometime in March 1974 the petitioners in the second petition wrote to the trustees offering to purchase the said land at the rate of Rs. 115 per sq. ft. provided that the trustees had a marketable title thereto. On March 21, 1974 the Charity Commissioner wrote to the trustees declining to sanction the proposed sale. On March 22, 1974 a meeting was held before the Charity Commissioner at which the trustees and the respondent No. 2 were present. The trustees having declined to ask the respondent No. 2 to increase his offer for the sale of the property, the respondent No. 2 volunteered to purchase the said land at the rate of Rs. 92 per sq. ft. He assured the Charity Commissioner that he would abide by his agreement to give free 3,000 sq. ft. of the built-up area to the Bombay Municipal Corporation and 9,000 sq. ft. to the Nalanda Dance Institute. On March 22, 1974 the Charity Commissioner passed the impugned Order sanctioning the sale.

3. Mr. Rana, learned Counsel for the petitioners in both petitions, contended that the impugned order was vitiated on the ground of breach of the principles of natural justice inasmuch as no hearing had been afforded to the petitioners in the first petition and their bid was not considered whereas the Charity Commissioner had associated the respondent No. 2 in the enquiry made by him although the respondent No. 2 was only one of the bidders. Mr. Rana contended that Section

36(4)(fl) of the said Act, read with Rule 24 of the Rules framed thereunder, obliged the Charity Commissioner to ensure the welfare and interest of the trust and the Charity Commissioner had not conformed to that obligation by accepting the respondent No. 2's bid which was lower than the bids of both the petitioners. Mr. Rana contended that the condonation of the failure of the trustees to comply with the Charity Commissioner's directions to advertise the proposed sale amounted to dereliction of the obligation cast upon him under s- 36. Mr. Rana contended that the impugned order did not give reasons why the petitioners' offers were rejected and, therefore, the impugned order was a nullity. Mr. Rana contended that the facts which were considered in the order were not germane to the provisions of the Act.

4. Mr. Rana contended that the petitioners had the requisite locus standi to present the petitions because the petitioners were prejudicially affected by the impugned order inasmuch as their offers were not considered or accepted by the Charity Commissioner and because they had been prejudicially affected by being not associated with the enquiry held by the Charity Commissioner.

5. What has to be considered first in this matter is the obligation cast upon the Charity Commissioner under the provisions of Section 36 of the said Act. The relevant provisions of Section 36 read thus:

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

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

(b) no lease for a period exceeding 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 be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(c) ...

Under these provisions, no sale of any immovable property belonging to a public trust is valid without the previous sanction of the Charity Commissioner. The sanction may be accorded subject to such conditions as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust.

6. Rule 24 of the Rules under the Act is framed specifically with regard to the application to be made u/s 36. It sets out what every application for sanction must contain. Clause (2) of the rule empowers the Charity Commissioner, before according or refusing sanction, to make such enquiry as he deems necessary.

7. Under the terms of Section 36 read with Rule 24, therefore, the Charity Commissioner is concerned only with according or refusing sanction to the

particular sale which the trustees propose to make. It is a proceeding which only concerns the trustees. To decide whether such sale is in the interest of the trust, he is empowered to make such enquiry as he deems necessary. It is for the trustees to decide whom they should sell the property to, subject to the Charity Commissioner's sanction to the proposed sale. If the Charity Commissioner needs, before according or refusing sanction, to ascertain the market price for the property proposed to be sold, he may issue such directions as he thinks necessary and it is obligatory upon the trustees to comply with those directions.

8. In the present case the trustees made an application to the Charity Commissioner for sanction of the proposed sale to respondent No. 2. To ascertain whether the price offered by respondent No. 2 was reasonable, the Charity Commissioner directed the trustees to invite offers for the sale of the said property. The trustees declined to do so on the ground that they had already entered into an agreement for sale in favour of respondent No. 2 and had morally committed themselves to respondent No. 2. There is substance in the contention of the trustees to which I shall advert later. The petitioners submitted offers for the purchase of the said land uninvited to the Charity Commissioner and the trustees. u/s 36 it was not open to the Charity Commissioner to consider the said offers except only to the extent that they might disclose to him what might be the market value of the said land. It was certainly not open to the Charity Commissioner to sell the said land to the petitioners or to require the trustees to sell the said land to any one other than respondent No. 2. If he considered the proposed sale to respondent No. 2 adverse to the interests of the trust he could only decline sanction.

9. Looked at in that light, it is clear that the Charity Commissioner owed no legal duty to the petitioners and, merely by sending offers to him for purchase of the said property, the petitioners acquired no legal rights. It would not be correct to hold, as Mr. Rana has urged me to do, that the Charity Commissioner was obliged to associate the petitioners with the enquiry that he was required to institute or that he was obliged to consider the offers made by petitioners. In my view, the petitioners have no legal right which has been infringed by the impugned order and the Charity Commissioner owed no legal duty to the petitioners.

