Kumar Constructions Vs. Deshastha Regved Sanstha and anr.

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SooperKanoon Citation : sooperkanoon.com/367520

Court : Mumbai

Decided On : Apr-12-2002

Reported in : 2002(5)BomCR497

Judge : A.M. Khanwilkar, J.

Acts : Bombay Public Trusts Act, 1950 - Sections 36

Appeal No. : Writ Petition No. 6430 of 2001

Appellant : Kumar Constructions

Respondent : Deshastha Regved Sanstha and anr.

Advocate for Def. : R.D. Soni, Adv. i/b. Ram & Co., for respondent No. 1, ;C.S. Dharmadhikari, Adv., and ;R.S. Datar, Adv., for respondent Nos. 2 and 3, ;P.I. Khemani, A.G.P., for respondent No. 4

Advocate for Pet/Ap. : J.N. Pawar, Adv.

Disposition : Petition allowed

Judgement :

A.M. Khanwilkar, J.

1. Rule. Rule made returnable forthwith by consent. Counsel for the respective respondents waive service. Heard for final disposal by consent.

2. This writ petition takes exception to the order passed by the Joint Charity Commissioner, Nasik dated May 15, 2001 in Application No. 63 of 2001 according sanction in respect of alienation of Survey No. 781 area 1 hectare 14 areas situated at Nasik owned by the respondent No. 1 trust in favour of respondent Nos. 2 and 3 for a total consideration of Rs. 51 lacs and developed plot of 1000 sq. yds. as per the terms and conditions agreed upon in the agreement of sale dated 2nd September, 1999.

3. Briefly stated, the respondent trust issued public notice on 23-7-1999 declaring its intention to alienate the subject trust property. In response to the said public notice, in all seven offers were received. The same were opened on 1-9-1999. It transpired that the petitioner was one of the offeror and had offered sum of Rs. 45/- lacs, whereas the respondent Nos. 2 and 3 (i.e. N.K. Consultant) made offer of Rs. 51/- lacs. Besides offering amount of Rs. 51 lacs, respondent Nos. 2 and 3 in addition offered developed plot of 1000 sq.yds. to be given to the respondent trust and also accommodating tenants occupying the trust property free of costs. Since the trust found the offer made by the respondent Nos. 2 and 3 to be more favourable, it entered into agreement to sell dated 2nd September, 1999 and made application to the Joint Charity Commissioner under section 36 of the Bombay Public Trusts Act for according sanction in respect of that transaction. The Joint Charity Commissioner in exercise of powers under section 36 of the Act held enquiry in which all the seven offerors including the petitioner participated. In so far as the petitioner is concerned, its plea has been recorded in para 4 of the impugned order. Besides the petitioner, M/s. Bhakti Deep Construction Pvt. Ltd. also participated and improved their earlier offer from Rs. 45 lacs to Rs. 57 lacs. This aspect has been duly noted by the Joint Charity Commissioner in para 5 of impugned order. However, the Charity Commissioner has allowed the application preferred by the respondent trust and accorded sanction under section 36 of the Act in respect of the proposed transaction in favour of respondent Nos. 2 and 3. The reason which has weighed with the Joint Charity Commissioner for allowing the said application can be discerned from para 9 of the impugned order, which is the only discussion entered into by him. The same reads thus:---

'9. After eliminating the objections so raised by above parties, the remainder in the proceeding is that, the trustees are selling the property under compelling circumstances which they have established beyond doubt with the help of documents and supporting affidavit. They have followed usual procedure of sale of public trust property and in doing the same there is nothing adverse on the part of the trustees. In so far as consideration is concerned, the trustees have established by filing valuation report and copy of Index-II that by this transaction the trust is receiving the price higher than market price with a plot a 1000 sq. Yards free of cost. Thus from monetary point of view the transaction is in the best interest of the trust. Taking into accounts all these facts and circumstances following order is passed.'

4. Although the Charity Commissioner has observed that 'after eliminating the objections so raised by above parties..', however, he has not done adjudication regarding eliminating of the objections raised by the respective parties. Moreover, he has merely observed that the offer made by the respondent Nos. 2 and 3 is higher than the market price with plot of 1000 sq.yds. free of costs. The Joint Charity Commissioner has observed that, thus from the monetary point of view the transaction is in the best interest of the trust.

5. Notably, the Joint Charity Commissioner, though in para 5 has noted the improved offer of M/s. Bhakti Deep Construction Pvt. Ltd., has not even addressed itself to that aspect in the impugned order. Moreover, the grievance made by the petitioner before this Court in para 10 of the writ petition is that, in fact the petitioner had substantially improved his offer before the Joint Charity Commissioner on 15-5-2001 when the impugned order was about to be passed and had raised the same to Rs. 60/- lacs, but that aspect has not even been referred to by the Joint Charity Commissioner. Besides the abovesaid averment made in the writ petition, the petitioner has filed affidavit before this Court dated 28-2-2002 to the effect that the petitioner is willing to purchase the subject trust property for a sum of Rs. 60/- lacs on 'as is where is basis' (with the tenants), plus giving plot of 1000 sq.yds. to the trust. The petitioner has further asserted in para 7 of the said affidavit that the petitioner firm is also ready and willing to raise its bid from Rs. 60/- lacs onwards, if any bidder increases its bid. The essence of the

argument advanced before this Court is that although higher or much better and attractive offer was given before the Joint Charity Commissioner, the Joint Charity Commissioner mechanically chose to grant sanction in respect of the agreement of sale already entered between the respondent No. 1 trust and the respondent Nos. 2 and 3.

