

CYRUS RUSTOM PATEL

v.

THE CHARITY COMMISSIONER MAHARASHTRA,
STATE & ORS.

(Civil Appeal No. 1745 of 2010)

SEPTEMBER 21, 2017

[ARUN MISHRA AND
MOHAN M. SHANTANAGOUDAR, JJ.]

Trusts and Charities:

Bombay Public Trusts Act, 1950 – s. 36 – Alienation of immovable property of public trust – On facts, a Trust property admeasuring about 3012 sq mtrs wherein stood a Parsi Fire Temple and other structures with 21 tenants – Joint venture agreement for development-cum-sale between Trust and the developer for a sum of Rs. 2,95,00,000/- – Accord of sanction to development-cum-sale transaction by Joint Charity Commissioner u/s. 36 – Upheld by the High Court – On appeal, held: Joint Charity Commissioner was required to consider the interest, benefit and protection of the trust – Charity Commissioner totally abdicated its duty, and failed to act as per the mandate of s. 36 – Trustee as well as Joint Commissioner failed to act in the interest, benefit and to protect the Trust – Order is wholly perverse – Such a huge area in a prestigious locality could not have been sold for a paltry sum of Rs.2,95,00,000/- and that too by a private negotiations – No effort made to ascertain the market value – No urgency to throw away the valuable property of the trust, which was derogatory to its interest – Requirement of publishing a public notice in a newspaper, could not have been waived – Inviting an offer by public notice would have disclosed actual worth of property – Order passed by the Charity Commissioner as well as High Court set aside – Trust to repay the amount of Rs.2,95,00,000/- to the developer – Imposition of cost of Rs.1,00,000/- on the developer – Costs.

Allowing the appeal, the Court

HELD: 1.1 It is apparent from the provisions of Section 36 of the Bombay Public Trusts Act, 1950 that sale, exchange or

A gift of any immovable property or lease, extending beyond 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 not be valid without previous sanction of the Charity Commissioner. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. “the interest, benefit, and protection” of the Trust. The expression that sanction may be accorded subject to such conditions as Charity Commissioner may think fit under section 31(1)(b) and Section 36(1)(c). The Charity Commissioner has to be objectively satisfied that property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account the said triple classic requirements. It is also open to the Charity Commissioner, in exercise of power of Section 36(2), to revoke the sanction, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. [Paras 22-23][294-F-H; 295-A, B]

1.2 In the instant case, the Joint Charity Commissioner was required to consider the interest and benefit of the Trust. The Charity Commissioner totally abdicated its duty, and failed to act as per the mandate of Section 36. The observations made by the Commissioner in its Order clearly reflect that Charity Commissioner failed to exercise the duties enjoined upon to protect trust under Section 36. It has not considered the interest, benefit, and protection of the trust at all. The order is wholly perverse. There is the sale made in the form of Joint Venture development cum sell agreement and lease was for 999 years. Right from the beginning, it was to be a joint venture agreement coupled with a sale option, as apparent from the minutes of the meeting of the trust. The trustees had been acting in collusion with developer even before resolution had been passed. Negotiations were going on with the developer. [Para 24][295-C-E]

1.3 This is a prestigious locality, where one would cherish to own a property. Judicial notice is taken of the fact, that such a huge area could not have been sold for a paltry sum of

Rs.2,95,00,000/- Trustees, as well as Joint Commissioner, have failed to act in the interest, benefit and to protect the Trust, and the same could not have been sold by such private negotiations. The value was many a time more at the time of entering into the agreement. The paltry sum that was reserved by the Trust could not be said to be in the interest and benefit of the trust. Merely obtaining a valuation report, from a person of choice, without making any serious effort to ascertain the market value by way of any method known to law, and fixing its reserve price, was an eye-wash; such a dubious transaction was not at all acceptable, and it shocks conscience as to how such a valuable property could have been sold at such a throw-away price. It was not considered as to why trust should sell such a valuable property at all, and as to what was the compelling necessity. Ordinarily, the trust property is to be protected, such property is held in trust; in case its condition was not good, there could be several other ways to improve it; it could not have been achieved by virtually throwing away the property. [Para 26][295-H; 296-A-E]