10. In para. 14 of their respective petitions, the petitioners have contended that they have a right under the law for the time being in force, being bidders whose offers were higher than that of the respondent No. 2, to purchase the said land. For the reasons set out above, I negative this contention.

11. Despite the fact that the petitioners have in their respective petitions not made out any case in support of the contentions that Mr. Rana has now urged before me, namely, that the petitioners were entitled to present these petitions in the public interest, I propose to consider the contention. It must be remembered in this context that this is a public charitable trust; if its interests are affected the restricted class of its beneficiaries would be entitled to move the Court. This is not a case

where public interest in its wide sense is concerned where the public rights of a large, almost unrestricted body of individuals are similarly affected and one or more of them seeks redress by way of a writ.

12. Mr. Rana referred me to several authorities which have considered the right of a private citizen to file a writ petition to redress an invasion of public rights. He invited my attention first to the judgment of Gandhi J. in *Piloo Mody v. State of Maharashtra* (1975) Miscellaneous Petition No. 519 of 1974, decided by Gandhi J., on October 22, 1975 (Unrep.), (popularly called Backbay Case) and read to me extracts of the submissions made to the Court. In that case, the rights of the citizens of Bombay as a whole were involved and this Court held that private citizens were entitled to file a writ to challenge the infringement of those public rights. I see nothing in the conclusions in that judgment which could aid the petitioners.

13. Mr. Rana next referred me to the case of [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#), . In para. 8 of the judgment, the Supreme Court held that ordinarily a petitioner who seeks to file a petition under Article 226 of the Constitution of India should be one who has a personal or individual right in the subject-matter of the petition. That apart, in exceptional cases, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or fiduciary interest in the subject-matter thereof. Mr. Rana placed great reliance upon these observations. In my view, this observation does not embrace the petitioners herein. In the facts and upon the law, no prejudice can be said to have been caused to the petitioners by the impugned order in respect of which they can legitimately seek a writ.

14. Mr. Rana then cited the case of [Dr. Satyanarayana Sinha Vs. S. Lal and Company \(P\) Ltd.](#), . In para. 10 of the judgment, the Supreme Court has observed that when an application for a writ is made by a party or by a person aggrieved the Court will intervene ex debito justice and when it is made by a stranger the Court must consider whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the Court. In that case before the Supreme Court the petitioner had challenged the grant of a lease on the ground of an infringement of his right to be granted that lease. The Court concluded that no such right of the petitioners had been effected and that he had, therefore, no locus standi. In the case before me, the petitioners have challenged the impugned order on the ground that they had a right to purchase the suit property. I have, as stated above, already found that the petitioners had no such right and I must therefore, hold, as the Supreme Court held, that the petitioners had no locus standi to present this petition. In any event, where public interest is concerned, it is a matter within the discretion of the Court whether to grant a writ or not. In my view, this is not a case where public interest is involved and, if it were, it is not a case where the Court's intervention is called for.

15. Mr. Rana next referred me to the case of Sundarlal Baijnath v. M.B. State A.I.R.[1955] M.B. 161. From that case, para. 29 of the judgment need only to be set out (p. 164):

As regards the first point there is no doubt that the petitioner being one of the bidders present and interested in bidding at the auction sale which took place on 16-2-1954 with respect to Indore city shops has a sufficient interest to challenge the same if the authorities thus conducting the same have failed to act within the bounds of their authority.

It is clear that in that case an auction took place at which the petitioner therein was one of the bidders. There were irregularities in the auction and the Court held that the petitioners had sufficient interest to challenge the auction. It is a case which is entirely different from the instant case. There was no auction in the instant case. The Charity Commissioner, as I have already pointed out, was only concerned with whether or not to sanction the sale proposed to be entered between the trustees and the second respondent. Clearly the Madhya Bharat judgment cannot aid the petitioners.

16. Mr. J.C. Bhatt on behalf of the trustees drew my attention to the judgment of the Supreme Court in the case of [Mani Subrat Jain and Others Vs. State of Haryana and Others](#), where the Court reiterated that there must be a judicial enforceable right as well as a legally protected right before one can ask for mandamus. A person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. As I have already pointed out above the petitioners have no legal right and the Charity Commissioner had no legal duty towards them.

