

GANESH RAMCHANDRA JADHAV

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v.

GOVARDHAN SANSTHA (REGD) WAI PUNE AND OTHERS

(Civil Appeal No 2748 of 2021)

JULY 19, 2021

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Maharashtra Public Trust Act, 1950 – Tender – In 2015, a tender notice was issued by the first respondent-registered charitable trust inviting bids for the development of the property – Bids were tendered by the appellant and the second respondent – There were various rounds of litigation between the first respondent, second respondent, third respondent-Joint Charity Commissioner and the appellant regarding the bids offered – In 2021, the appellant filed an intervention application in the writ proceedings, alleging collusion between the first and second respondent for the sale of the said property – Appellant offered an amount of Rs. 75 lakhs for the property – However, appellant did not abide by its offer despite various opportunities given by the High Court – Thereafter, second respondent made an offer of Rs.80 lakhs and accordingly, the High Court directed to complete the transaction with the second respondent – Before the Supreme Court, the appellant submitted that he was ready with Rs. 75 lakhs and High Court should have granted further extension of time – On 18.03.2021, the appellant was directed to deposit Rs.1 crore in the High Court to his bona fides and the same was complied with – It was contended by the second respondent that all along, it was second respondent who has participated in the process of auction sale and the appellant had failed to avail of the opportunities which were granted by the High Court – It was urged that having regard to the principles of law which have evolved by the judgments of the Supreme Court, it would be necessary to reject the offer which is now made by the appellant and to award the property to the second respondent – Held: At the present time, the appellant has deposited an amount of Rs. 1 crore before the High Court – To accept the bid of the second respondent in the amount of Rs. 80 lakhs will deprive the trust of the opportunity of realising the full market value – The decision of

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- A *the High Court to award the sale in favour of the second respondent would cause serious jeopardy to the interests of the public charitable trust – The manner in which the second respondent has increased his offer in dribblets (from Rs.50 lakhs to Rs.75 lakhs and thereafter, to Rs.80 lakhs) leads to a reasonable inference that the true value of the property was not realized – The appropriate direction would be to require the third respondent to conduct the auction process by inviting fresh bids after a proper valuation – Accordingly, directions issued.*
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Allowing the appeal, the Court

- C **HELD: 1. The offer which was made by the second respondent initially was in the amount of Rs 50 lakhs. It was only after the appellant had indicated before the High Court that an amount of Rs 75 lakhs would be offered and failed to do so, that the second respondent stated before the High Court that he was willing to match the offer of the appellant and to go beyond it by**
- D **an amount of Rs 5 lakhs. At the present time, the appellant has deposited an amount of Rs 1 crore before the High Court. To accept the bid of the second respondent in the amount of Rs 80 lakhs will deprive the trust of the opportunity of realising the full market value. In this view of the matter, this Court is of the view**
- E **that the submission which has been urged on behalf of the appellant is worthy of acceptance. This Court is unable to subscribe to the submission of the second respondent for the simple reason that the course of dealings would indicate that even the second respondent has progressively enhanced its offers from Rs 50 lakhs to Rs 75 lakhs and, thereafter, to Rs 80 lakhs. Before**
- F **this Court, now it has been indicated that the second respondent would be willing to match the offer of the appellant of Rs 1 crore. There has undoubtedly been a default on the part of the appellant before the High Court. But the decision of the High Court to award the sale in favour of the second respondent would cause**
- G **serious jeopardy to the interests of the public charitable trust. The manner in which the second respondent has increased his offer in dribblets leads to a reasonable inference that the true value of the property has not been realized. Hence, the order of the High Court to dismiss the petition cannot be sustained. This Court**