1.4 Sale of trust property, which is like public property, if at all necessary, is not permissible by way of private negotiations; could be done only in exceptional circumstances, for reasons to be recorded. There was no exceptional circumstance, no urgency to throw away the valuable property of the trust, which was derogatory to its interest and would have defeated the very object of the creation of the trust for the preservation and protection of religion and Parsi culture. [Para 28][300-B-C]

1.5 The joint venture development was not an intended transaction; sale option was mentioned dubiously in the agreement; same indicated that transaction was not bonafide. It was a cloak or a device adopted by the trust so as to sell the property, and the transaction could not be said to be in the interest and benefit of the trust at all. Unfortunately, Joint Charity Commissioner totally failed in observance of statutory duties and did not look into the various aspects, neither conducted an enquiry envisaged under Section 36. Thus, the transaction could not have been sanctioned, considering the spirit of the provisions of Section 36 of the Act. The sanction had been granted in flagrant violation of basic principles of the law; it cannot withstand judicial

A scrutiny. [Para 29][300-C-F]

B 1.6 The prayer was made in the application to dispense with public notice in a newspaper on the pretext that it was joint venture agreement and development was to be made by trustees, whereas it was, in fact, not the actual factual situation. There was a clause for sale, and lease of 999 years would also tantamount to a sale, and admittedly sale option had been exercised. [Para 30][300-G]

C 1.7 It is apparent from the averment that there was a necessity of publishing a public notice in a newspaper, which requirement was sought to be waived on the ground that it was a joint venture and that development was being done by the trustees themselves, due to that, a public notice was not necessary. However, as a matter of fact, in Joint venture itself, the sale was contemplated and in fact it had taken place. The issuance of public notice could not have been waived. Inviting an offer by public notice would have disclosed actual worth of property; the said averments had been made designedly to evade the public notice, and it was not in the interest or for the benefit of the Trust to act in such a clandestine manner. It is clear that the application under Section 36 of the Act was not filed with clean hands, and it illegally aimed to get rid of public notice and unfortunately trustees succeeded in it. There was misrepresentation made as to the actual transaction that was intended and had ultimately taken place, in as much as it was stated in the application that no purpose would have been served by issuance of the public notice, as it was joint development venture, however, the property was totally unencumbered and easily marketable in its present form. The Joint Charity Commissioner also omitted to take into account actual nature of transaction how such property has to be sold. [Para 31][301-D-G]

G 1.8 The trust could not have entered into such negotiations with the builder without public notice, which was admittedly not given in the instant case and, thus, the joint venture-cum-sale and lease for 999 years amounted to a sale. In such a manner and method, the application could not have been entertained at all, much less allowed, by the Joint Charity Commissioner. The High

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Court did not look into the market value of the property, and rejected the petition mainly on the basis of the delay, that was not very material in the facts, as no development had taken place. When such a prime and valuable public property was involved, the said delay could not be said to be fatal in the facts and circumstances of the case. [Paras 32-33][301-H; 302-A-C]

1.9 Such a frivolous prayer could not have been entertained, and the order of the Joint Charity Commissioner is absolutely illegal. When trust has obtained money, obviously it has to repay the amount of Rs.2,95,00,000/- to the developer. Considering the value of the property and the arguments made, the trustees were not up to the task of protecting the interest of the trust, and clearly colluded with the developer while entering into such an agreement for development-cum-sale. The order passed by the Charity Commissioner as well as by the High Court is set aside. The costs of Rs.1,00,000/- to be deposited by the developer with the Supreme Court Advocates Bar Association Welfare Fund. [Paras 34-35][302-D-F]

Sailesh Developers v. The Joint Charity Commissioner Maharashtra 2007 (4) ALL MR 100 : 2007 (3) Bom. CR7; *Chenchu Rami Reddy and Another v. Govt. of A.P. and Others* [1986] 1 SCR 989 : (1986) 3 SCC 391; *R. Venugopala Naidu and Ors. v. Venkatarayulu Naidu Charities and Ors.* [1989] 1 Suppl. SCR 760 : (1989) Supp. 2 SCC 356; *Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society* [2012] 11 SCR 767 : (2013) 11 SCC 531; *Vedica Procon Private Limited v. Balleshwar Greens Private Limited and Ors* [2015] 8 SCR 1099 : (2015) 10 SCC 94 – referred to.