17. In the result, I hold that the petitioners have no locus standi to maintain the petition.

18. I propose to go on to consider the matter on its merits. From the impugned order it is clear that the Charity Commissioner considered what the probable market value of the property was, based! upon the offers gratuitously made by the petitioner in the second petition, by one Kamani and by one Ellora Construction Company. He came to the conclusion that the price mentioned in the agreement to sell to the respondent No. 2 was not adequate and brought about the increase in that figure by the respondent No. 2. He considered the aspect raised by the trustees of the moral commitment made by them to the respondent No. 2. He considered the fact that the respondent No. 2 was prepared to give free the built-up area of 9,000 sq. ft. to another public trust, albeit one in which the respondent No. 2 was interested, and another built-up area of 3,000 sq. ft. to the Municipal Corporation of Greater Bombay to use for some object of general public utility. From para. 2 of the impugned order it is also clear, though it is not expressly stated, that the Charity Commissioner took into account the fact that respondent No. 2 had agreed to buy

the said land upon such title as the trustees had and without making requisitions thereon. Having weighed all these factors, the Charity Commissioner arrived at the conclusion that it would be proper to sanction the sale of the said land by the trustees to the respondent No. 2 at the enhanced price.

19. Much of the ground on merits has already been covered by the discussion of what the obligation of the Charity Commissioner was under the provisions of Section 36 of the Act. Since the Charity Commissioner was concerned only with according or not according sanction to the agreement of sale placed before him by the trustees, there was no question of his giving any hearing to the petitioners or of considering any bids made by them. The petitioners and the respondent No. 2 cannot be treated on par for respondent No. 2 was the party to whom the trustees proposed to sell the said land and in respect of which proposed sale they sought the Charity Commissioner's sanction. It is, therefore, not legitimate for the petitioners to contend that there has been any breach of any principle of natural justice in the Charity Commissioner not hearing the petitioners or not associating the petitioners with any inquiry held by him. Inasmuch as the Charity Commissioner was not entitled to call for or to consider any offers with the object of concluding a sale of the said land on the basis thereof, the petitioners cannot make a grievance of the fact that their offers were not considered by him nor does the impugned order become a nullity in law because it does not state the reasons why the petitioners' bids are not accepted.

20. Mr. Rana contended that the acceptance of a price lower than that offered by the petitioners and others was contrary to the provisions of the Act. I cannot agree. Considering all the facts which the Charity Commissioner has taken into account, it was open to him to sanction the proposed sale. Mr. Rana also contended that the impugned order takes into account benefit to another charitable trust and to objects of general public utility. Certainly, this is one of the factors which the Charity Commissioner has taken into account; it is not the only factor which weighed with him to sanction the proposed sale. I cannot see that this factor is, by itself, strong enough to warrant the setting aside of the impugned order.

21. At this stage, it would be appropriate to refer to the judgment of the Division Bench of this Court in Nanji Meghji Shah v. The Charity Commissioner, Maharashtra State, Bombay (1972) Special Civil Application No. 1184 of 1972, decided by Kantawala and Kania JJ., on August 25, 1972 (Unrep.) to which Mr. Rana drew my attention. This was a case in which the trustees of a public charitable trust applied to the Charity Commissioner for permission to sell the trust property and for sanction thereof. The sanction sought was in general terms and not to any particular buyer. The Charity Commissioner directed the trustees to invite offers for the proposed sale. The trustees complied and communicated the offers received to the Charity Commissioner for his consideration. The Charity Commissioner accepted one of the offers. When he passed the order accepting this offer, other offers received,

including from the one petitioner in that matter, were not put up for his considerations. The petitioner thereupon filed the application challenging the sanction. The Court, with the consent of the trustees and the other parties sought further bids and passed an order allowing the application on the basis that a particular bid received before it would be accepted. This judgment does not aid Mr. Rana. What was put up before the Charity Commissioner in that case was not a particular proposed sale but a blanket approval was sought for and the offers received were placed before him for consideration and acceptance. The Court observed that other things being equal, the Charity Commissioner could take the fact of the trustees' moral commitment to a particular buyer into account.

22. Before parting with this case, I would add this note of caution. If the Charity Commissioner directs trustees to invite offers for sale of trust property in respect whereof the trustees have already entered into an agreement for sale and applied for sanction thereof, there are bound to be difficulties of the sort which have occurred in this petition. If the Charity Commissioner is inclined to direct the trustees to invite offers for the sale of trust property, he must first ascertain that the trustees would be willing to sell the property to one of these offers. Where an agreement for sale has been arrived at and is sent up for sanction, the Charity Commissioner must satisfy himself of the adequacy of the price offered upon the basis of instances of sale in the locality or upon an architects' report or upon some similar basis.

23. In the light of the above discussion, I dismiss the petitions with costs in each petition in the sum of Rs. 300 to respondents Nos. 1 and 10 and to respondent No. 2. I am of the view that this is an appropriate case in which the costs payable by petitioners to the trustees, respondents Nos. 3 to 9 should be quantified in the sum of Rs. 1,200 in each petition.

24. The reasons set out above are, I think, justification enough for declining Mr. Jain's application that the order should be stayed.