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is of the view that the appropriate direction would be to require the third respondent to conduct the auction process by inviting fresh bids after a proper valuation and to issue further consequential directions for the submission of a report in the proceedings before the Bombay High Court. Accordingly, the following directions are issued: (i) The third respondent shall obtain a fresh valuation report for the property, and shall fix an upset price which shall not, in any circumstances, be less than the amount of Rs 1 crore. The upset price shall be based on the valuation, subject to the minimum of Rs 1 crore; (ii) The third respondent shall invite fresh bids by publishing an advertisement in at least two widely circulated local newspapers for the sale of the property; (iii) Both the appellant and the second respondent shall be at liberty to submit their fresh bids, which shall be considered by the third respondent together with all other bids which are received; (iv) The third respondent shall, upon the bids so received, submit a report to the High Court, which shall consider the report while passing such final directions as are necessary in the writ petition; (v) Consequently, the impugned order of the High Court dated 26 February 2021 dismissing the petition shall stand set aside. The writ petition, being Writ Petition No 3894 of 2019, shall hence stand restored to the file of the High Court. The High Court shall upon the receipt of the report of the third respondent take an appropriate view and decide upon the merits of the petition in respect of which all the rights and contentions of the parties on all aspects are kept open; and (vi) The amount of Rs 1 crore which has been deposited with the Bombay High Court by the appellant, shall be invested in a Fixed Deposit of a nationalized bank to be renewed periodically during the pendency of the writ petition and shall abide by such further directions as may be issued by the High Court. In the event that the appellant desires to bid for the property at the auction, it would be open to him to move a Civil Application before the High Court to adjust the amount of Rs 1 crore deposited in pursuance of the order of this Court towards the bid. [Para 18][500-C-H; 501-A-G]

*Cyrus Rustom Patel v Charity Commissioner (2018) 14
SCC 761 : [2017] 9 SCR 277 – relied on.*

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Case Law Reference**[2017] 9 SCR 277 relied on Para 17**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2748 of 2021

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From the Judgment and Order dated 26.02.2021 of the High Court of Judicature at Bombay in Writ Petition No.3894 of 2019.

Dilip Annasaheb Taur, Adv. for the Appellant.

Vikas Mishra, Ms. Shivani Shah, Sanchit Gawri, Ms. B. Vijayalakshmi Menon, M. V. Mukunda, Kailas Bajirao Autade, Ms. C Sheetal Patil, Prashant Shantaram Chaudhari, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

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2. This appeal arises from a judgment and order of the High Court of Judicature at Bombay dated 26 February 2021.

3. The subject matter of the dispute relates to a parcel of land¹ admeasuring 2 hectares 48 ares belonging to the first respondent, Shri Govardhan Sanstha (Regd) Wai, which is a registered charitable trust, bearing registration No F-133 (Pune), under the Maharashtra Public Trust Act, 1950². The property is comprised in Survey No 90, Hisra No 6, at Village Dabewadi, Taluka and District Satara.

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4. In 2015, a tender notice was published by the first respondent inviting bids for the development of the property. During the course of the tender process, two bids were received, out of which one was tendered by the appellant and the other by the second respondent. The first respondent accepted the offer of the second respondent in its meeting on 6 November 2015, in which the second respondent had offered a cash consideration of Rs 32 lakhs along with 6000 sq. ft. of constructed area in the property, admeasuring 30 ares.

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5. On 4 January 2016, an application for the grant of approval under Section 36(1) of the Act was filed by the first respondent before the third respondent, the Joint Charity Commissioner, Pune. The application

¹ the “property“

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² the “Act“

was rejected by the third respondent on 8 February 2017, by noting that the first respondent had not filed a copy of the resolution dated 19 November 2015 in which its members had decided to sell the subject property. Further, that the second respondent's offer was held not to be reasonable since the Assistant Charity Commissioner, Satara's report valued the land at Rs 5 crores. Finally, the Joint Charity Commissioner also held that there was no legal necessity to sell the property, since the first respondent was not getting offers for the property due to its ongoing disputes with tenants, which should be resolved prior to the sale.

6. The order of the Joint Charity Commissioner, Pune resulted in the first respondent instituting a writ petition³ for challenging the order dated 8 February 2017. The High Court of Judicature at Bombay, by a judgment and order dated 21 June 2018, set aside the order dated 8 February 2017. It directed the third respondent to decide the first respondent's application afresh and the first respondent was granted an opportunity to file a copy of their resolution deciding to sell the subject property and to also to address the merits of the valuation report relied upon by the third respondent in respect of the subject property.