Case Law Reference

2007 (4) ALL MR 100	referred to	Para 10	G
[1986] 1 SCR 989	referred to	Para 11	
[1989] 1 Suppl. SCR 760	referred to	Para 11	
[2012] 11 SCR 767	referred to	Para 11	
[2015] 8 SCR 1099	referred to	Para 14	H

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1745 of 2010.

From the Judgment and Order dated 04.02.2008 passed by the High Court of Bombay in Writ Petition No. 2655 of 2007.

B Chandra Shekhar, S. K. Verma, Saurabh Upadhyay, Ms. Akansha Verma, Chandok, Arindam Mukharji, Ms. Gargi Tuli, Advs. for the Appellant.

C Jaideep Gupta, Gopal Jain, Atul Yeshwant Chitale, Sr. Advs., Sumit Goel, Ms. S. Lakshmi Iyer, Ms. Anwasha Padhi, Ms. Kriti Awasthi (for M/s. Parekh & Co.), Ms. Suchitra Atul Chitale, Gurjyot Sethi, Kunal Cheema, Nishant Katneshwarkar, Yogesh Ahirrao, Amar Dave, Mahesh Agarwal, Rishabh Parikh, Himanshu Satija, E. C. Agrawala, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **ARUN MISHRA, J.** 1. This appeal has been preferred questioning the dismissal of the Writ Petition by the High Court, vide impugned Judgment and Order dated 04-02-2008, thereby declining to interfere in the order passed by the Joint Charity Commissioner on 03-07-2004 granting sanction to development cum sale transaction.

E 2. The B.C. Batliwala Agiary Trust is registered under the Bombay Public Trusts Act, 1950 (hereinafter referred to as '*the Act*'). The Trust, in its meeting dated 20-01-2003, decided to enter into an agreement with M/s. Astral Enterprises. It was noted in the minutes of the meeting that the tenants in the premises had, in principle, agreed to the development of the Trust property at Tardeo, on the condition that the interest of the tenants would be looked after and that the tenants would be provided flats in new buildings on ownership basis, and that the development would be completed in a time bound manner by the said developer.

F 3. The minutes of the Trustees meeting dated 20-01-2003 states
G that Shri Suresh Mehta, partner of M/s. Astral Enterprises, had been invited to the meeting. It was decided that in case there was any difficulty in carrying out the development agreement, it would be converted into an outright sale. The Trustee would have an exit option. It was decided that development would be on a time-bound basis. The registration
H charges of the deed would be borne by the developer, as well as the cost

of construction. Trustees would have an exit option if trustees felt that it was not in the interest of the Trust to carry on with the joint venture development; the Trustees alone shall have the option to convert the joint venture arrangement into a sale, in that event M/s. Astral Enterprises would require paying a fixed pre-determined price to the Trust. The application was filed under the provisions of Section 36 of the Act, for granting sanction to enter into joint venture cum sale agreement between the trust as well as the M/s. Astral Enterprises.

4. The aforesaid development agreement was with respect to "Fire Temple", bearing Cadastral Survey No.727 of Malabar Hill Division, Mumbai admeasuring about 3012 sq. meters, situated at 160 Tardeo, Mumbai. On the said property stand a "Parsi Fire Temple" and certain other structures that are occupied by 21 occupants in the capacity of tenants. There was no further availability of F.S.I.

5. It was mentioned in the application filed under Section 36 of the Act that construction of the temple was done prior to 1940, it was old and in a dilapidated condition, and required extensive repairs. The Trust was getting a meager income from the building. It was in need of funds to meet the objectives of the trust; as such trustees decided to develop the property after prolonged discussions. As trust had no such funds as were required for carrying out the construction work, it was considered necessary to take help of the developer. M/s. Astral Enterprises was ready to provide the necessary services to the trust, with a proposal to jointly develop the property. It transpires that agreement for joint venture development-cum-sale had been entered into and ultimately sale had been effected, for a sum of Rs.2,95,00,000/-.

