

Bhaskar Laxman Jadhav & Ors vs Karamveer Kakasaheb Wagh Edu.Sty.& Ors on 11 December, 2012

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Bench: Madan B. Lokur, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL NO. 30469 OF 2009

Bhaskar Laxman Jadhav & Ors.

....Petitioner(s)

Versus

Karamveer Kakasaheb Wagh
Education Society & Ors.

....Respondent(s)

J U D G M E N T

Madan B. Lokur, J.

1. The facts of this case are a little elaborate, spanning as they do more than a decade and a half. However, the issue raised is somewhat narrow and is, in a sense, limited to the question whether the High Court over- stepped its jurisdiction in issuing the directions that it did.

2. The issue before the High Court was whether respondent No.1 should be impleaded as a party in the proceedings before the Charity Commissioner in an application filed by a trust for sanction to sell off some land belonging to it. The High Court obliquely decided the issue by directing the Charity Commissioner to go ahead with the advertised auction of the trust land in which respondent No. 1 was the highest bidder.

3. While upholding the decision of the High Court, we feel that it may have over-stepped in giving the direction that it did. But, we are of the opinion that the learned judges had no option but to

mould the relief and give the direction that it did in the best interest of the trust, in keeping with the provisions of Section 36 of the Bombay Public Trust Act, 1950. Consequently, there is no reason to interfere with the direction of the High Court.

4. We are also of the opinion that the petitioners have suppressed a material fact from us and, therefore, special leave to appeal ought not to be granted to the petitioners.

Facts:

5. On 29th November, 1994 the trustees of the Shri Vyankatesh Mandir Trust at Panchavati, Nasik resolved to sell 9 (nine) acres of agricultural land belonging to the Trust in Survey No. 275 situated at Aurangabad Road, Panchavati, Nasik by calling tenders from the public at large. For convenience the land resolved to be sold is hereinafter referred to as the 'Trust land'.

6. Pursuant to the resolution, the trustees issued a public notice in the newspaper "Rambhoomi" inviting offers for purchase of the Trust land. In response, they received four offers, the highest being that of the petitioners for Rs.2.5 lakhs per acre totaling Rs.22.5 lakhs.

7. The petitioners' offer was accepted by the trustees and on 18th February 1995 they entered into an agreement for the sale/purchase of the Trust land for a total consideration of Rs.22.5 lakhs.

8. As required by Section 36 of the Bombay Public Trust Act, 1950 (for short the Act) the trustees moved an application on 5th February 1996 before the Charity Commissioner for sanction to sell the Trust land in terms of the agreement dated 18th February 1995. Section 36 of the Act reads as follows:

"36. Alienation of immovable property of public trust :(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) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.

(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) on the ground that such sanction was obtained by fraud or misrepresentation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

(3) No sanction shall be revoked under this section unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show cause why the sanction should not be revoked.

(4) If, in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable effort or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.”

9. On 6th February 1998 the Joint Charity Commissioner (for short ‘the JCC’) Mumbai granted the sanction prayed for by the trustees, subject to all laws applicable to the transaction and on terms and conditions that were to follow.

10. On 19th June 1998 the sanction granted by the JCC was partially modified and a condition imposed that the sale shall be executed within a period of one year from the date of the order that is 19th June 1998. However, for one reason or another, the petitioners and the trustees were unable to complete the sale transaction within this time.

11. Much later, on 30th June 2001 the trustees and the petitioners mutually agreed to extend the time for completing formalities for execution of the transaction. They also agreed that the sale price of the Trust land would now be increased to Rs.75 lakhs. This was the second agreement between the parties. Consequent upon this, the trustees moved an application before the JCC on 13th September 2001 to extend the time for completing the transaction.

12. Although it is not very clear, but it appears that thereafter something seems to have gone wrong between the parties because in January 2002 the trustees moved an application before the JCC for revised permission since the petitioners had not complied with the terms of the agreement. The trustees therefore planned to sell the Trust land as per the sanction but apparently to persons other than the petitioners. This application was contested by the petitioners.

13. During the pendency of the application for extension of time moved by the trustees on 13th September 2001 and the application for revised permission moved by the trustees in January 2002 the differences between the trustees and the petitioners could not to be resolved with the result that on 16th April 2002 the trustees sought to withdraw the application dated 13th September 2001 for

extension of time since the petitioners had not complied with the terms and conditions of the agreement entered into between the parties.

14. Eventually, both the applications (for extension of time and for revised sanction) were heard by the JCC who passed an order on 2nd May 2003 rejecting them. This order was not challenged by any of the parties and it has attained finality.

15. At this stage, it may be noted that according to respondent No. 1 the order dated 2nd May 2003 is an important order and it has been suppressed by the petitioners in this petition.