7. It appears that on 1 August 2018, a fresh valuation report was obtained from a government approved valuer, according to which the market value of the property was determined to be Rs 1,82,25,000.

8. Thereafter, the third respondent by an order dated 22 October 2018, once again dismissed the first respondent's application under Section 36(1) of the Act. The third respondent noted that the second respondent's offer had not changed since the last order which was passed on 8 February 2017, and during the course of the proceedings, the second respondent also indicated their inability to enhance their offer. As held previously, this offer by the second respondent was not reasonable, in light of the valuation report. Further, it was noted that the fact that tenants of the property were not paying rent was not an adequate reason to sell the property, when the first respondent could file and contest a suit for possession.

9. Another writ petition⁴ was then instituted before the Bombay High Court by the first respondent on 23 January 2019. During the pendency of the petition, the High Court by an order dated 7 August

³ Writ Petition No 8625 of 2017

⁴ Writ Petition No 3894 of 2019

A 2019 directed the third respondent to call for fresh bids by issuing a fresh advertisement. In pursuance of this order, the third respondent invited fresh bids, in pursuance of which, only one offer, that of the second respondent, was received for an amount of Rs 50 lakhs.

B 10. On 6 January 2021, the appellant filed an intervention application⁵ in the writ proceedings, alleging collusion between the first and second respondent for the sale of the property. The appellant also offered an amount of Rs 75 lakhs for the property, while highlighting his willingness to further increase the amount. In pursuance of the aforesaid position, the writ petition was listed before the High Court on several occasions and orders were passed on 11 January 2021, 20 January 2021, C 5 February 2021, 15 February 2021 and 22 February 2021. The appellant did not abide by its offer to deposit Rs 75 lakhs.

D 11. On 26 February 2021, the High Court declined to grant any further time to the appellant to make good the offer of Rs 75 lakhs. The High Court was of the view that though sufficient opportunities were granted to the appellant to deposit an amount of Rs 75 lakhs, no compliance had been effected. However, the second respondent matched the offer of Rs 75 lakhs made by the appellant by increasing the offer further by an amount of Rs 5 lakhs to make a total offer of Rs 80 lakhs. The High Court accordingly directed the third respondent to complete the sale formalities by entering into a sale transaction with the second E respondent for a consideration of Rs 80 lakhs.

12. Aggrieved by the order of the High Court, the appellant moved these proceedings under Article 136 of the Constitution.

F 13. On 18 March 2021, the following order was passed by this Court:

“1 Permission to file the Special Leave Petition is granted.

G 2 Mr Dilip Annasaheb Taur, learned counsel appearing on behalf of the petitioner submits that the petitioner was ready with a Demand Draft in the amount of Rs 75 lakhs and the High Court should have granted a further extension of time. From the record it emerges that the High Court had granted several opportunities to the petitioner to comply with the statement of depositing Rs 75 lakhs, but the petitioner was unable to do so and a cheque which was issued was, in fact, dishonored.

H ⁵ Intervention Application St No 499 of 2021

3 In order to test the bona fides of the petitioner and having regard to the fact that the property in question belongs to a charitable trust, we direct the petitioner to deposit an amount of Rs 1 crore in the Registry of the High Court of Judicature at Bombay within a period of two weeks from today. In order to facilitate the petitioner in making the deposit, we order the status quo to be maintained for a period of two weeks. The petitioner shall file an affidavit in the Registry of this court a receipt indicating proof of deposit on or before 9 April 2021, failing which the Special Leave Petition shall stand dismissed without further reference to this Court. In the event, the proof of deposit is produced, notice shall issue, returnable on 23 April 2021 and the order of status quo will stand extended till the next date of listing.

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4 In the event that the petitioner fails to effect deposit, in addition, to the consequences which have been envisaged above, the petitioner would be saddled with exemplary costs, in which event an office report shall be placed before this Court for directions.

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5 After the order was dictated, Mr Dilip Taur had requested the Court to pass over the case in order to enable him to get specific instructions from his client whether they were ready and willing to abide by the above understanding, as reflected in the order.

6 After seeking instructions, Mr Dilip Taur states that his client has been made aware and he is agreeable to the above terms.”