6. The Charity Commissioner had accorded the sanction under Section 36 of the Act. Though it was noted by the Charity Commissioner that no public notice had been published in the newspaper for inviting the offers, yet for non-publication of the same in newspapers, the applicant, gave an explanation by way of an affidavit, that public notice was not mandatory in all cases, before a grant of sanction.

7. Charity Commissioner has further observed that it was concerned only with according or refusing sanction to a particular sale which the trustees propose to make and that it was for the trustees to decide to whom they should sell the property, subject to the sanction of the Charity Commissioner. There was no necessity to invite others by

A way of public advertisement. It was not open to the Charity Commissioner to invite offers from third parties. As per the development agreement, the temple would be renovated and 33% of the built-up area would be given out of balance F.S.I. In addition, a sum of Rs.2,95,00,000/- as sale consideration was given; and the alienation was for the compelling necessity, and in the interest of the public trust. At the same time, while
 B considering whether the offer was proper, fair and adequate, as compared to the market value, the Joint Charity Commissioner has observed that it was not the case of an outright sale; and further that it was not necessary to take into consideration the market value of the property as the developer had agreed to make the extension of Fire Temple, and to re-
 C house the tenant, and to give 33 % of the constructed portion out of the balance F.S.I. As such, the transaction has been found by the Joint Charity Commissioner to be in the interest of the trust and sanctioned sell and lease for 999 years of the property. It was ordered that joint venture agreement for development-cum-sale with the Astral Enterprises may be entered into, as per MOU dated 3-04-2003, following order has been
 D passed:

“1. xxx xxx

2. The Trustees are permitted to enter into the joint venture agreement coupled with the sale option in terms of the memorandum of Understanding dt.3.4.03 Ex.5 executed between
 E the trustees and the Astral enterprises.

3. The Trustees are permitted to enter into joint venture with astral enterprises in terms of Memorandum of Understanding dt.3.4.03 (Ex.5) executed between the trustees and the Astral
 F Enterprises & consequently permitted the trustees to execute a lease of the balance land i.e. the said property minus the land underneath Agiary building, which Agiary building land admeasures 620 sq. mtrs or thereabouts for a term of 999 years at a token annual rent of Rs.1/- in favour of Astral Enterprises or its nominee.

4. In the event of trustees exercise the option as provided in cl. 18 of the said MOU Ex.5 they are permitted to sell the development rights in respect of the balance land i.e. the said entire property minus the land underneath the Agiary building admeasuring 620 sq.mtrs for a total consideration of Rs.2.
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95,00,000 (Rupees two crores ninety-five lacs only) to Astral Enterprises and consequently the trustees are permitted to lease the balance land of a term of 999 years at a token annual rent of Rs.1/- in favour of Astral Enterprises or its nominee. In the event, the B.E.S.T. Authorities so require as a precondition to providing the necessary electrical power, the trustees are permitted to transfer such area as may be necessary but not exceeding 100 sq. m. out of the said property in favour of B.E.S.T. undertaking to accommodate a subsection. The trustees are permitted to hand over such setback area as may be ultimately determined to be handed over to the Bombay Municipal Corporation on such terms and for such consideration as may be stipulated by the Corporation or by any statutory Authority and execute such documents as may necessary or incidental for completing the process of such handling over of the setback area.

5. Necessary and relevant documents are executed within a period of six months from the date of passing of this order for giving effect to the Memorandum of Understanding dt.2.4.2003 (Ex.5). All the expenses are required to be made for the development of the trust and for executing the document, shall be made by the Astral Enterprises.

6. The above permission is granted subject to the provisions and prohibition contained in any other act and laws for the time being in force, relating to trust property in question.

7. The consideration amount, income received by the trust in view of the transaction permitted shall be utilized in carrying out the objects of the trust and for protecting the interest of the trust and its property.

8. The trustees shall invest the amount, which will be received in this transaction in the fixed deposits in any Nationalized Bank or Public Securities of their choice. It shall form the part of the corpus of the trust property.

9. The trustees are directed to file necessary change report under Sec.22 of the Bombay Public Trust Act, 1950 before the Competent Authority after the transaction completed."