16. Even after the order dated 2nd May 2003 it seems that the trustees and the petitioners continued to have discussions and eventually on 15th August 2004 they entered into a third agreement. By the third agreement, they agreed to extend the time for completing formalities for executing the transaction originally entered into between them. They also mutually agreed to increase the sale price of the Trust land to Rs. 125 lakhs.

17. Pursuant to the third agreement the trustees once again decided to seek extension of time from the JCC for executing the transaction with the petitioners. Accordingly, they moved an application on 20th July 2005 for extension of time. This was the second application for extension of time. The petitioners were not parties before the JCC in this application nor were they heard on this application.

18. By an order dated 24th July 2006 the JCC rejected the second application filed by the trustees for extension of time.

19. Pursuant to the rejection, the trustees issued a public notice in "Day View" on 19th February 2007 for sale of the Trust land. In response to the public notice, respondent No.1 gave the highest bid on 23rd February 2007 at Rs.43 lakhs per acre.

20. Significantly, on 26th February 2007 the petitioners filed W.P. No.1502 of 2007 in the High Court challenging the order dated 24th July 2006 passed by the JCC rejecting the second application for extension of time. In this Writ Petition, respondent No.1 was not made a party by the petitioners nor did the trustees bring it to the notice of the High Court that respondent No.1 had given the highest bid for purchase of the Trust land pursuant to the public notice issued in "Day View".

21. On 28th August 2008 the petitioners and the trustees entered into a compromise as a result of which it was agreed that the order dated 24th July 2006 be set aside and the second application for extension of time be remanded to the JCC for a fresh hearing on merits. It was also agreed that the petitioners would be joined as parties in the proceedings before the JCC and that the application be decided as expeditiously as possible but not later than three months beyond the date of presentation of the order of the High Court. On the basis of this compromise between the parties (and without the knowledge of respondent No.1), minutes of order were drawn up and the High Court passed an order taking the minutes on record. An order was then passed by the High Court in terms of the

minutes.

22. Pursuant to the compromise order dated 28th August 2008 the JCC impleaded the petitioners as parties to the second application for extension of time.

23. When respondent No.1 learnt of the pendency of the proceedings before the JCC, it moved an application before the JCC for impleadment. In fact, other interested purchasers also moved applications for impleadment. The JCC heard all the applications and by an order dated 29th November 2008 rejected them.

24. Feeling aggrieved by the rejection of its impleadment application, respondent No.1 preferred W.P. No.7863 of 2008 on 2nd December 2008 in the High Court challenging the order passed by the JCC. The trustees as well as the petitioners were arrayed as respondents. It was prayed that the order dated 29th November 2008 passed by the JCC be quashed and respondent No.1 be impleaded as a necessary party in the proceedings before the JCC. The alternative prayer was that the JCC be directed to consider the bid of respondent No.1 for sale of the Trust land.

25. After hearing all the parties, the High Court passed the impugned order on 24th April 2009 in which it was noted, inter alia, that the Charity Commissioner had received another offer for the Trust land higher than the offer of respondent No.1. The Assistant Government Pleader accordingly submitted that the matter be remanded to the Charity Commissioner to decide in whose favour the Trust land should be sold, depending on the highest bid.

26. On deliberations of the submissions made by the parties, the High Court remanded the entire matter for consideration by the Charity Commissioner to decide who should be the purchaser for the Trust land. The Charity Commissioner was directed to consider all bids received pursuant to the public notice dated 19th February 2007 including the bids given by the petitioners and respondent No.1.

27. It is under these circumstances that the petitioners are now before us.

Submissions:

28. The broad submission of learned counsel for the petitioners was that the High Court had effectively over-stepped its jurisdiction while deciding W.P. No.7863 of 2008. It was submitted that the issue before the High Court was rather limited, namely, whether respondent No.1 should be impleaded before the JCC in the second application for extension of time. Apart from adjudicating on the correctness or otherwise of the decision rendered by the JCC rejecting the impleadment application, the High Court effectively rejected the second application for extension of time.

29. It was submitted that the High Court went much further than necessary in requiring the JCC to consider all bids received by the trustees pursuant to the public notice dated 19th February 2007. The right of the petitioners to seek specific performance of the third agreement entered into between them and the trustees on 15th August 2004 was thereby scuttled. To make matters worse, the High

Court virtually set aside an order passed by the co-ordinate Bench in W.P. No.1502 of 2007 directing the JCC to hear the second application for extension of time. It was submitted that this was clearly impermissible.

30. It was finally submitted that under these circumstances the impugned order could not be sustained and the only relief that could have been granted by the High Court to respondent No.1 was to implead it in the second application for extension of time and to direct the JCC to decide the application at the earliest.