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14. In pursuance of the above order, the appellant has produced proof of having effected a deposit of an amount of Rs 1 crore in the High Court of Bombay and an affidavit dated 5 April 2021 has been filed in compliance of the order dated 18 March 2021. It is at this stage that the matter now appears before this Court for resolution.

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15. Mr Dilip Taur, learned counsel appearing on behalf of the appellant submits that the appellant has indicated his *bona fides* in complying with the direction of this Court of depositing the amount of Rs 75 lakhs, and the appellant has gone even beyond that by depositing an amount of Rs 1 crore before the High Court. Hence, it was urged that the order of the High Court may be set aside and the writ petition may be restored before the High Court.

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16. On the other hand, Mr Vikas Mishra, learned counsel appearing on behalf of the second respondent, submitted that all along, it has been

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- A the second respondent who has participated in the process of auction sale and the appellant had failed to avail of the opportunities which were granted by the High Court. It has been urged on behalf of the second respondent that having regard to the principles of law which have been evolved by the judgments of this Court, it would be necessary to reject the offer which is now made by the appellant and to award the property to the second respondent.
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17. The property which is sought to be sold belongs to a public charitable trust. A two-Judge Bench of this Court In **Cyrus Rustom Patel v Charity Commissioner**⁶, noted the principles laid down by this Court with respect to the duties enjoined upon a trustee in the matter of sale of trust properties:

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“17. ...This Court held [*Chenchu Rami Reddy v. State of A.P.*, (1986) 3 SCC 391] that in view of the provisions contained in Section 74(1) of the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1966, **the Government must be satisfied that it was in the interest of the institution or endowment to permit the sale of the lands concerned otherwise than by a public auction, and then reasons to reach that satisfaction must be recorded in the order.**

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18. It was also observed by this Court in *Chenchu Rami Reddy v. State of A.P.*, (1986) 3 SCC 391] that **public officials and public-minded citizens entrusted with the care of “public property” have to show exemplary vigilance; the property of religious and charitable institutions or endowments must be jealously protected.** The sale of such a property by private negotiations which will not be visible to the public eye, and may even give rise to public suspicion, should not be, therefore, made, unless there are reasons to justify the same...

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19. Again, in *R. Venugopala Naidu [R. Venugopala Naidu v. Venkatarayulu Naidu Charities*, 1989 Supp (2) SCC 356], this Court observed that fraudulent sale of the property of public charities by way of private negotiations should not be permitted. **This Court further held that reserved price should be fixed after ascertaining the market value and offer of higher price by filing an affidavit...** This Court had considered the fact that the value of the property which the

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Trust got was not the market value, and quashed and set aside the sale order of the subordinate court and the consequent sale...

20. In Bhaskar Laxman Jadhav [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531], this Court considered the alienation of the immovable properties of public trust under Section 36 of the Bombay Public Trusts Act, 1950; sanction was sought from the Charity Commissioner to alienate the property of the public trust, there was continuation of negotiations between trustees of public trust and prospective purchasers. There were successive applications submitted, seeking permission to alienate after each negotiation. **This Court held [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531] that it would tantamount to an abuse of the process of law and that such an act of the party meant that they were trying to take advantage of the absence of any clear-cut provisions under the Act relating to the sale.** To prevent the abuse, this Court considered the factual scenario that trustees and the petitioners had been indulging in a flip-flop, and in a sense taking advantage of the absence of any clear-cut statutory measures designed to prevent abuse of the process of law in the Act. It was held by this Court that the Charity Commissioner had rightly rejected the first application for two reasons, firstly since the trustees were not voluntarily selling the trust land and secondly, in the given circumstances, the sale transaction was not for the benefit, and in the interest of, the Trust. This Court also considered the background facts, as also the compromise effected between the trustees and the petitioners in the High Court on 28-8-2008, which appeared to this Court to be suspicious. **On an overall consideration of the facts and circumstances of the case, it observed that it was not possible to rule out the possibility of collusion between the trustees and the petitioners.**

21. **This Court in Bhaskar Laxman Jadhav [Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531] further observed that the lack of bona fide of trustees and the petitioners could not have been overlooked by the High Court. Therefore, the safest course was to sell off the trust land through auction.** It was also observed that it was quite clear that due to the passage of time,