(Emphasis supplied)

A 8. The appellant Cyrus Rustom Patel filed writ application in the
High Court of Bombay. The High Court dismissed the same, mainly, on
the ground of delay, as petitioner was aware of the transaction *w.e.f.* the
year 2003. The High Court has observed that offer made by the Nilkanth
B Realtors in respect of sale transaction of an amount of Rs.55 crores
was not proper. It was to acquire property rights on a freehold basis and
not in the form where the setback line runs through the Sanctum
Sanctorum. The High Court opined that offer may have been tempting,
but could not be said to be genuine as per provisions contained in Section
36 of the Act.

C 9. It has not been disputed that so far the Municipal Corporation
of Mumbai has not granted the permission for the aforesaid development,
as such no development has taken place.

D 10. The learned counsel appearing on behalf of the appellant
urged that in the instant case, the Charity Commissioner while granting
sanction has not safeguarded the interest of the Trust. The property is a
prime property in Mumbai. It is worth multi-folds more than at what it
had been sold away. The relevant aspect to grant sanction under Section
56 of the Act had been considered by a Full Bench of the High Court at
Bombay in *Sailesh Developers v. The Joint Charity Commissioner
Maharashtra*; 2007 (4) ALL MR100= 2007 (3) Bom. CR7, in which it
E has been held that it was open to the Charity Commissioner to take care
of the interest of the Trust in such transactions, and if necessary, to
invite the other best offers to safeguard the interest of the Trust.

F 11. Learned counsel for the appellant has also relied upon the
decisions of this Court in *Chenchu Rami Reddy and Another v. Govt.
of A.P. and Others* (1986) 3 SCC 391; *R. Venugopala Naidu and
Ors. v. Venkatarayulu Naidu Charities and Ors.* (1989) Supp. 2 SCC
356, *Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh
Education Society*, (2013) 11 SCC 531.

G 12. He has submitted that sale of the property could only be
done in the prescribed method and manner in which it was to be done, as
apparent from the minutes of the meeting dated 20th January 2003, that
in the said meeting only M/s. Astral Enterprises had been invited. The
Trustees invited no other offer. Thus, trustees have totally failed to act in
an objective manner. No transparency was observed while selling the
valuable trust property for a paltry sum, and that such transaction could

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not be said to be beneficial for the Trust. The trustees had failed to live upto the expectations of the beneficiaries and creator of the trust and to protect the property of Trust. A

13. On the other hand, learned counsel appearing for the respondents contended that no case for interference was made out as the market value was not required to be taken into consideration in this case. Tenants were to be settled, and the Temple was also to be protected, and no other builder was coming forth so as to develop the property by keeping intact the "Fire Temple". The property was in a dilapidated condition; hence the decision had been taken in the best of the interests of the trust to sell the property. B C

14. It was also submitted on behalf of the respondents that the competent authority the Joint Charity Commissioner had duly accorded sanction under the provisions contained in Section 36 of the Act, and at the relevant time, it was not open to Charity Commissioner to make much interference in such a matter. It was not open even to this Court to interfere in such a matter, in view of the decision of this Court in *Vedica Procon Private Limited v. Balleashwar Greens Private Limited and Others*; (2015) 10 SCC 94. D

15. It was also urged on behalf of the respondents that at the relevant time when the matter had been decided by the Charity Commissioner, the Full Bench decision of the Bombay High Court was not available. As per the then prevailing decision, which had been noted by the Charity Commissioner, permission had been accorded in accordance with law. Now the Full Bench Decision of the Bombay High Court has widened the scope of Section 36; said decision cannot be said to have retrospective effect. It was also submitted on behalf of the trust that at present the trust would not be in a position to repay the amount of Rs.2.95 crores which had been obtained from the developer. E F

16. After hearing learned counsel for the parties, first, we propose to take note of the certain principles laid down by this Court with respect to the duties enjoined upon the trustee in the matter of sale of trust properties. G

17. This Court in *Chenchu Ram Reddy (supra)* considered the sale of immovable property belonging to public religious and charitable endowments by private negotiations. The Government had sanctioned the sale of land by private negotiations for a sum of Rs.20,00,000/- without H