31. Contesting these submissions, learned counsel for respondent No.1 submitted that the petitioners were guilty of suppression of material facts inasmuch as it was not brought to the notice of this Court that the JCC had earlier rejected the first application for extension of time on 2nd May 2003 which had attained finality. Since this fact is not disclosed, this Court will not grant special leave to appeal.

32. It was also submitted that since Shri Vyankatesh Mandir Trust is a charitable trust, it was expected of the High Court (as also this Court) to subserve the larger interest of the charitable trust. In achieving this, necessary and appropriate orders can be passed for the ultimate benefit of the trust. In support of this submission learned counsel for respondent No.1 relied on *Chenchu Rami Reddy v. Government of Andhra Pradesh*, 1986 (3) SCC 391, *R. Venugopala Naidu v. Venkatarayulu Naidu Charities*, 1989 Suppl. (2) SCC 356 and *Mehrwan Homi Irani v. Charity Commissioner Bombay*, 2001 (5) SCC 305.

33. Finally it was submitted by learned counsel for respondent No.1 that the Charity Commissioner had received an offer higher than given by respondent No.1 and therefore the High Court was right in directing that appropriate steps be taken to receive the highest amount possible by sale of the Trust land. In this regard, the High Court had acted in the best interest of the charitable trust (and that is how it should be) and therefore we should not interfere with the impugned order.

34. Learned counsel for the trustees only submitted that the trust expects the highest amount possible for the sale of its land and that appropriate orders may be passed in this regard.

Conduct of the petitioners and trustees:

35. The facts of the case show that the trustees and the petitioners have been indulging in a flip-flop and in a sense taking advantage of the absence of any clear-cut statutory measures to prevent an abuse of the process of law.

36. The trustees and the petitioners entered into a total of three agreements from time to time. The trustees moved two applications for extension of time to complete the sale transaction with the petitioners. The trustees even sought to withdraw their first application for extension of time and to seek a revised sanction from the JCC to sell the Trust land to a third party apparently because they fell out with the petitioners.

37. Given this flip-flop, the JCC rightly rejected the first application for extension of time on 2nd May 2003. He gave two significant reasons for doing so, namely, that the trustees were not voluntarily selling the Trust land and secondly, given the circumstances, the sale transaction was not for the benefit and in the interest of the Trust. This order has attained finality, not having been challenged by anybody. It is this order that has been suppressed by the petitioners from this Court. We propose to refer to this a little later.

38. While considering the second application for extension of time on 24th July 2006 the JCC observed that the trustees are “changing track from time to time and for the reasons best known to them are bowing before the proposed purchasers”. The JCC doubted the bona fides of the trustees and in fact observed that there is obviously something fishy and suspicious in the matter. Accordingly, the JCC rejected their second application for extension of time.

39. After the second application for extension of time was rejected, the trustees issued a public notice on 19th February, 2007 for sale of the Trust land.

40. Soon after the trustees received offers including the highest bid by respondent No.1 the petitioners filed a writ petition in the High Court challenging the order rejecting the second application for extension of time. It seems rather odd that respondent No.1 was not impleaded in the writ petition either by the petitioners or at the instance of the trustees. The fact that third party interests were in existence was definitely known to the trustees, if not to the petitioners, and this should have been brought to the notice of the High Court.

41. In this background, the compromise effected between the trustees and the petitioners in the High Court on 28th August 2008 appears rather suspicious. To this extent, learned counsel for respondent No.1 may be correct in his submission that the order dated 28th August 2008 passed by the High Court was collusively obtained by the parties.

42. These facts clearly indicate to us that all through, the conduct of the trustees and the petitioners leaves much to be desired.

43. While it may be that no time limit is prescribed for seeking extension of time to complete the transaction for sale of the Trust land, yet the conduct of the parties certainly requires consideration. While so considering, we are of the view that the petitioners and the trustees were trying to take advantage of, if not exploit, the situation and the absence of any adverse consequences under the Act for not complying with the terms of the sanction originally granted.

Suppression of fact:

44. While dealing with the conduct of the parties, we may also notice the submission of learned counsel for respondent No.1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2nd May 2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to

appeal should not be granted to the petitioners.

45. Learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2nd May 2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

46. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

47. We may only refer to two cases on this subject. In *Hari Narain v. Badri Das*, AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows:

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.”