- A the value of the trust land had increased considerably, and that it would be in the best interest of the Trust if the maximum price is made available for the trust land from the open market. **This Court also observed that Section 36 of the Act enjoins duties on the Charity Commissioner to consider the sale of immovable property of the Trust, with regard being had to the “interest, benefit or protection” of the Trust...**
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(emphasis supplied)

18. The offer which was made by the second respondent initially was in the amount of Rs 50 lakhs. It was only after the appellant had indicated before the High Court that an amount of Rs 75 lakhs would be offered and failed to do so, that the second respondent stated before the High Court that he was willing to match the offer of the appellant and to go beyond it by an amount of Rs 5 lakhs. At the present time, the appellant has deposited an amount of Rs 1 crore before the High Court of Judicature at Bombay. To accept the bid of the second respondent in the amount of Rs 80 lakhs will deprive the trust of the opportunity of realising the full market value. In this view of the matter, we are of the view that the submission which has been urged on behalf of the appellant is worthy of acceptance. We are unable to subscribe to the submission of the second respondent for the simple reason that the course of dealings would indicate that even the second respondent has progressively enhanced its offers from Rs 50 lakhs to Rs 75 lakhs and, thereafter, to Rs 80 lakhs. Before this Court, Mr Vikas Mishra has now indicated that the second respondent would be willing to match the offer of the appellant of Rs 1 crore. There has undoubtedly been a default on the part of the appellant before the High Court. But the decision of the High Court to award the sale in favour of the second respondent would cause serious jeopardy to the interests of the public charitable trust. The manner in which the second respondent has increased his offer in dribblets leads to a reasonable inference that the true value of the property has not been realized. Hence, the order of the High Court to dismiss the petition cannot be sustained.
- F We are not inclined to conduct an auction process within the precincts of this Court and are accordingly of the view that the appropriate direction to be passed would be to require the third respondent to conduct the auction process by inviting fresh bids after a proper valuation and to issue further consequential directions for the submission of a report in the proceedings before the Bombay High Court. We accordingly issue the following directions:
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- (i) The third respondent shall obtain a fresh valuation report for the property, and shall fix an upset price which shall not, in any circumstances, be less than the amount of Rs 1 crore. The upset price shall be based on the valuation, subject to the minimum of Rs 1 crore; A
- (ii) The third respondent shall invite fresh bids by publishing an advertisement in at least two widely circulated local newspapers for the sale of the property; B
- (iii) Both the appellant and the second respondent shall be at liberty to submit their fresh bids, which shall be considered by the third respondent together with all other bids which are received; C
- (iv) The third respondent shall, upon the bids so received, submit a report to the High Court of Judicature at Bombay, which shall consider the report while passing such final directions as are necessary in the writ petition; D
- (v) Consequently, the impugned order of the High Court dated 26 February 2021 dismissing the petition shall stand set aside. The writ petition, being Writ Petition No 3894 of 2019, shall hence stand restored to the file of the High Court. The High Court shall upon the receipt of the report of the third respondent take an appropriate view and decide upon the merits of the petition in respect of which all the rights and contentions of the parties on all aspects are kept open; and E
- (vi) The amount of Rs 1 crore which has been deposited with the Bombay High Court by the appellant, shall be invested in a Fixed Deposit of a nationalized bank to be renewed periodically during the pendency of the writ petition and shall abide by such further directions as may be issued by the High Court. In the event that the appellant desires to bid for the property at the auction, it would be open to him to move a Civil Application before the High Court to adjust the amount of Rs 1 crore deposited in pursuance of the order of this Court towards the bid. F
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19. We clarify that there was no challenge before this Court in regard to the findings on the aspect of legal necessity in selling the subject H

A property, as a consequence of which, the present order shall not disturb the findings of the High Court in that regard. The third respondent shall act immediately on the receipt of a certified copy of this order and endeavour to complete the process on or before 31 December 2021.

20. The appeal is accordingly allowed in the above terms.

B 21. Pending applications, if any, stand disposed of.

Ankit Gyan

Appeal allowed.