

CASE NO.:
Appeal (civil) 3788 of 2001

PETITIONER:
MEHRWAN HOMI IRANI & ANR.

Vs.

RESPONDENT:
CHARITY COMMISSIONER, BOMBAY & ORS.

DATE OF JUDGMENT: 10/05/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan

JUDGMENT :

K.G. BALAKRISHNAN, J.

Leave granted.

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This appeal is directed against the order passed by the Bombay High Court in Writ Petition No. 2005 of 1988. The appellants herein unsuccessfully challenged an order passed by the Charity Commissioner, Bombay, under Section 36(1) of the Bombay Public Trusts Act, 1950.

Five philanthropic members of the 'Parsi' community created a Trust, by name, "The Tithal Parsi Sanatorium Trust". They felt the necessity of having a Sanatorium at Tithal, a small coastal town in the South Western part of the State of Gujarat. They collected some money and in the year 1907 a committee was constituted to hold these funds and to carry out the objects of the Trust. Initially, they acquired two and half acres of land with some buildings on it. Thereafter, further donations were collected and with those funds they purchased some more properties. All these properties and assets were held by the members of the committee in trust and they made a declaration of Trust on 10.7.1911. Some Rules & Regulations were also made for the administration of the said Trust. These Rules contained a provision to appoint new Trustees by the surviving Trustees. The object of the Trust was to have a Sanatorium or Convalescent Home for the poor and middle class sick and convalescent of the Parsi community professing the Zoroastrian religion, on payment of such nominal fee as may be fixed from time to time by the Trustees in consultation with the committee of Management. The Trust came to be registered as a Public trust on 15.10.1952.

The Trust owns eleven pieces of land having a total extent of 13 acres. There is no income from these@@ JJ properties. The moveable properties consist of furniture@@ JJ and utensils of the Sanatorium. These are worth

Rs.10,000/- . In bonds and other fixed deposits, there is a corpus of Rs.8,485.20. For want of money, the Sanatorium could not effectively function. As there was no tangible source of income, it became difficult to conduct the Sanatorium and even to preserve the building situated on the property. Therefore, the Trustees wanted to launch a programme of putting the property to use by granting lease thereof in such a manner as to preserve the property permanently for the Trust. It was stated by the Trustees that they secured an offer from the 5th respondent herein. The 5th respondent is an association of persons called "Mahavideh" having its head office at Bombay and one Shri Vipin Shantilal Shah is its promoter. The Trustees filed an application before the Charity Commissioner, Bombay, for permission under Section 36 of the Bombay Public Trusts Act, 1950. In the application, they stated that they had entered into an agreement of lease with the 5th respondent whereby 2 acres of Trust property were to be alienated and given on lease to the 5th respondent for a period of 99 years and the 5th respondent agreed to construct 8 blocks of 450 sq. feet each for the Trust at a cost of Rs.7,75,000, which would form the Sanatorium. It was also stated that the remaining area would be leased to the 5th respondent on certain conditions. Two agreements of lease were thus entered into by the Trustees with the 5th respondent. The Charity Commissioner, on receipt of the application from the Trustees, advised them to give more publicity to the intended transaction of lease. The Trustees thereafter gave advertisement in the Ahmedabad edition of the Indian Express and also in a Gujarat Newspaper, 'Dainik Lok Satta'. Two offers were received, including that of the 5th respondent and the Trustees accepted the offer made by the 5th respondent. Thereafter, they filed a fresh application under Section 36 of the Bombay Public Trusts Act. The present appellants got themselves intervened in the proceedings before the Charity Commissioner and contended that the Trustees have no power to execute long-term lease agreements in favour of the 5th respondent. They also alleged that the object of the Trust would be defeated in case the 5th respondent is allowed to make use of the property for other purposes. They also contended that there were no compelling necessities for the Trust to lease out the property to the 5th respondent and there would be better proposals from other parties. The Charity Commissioner, after hearing both sides, granted permission to the Trustees under Section 36 of the Bombay Public Trusts Act.

Aggrieved by the order of the Charity Commissioner, the appellants preferred a Writ Petition before the Bombay High Court. In the High Court also, the appellants alleged that the agreements executed between the Trustees and the 5th respondent, if implemented, would defeat the purpose of the Trust. The appellants also urged before the High Court that there could be better proposals from other parties. The High Court, however, held that the Trust is not in a position to run the Sanatorium and the leasing out of the property was being done with a view to carry out the object of the Trust. The High Court further held that the petitioners could not substantiate their claim that there were better proposals from other parties. Consequently, the order of the Charity Commissioner was upheld.

We heard learned counsel for the appellants as also learned counsel for respondents 2-4. The counsel for the appellants drew our attention to the various clauses in the

two agreements executed by the 5th respondent in favour of the Trustees. It was pointed out that 2 acres of the property were to be alienated and given to the 5th respondent for a period of 99 years and that only 1 acre of the Trust property is to be used for construction of 8 blocks of buildings at a cost of Rs.7,75,000/- to be used as Sanatorium. It was pointed out that the remaining area would also be leased out to the 5th respondent to be used for other purposes.

Learned counsel for respondents 2 to 4, on the other hand, contended that the agreements entered into with the 5th respondent are only with a view to carry out the objects of the Trust and as there was no other source of income to run the Sanatorium, the 5th respondent had come forward with the scheme and the same was accepted and according to these respondents, the agreements entered into between the Trust and the 5th respondent are in the best interests of the Trust.

The important point to be considered is whether the agreements entered into between the Trust and the 5th respondent are capable of carrying out the objects of the Trust to provide a Sanatorium for the convalescing and sick persons. It is to be noted that under the two- lease agreement, a total of 12 acres of land is to be leased to the 5th respondent for a period of 99 years at an annual rent of Rs.1,51,000/-. In the agreements, there is no sort of covenant as to how the property would be used by the 5th respondent. In the application filed before the Charity Commissioner also, it is not explained as to how the 5th respondent-lessee would make use of the 12 acres of lands to be given to him at an annual rent of Rs.1,51,000/- under the lease agreements.

The counsel for the appellants also pointed out that it is likely that there would be better offers from other parties. The offer made by the appellants themselves is not very encouraging and the respondents were right in not accepting the same. However, we are told that there were some other offers also from some well-known charitable institutions. In the best interests of the Trust and its objects, we feel it appropriate that respondent nos. 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 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. We allow the appeal as indicated above and remit the matter to the Charity Commissioner in modification of the orders of the High Court in Writ Petition and that of Charity Commissioner.

The appeal is thus disposed of without, however, any
order as to costs.@@
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