6. There is force in the abovesaid grievance made by the petitioner. I am conscious of the position that merely because some party approaches the Joint Charity Commissioner at the last minute or for that matter before the High Court, substantially enhancing the offer, that by itself cannot be a ground for interference with the decision of the Charity Commissioner according the sanction. However, as referred to above, the Joint Charity Commissioner, though records in para 5 of the impugned order regarding the revision of the offer during the enquiry by M/s. Bhakti Deep Construction Pvt. Ltd., which, prima facie, obviously seems to be higher and attractive than the offer given by the respondent Nos. 2 and 3 at the relevant point of time, and, therefore, in the interest of the trust, however, has not even considered the efficacy of that offer before according sanction in respect of the proposed transaction to be entered between the respondent 1 and respondent Nos. 2 and 3 inter se. If the Joint Charity Commissioner had done that, perhaps, this Court would have been loath to interfere in the matter having regard to the fact that the proposal to alienate the land was initiated by the trust as back as in July 1999 and the Joint Charity Commissioner has accorded sanction on 15-5-2001. Needless to mention that the main or paramount consideration of the Joint Charity Commissioner while according sanction is the interest or benefit of the trust. If a relatively better offer is made during the enquiry under section 36 of the Act it would be obligatory on the Joint Charity Commissioner to discard the same for reasons to be recorded therefore before preferring the proposed transaction of which sanction is sought by the trust. Only then the decision of the Joint Charity Commissioner, according sanction under section 36 of the Act, would stand the test of judicial scrutiny.

7. No doubt the above grievance could be well taken at the instance of M/s. Bhakti Deep Construction Ltd. But though M/s. Bhakti Deep Construction Pvt. Ltd. is not before this Court and has not taken exception to the order passed by the Joint

Charity Commissioner, however, this Court would still show indulgence at the instance of the petitioner herein who had also participated in the enquiry before the Joint Charity Commissioner and had made a better or attractive offer during that enquiry, albeit on the day of the judgment. What is relevant is that even the petitioner's offer is and was striking one. This Court would therefore show indulgence at the instance of the petitioner whose offer is prima facie in the interest and benefit of the trust. That can be done only if the petitioner is put to some terms. Only then the question of calling upon the Joint Charity Commissioner to re-examine the matter would arise so as to meet the ends of justice and more importantly the benefit or interest of the trust.

8. In the circumstances the impugned order is set aside at the instance of the petitioner, on the condition that the petitioner deposits the entire amount of Rs. 60/- lacs as offered by him for the purchase of the subject property on the terms and conditions referred to by him in para 7 of his affidavit dated 28-2-2002. This is necessary to test the bona fide of the petitioner, lets allow him to indulge in speculative litigation or in litigation to harass the respondents 2 and 3 who can be said to be genuine and bona fide bidders. If the petitioner deposits sum of Rs. 60/- lacs before the Joint Charity Commissioner within a period of eight weeks from today, only then the Joint Charity Commissioner would reopen the proceedings and not otherwise. Further, if the amount is deposited, the Joint Charity Commissioner may forthwith invest the same in any nationalised bank in fixed deposit initially for a period of three months to be renewed further, if necessary.

9. If the proceedings are re-opened, the Joint Charity Commissioner shall permit the parties to offer revised bid and consider the efficacy of all the offers made before him by the respective parties and record a clear finding as to why he would think it appropriate to accord sanction in respect of the proposed transaction. If the Joint Charity Commissioner, on the other hand, feels that the revised offer given by the petitioner before this Court or by any other bidder including the respondent Nos. 2 and 3 is higher and is in the best interest of the trust then, it would be open to the Charity Commissioner to pass such further orders in that behalf requiring the trust to re-examine the proposal given by the highest bidder. After the trust examines the same and offers comments thereon, the Charity Commissioner may

pass a final order. All this be done within a period of three months from today, for the simple reasons that the petitioner has been directed to deposit a substantial amount of Rs. 60/- lacs. Needless to mention that if the petitioner succeeds in getting the deal, the deposit made by him shall be made over along with the interest accrued thereon to the respondent No. 1 trust which amount shall be adjusted towards the final consideration amount as approved by the Joint Charity Commissioner. However, if the petitioner fails to bag the deal then the amount deposited by the petitioner be returned to him forthwith. But in so far as the amount of interest accrued thereon is concerned the same shall be subject to the order to be passed by the Joint Charity Commissioner in that behalf.

10. All questions are left open to be considered by the Joint Charity Commissioner, including the question that the respondent Nos. 2 and 3 have already acted upon the agreement of sale in respect of which sanction has been accorded by the impugned order on 15-5-2001. For this purpose however, the Joint Charity Commissioner shall consider the events after the date of according sanction i.e. 15-5-2001, so as to judge the equities for or against the respondent Nos. 2 and 3. This is so because prior sanction is the quintessence of any alienation to be valid by virtue of the mandate of section 36 of the Act and, therefore, any steps taken prior to obtaining sanction on 15-5-2001 would be of no consequence so as to plead equity, for no equity can be pleaded against the law.

11. Parties to appear before the Charity Commissioner on 11-6-2002.

12. It is made clear that if the aforesaid amount is not deposited by the petitioner within the specified period, the order passed by the Joint Charity Commissioner, which is impugned in this writ petition, would stand and the respondent trust and the respondent Nos. 2 and 3 would be free to proceed on the basis of the said agreement to sell dated 2-9-1999. In other words, the interim order passed by this Court in terms of prayer Clause (c) on 20-12-2001 would initially enure only till 10-6-2002. The same to be continued by the Joint Charity Commissioner consequent to the deposit of the aforesaid amount of Rs. 60/- lacs by the petitioner in the specified time, till the disposal of the proceedings before him.

13. In the circumstances this petition is allowed in the above terms. No order as to costs.

14. All concerned to act on the copy of this order duly authenticated by Sheristedar of the Court.

15. Certified copy expedited.