48. More recently, in *Ramjas Foundation v. Union of India*, (2010) 14 SCC 38 the case law on the subject was discussed. It was held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said:

“The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

49. A mere reference to the order dated 2nd May 2003, en passant, in the order dated 24th July 2006 does not serve the requirement of disclosure. It is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come up-front and clean with all material facts and then, on the basis of the submissions made by learned counsel, leave it to the Court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof. Validity of the High Court order:

50. The next submission of learned counsel for the petitioners was that the High Court had over-stepped its jurisdiction in requiring the JCC to virtually go in for a fresh auction. While we agree that the question before the High Court was very limited, namely, whether respondent No.1 ought to have been impleaded by the JCC in the second application for extension of time, we are of the view that on an overall consideration of the facts and circumstances of the case, the High Court was perhaps left with no option but to pass the order that it did and accept the alternative prayer of respondent No. 1. We say this because, as noticed above, the trustees and the petitioners were colluding and it was not possible to entirely rule out the possibility that they would enter into yet another mutual arrangement to wipe out whatever interest respondent No.1 had in the Trust land. Therefore, impleading respondent No.1 before the JCC could have been rendered into a mere formality. Additionally, the lack of bona fides of the trustees and the petitioners could not be overlooked by the High Court. Therefore, the safest course of action for the High Court was to require sale of the Trust land through auction.

51. It appears to us that another factor that weighed with the High Court in this regard was the submission of the learned Assistant Government Pleader that the Charity Commissioner had received an offer higher than that given by respondent No.1. Therefore, it is quite clear that due to the passage of time, mainly because of the flip-flop of the trustees and the petitioners, the value of the Trust land had increased considerably. In these circumstances, it would be in the best interest of the trust if the maximum price is available for the Trust land from the open market. While this may or may not have been a consideration before the High Court, it is certainly one of the considerations before us for not interfering with the order passed by the High Court, even though it may have, in a loose sense, over-stepped its jurisdiction.

52. Section 36 of the Act clearly provides that the trustees may be allowed by the Charity Commissioner to dispose of immoveable property of the trust with regard being had to the “interest, benefit or protection” of the trust. It cannot be doubted that the interest of the trust would be in getting the maximum for its immoveable property.

53. In *Chenchu Rami Reddy* this Court frowned upon private negotiations for the alienation of trust property and encouraged public auction in such a case. It was held

as follows:-

“We cannot conclude without observing that property of such institutions [religious or charitable 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 [Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments] 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 authorised 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.”

54. Similarly, in *R. Venugopala Naidu* this Court followed the law laid down in *Chenchu Rami Reddy* and actually went a bit further and gave a direction for sale of the trust property by public auction. It was held as follows:-

“The subordinate court and the High Court did not go into the merits of the case as the petitioners 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.....

..... We direct that the properties in question may be sold by public auction by giving wide publicity regarding the date, time and place of public auction. The offer of Rs 10 lakhs made in this Court will be treated as minimum bid of the person who has given the offer and deposited 10 per cent of the amount in this Court. It will also be open to the respondents/purchasers to participate in the auction and compete with others for purchasing the properties.”

55. In *Mehrwan Homi Irani* 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 :-

“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.”

56. Following the consistent view taken by this Court as well as the language of Section 36 of the Act, we have no hesitation in concluding that the only course available to the High Court was to mould the relief and direct the Charity Commissioner to have a re-look at all bids received pursuant to the public notice dated 10th February 2007. Remaining contentions:

57. We are not impressed with the submission of learned counsel for the petitioners that the right of the petitioners to obtain specific performance of the agreements with the trustees has now been obliterated.

As far as the first agreement is concerned, permission was granted to the petitioners to purchase the Trust land subject to certain conditions and within a certain time frame. Those conditions were not met. As far as the other two agreements are concerned, the JCC did not grant sanction to the trustees to act on them. It seems to us, prima facie, that the petitioners could not have sought specific performance of any of these agreements, but we do not express any final opinion on this since the issue is not directly before us.

58. We are also not impressed by the contention of learned counsel for the petitioners that by the impugned order, the High Court has effectively set aside its earlier order dated 28th August 2008 passed by a coordinate Bench. The circumstances under which the earlier order was passed and the significant developments that took place thereafter changed the circumstances and made it necessary for the High Court to pass a different order. It is not as if both orders were passed by the High Court under similar circumstances. The circumstances had changed and the view of the High Court on the changed circumstances could also be different. Conclusion:

59. For the reasons mentioned above, we decline to grant special leave to appeal to the petitioners for suppression of a material fact and direct the Charity Commissioner to have a fresh look at the sale of the Trust land, subject matter of this petition, in accordance with the directions of the High

Court. However, we leave it open to the Charity Commissioner to permit all the parties before it to submit fresh offers for the Trust land and if deemed necessary, a fresh public notice for sale of the Trust land may be issued. On the basis of the bid given by respondent No.1 as disclosed to us in Court, we make it clear that the price for the sale of the Trust land shall not be less than Rs.3.87 crore.

60. The petitioners will pay costs of Rs.15,000/- to the Charity Commissioner within six weeks from today.

61. The petition is disposed of accordingly.

..... J.

(Swatanter Kumar) J.

(Madan B. Lokur) New Delhi;

December 11, 2012