- A recording reasons whereas, the appellants made the offer to purchase the land for Rs.80,00,000/-. This Court observed that in all circumstances, the concept of an auction of the property was primarily for the benefit of the Trust, and that disposal of public property should normally be done by public auction, with full application of mind by the competent authority.
- B This Court made the observations on consideration of the provisions contained in Article 14 of the Constitution of India. This Court held that in view of the provisions contained in Section 74 (1) of the Andhra Pradesh Charitable & Hindu Religious and Endowments Act 1966, Government must be satisfied that it was in the interest of the institution or endowment to permit the sale of the concerned lands otherwise than by a public auction, and then reasons to reach that satisfaction must be recorded in
- C the order.

It was also observed by this Court in *Chenchu Ram Reddy* (supra) 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

D 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. This Court observed:

- E "10. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has a beneficial interest in it (that is the *raison d'être* of the Act itself). The authorities exercising the powers under the Act must not
- F 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
- G persons authorized to sell by private negotiations, can, in a given case, enter into a secret or invisible under-hand 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
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then permit sale by private negotiations, which will not be visible A
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. With
these words of caution, we close the matter. B

18. Again, in *R. Venugopala Naidu* (supra), 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. In the aforesaid case, the Subordinate C
Court and the High Court, instead of going into the merits of the case,
non-suited the plaintiffs on the ground of *locus standi*. This Court had
considered the fact that the value of the property which the trust got
was not the market value, and quashed and set aside the sale order of
the subordinate court and the consequent sale. Relying on *Chenchu*
Ram Reddy (supra), this Court observed: D

“13. The subordinate court and the High Court did not go into
the merits of the case as the appellants 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 E
the trust got was not the market value. Two persons namely
S.M. Mohamed Yaaseen ad S.N.M. Ubayadully have filed
affidavit offering Rs.9.00 lacs and Rs. 10.00 lacs respectively
for these properties. In support of their bonafide, they have
deposited 10% of the offer in this Court. This Court in *Chenchu*
Ram Reddy and another v. Government of Andhra Pradesh and F
Others have held that the property of religious and charitable
endowments or institutions must be jealously protected because
a large segment of the community has a beneficial interest therein.
Sale by private negotiations, which is not visible to the public eye
and may, even give rise to public suspicion, should not, therefore, G
be permitted unless there are special reasons to justify the same.
It has further been held that care must be taken to fix the reserve
price after ascertaining the market value for safeguarding the
interest of the endowment. H

A 19. In *Bhaskar Laxman Jadhav (supra)*, 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
B submitted, seeking permission to alienate after each negotiation. This
Court held 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
C 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 Charity Commissioner had
D 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 affected between the trustees and the
petitioners in the High Court on 28-08-2008, which appeared to this Court
to be suspicious. On an overall consideration of the facts and
E circumstances of the case, it observed that it was not possible to rule out
the possibility of collusion between trustees and the petitioners.

20. This Court in *Bhaskar Laxman Jadhav (supra)* further
observed that the lack of *bonafide* of trustees and the petitioners could
not have been overlooked by the High Court. Therefore, the safest course
F 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, 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 under Section 36
of the Act enjoins duties on the Charity Commissioner to consider the
G sale of immovable property of the trust with regard being had to the
“interest, benefit or protection” of the trust. This Court considered the
decision in *Chenchu Rami Reddy* case (*supra*) and held that the only
course available to the High Court was to mold the relief and to direct
the Charity Commissioner to have a relook at all the bids received

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pursuant to the public notice dated 19-02-2007. In *Bhaskar Laxman A
Jadhav* (supra), this Court observed:

“30. 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) Supp 2 SCC 356. and *Mehrwan Homi Irani v. Charity Commissioner* (2001) 5 SCC 305. B
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49. 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. D
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50. Section 36 of the Act clearly provides that the trustees may be allowed by the Charity Commissioner to dispose of immovable 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 immovable property. G

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53. In *Mehrwan Homi Irani* (2001) 5 SCC 305, it was categorically held that the Charity Commissioner while granting H

A 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
B directions given are as follows:-

“9.... 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.
C 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
D 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
E Commissioner shall take a decision at the earliest.”

54. 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
F 19-2-2007.”

21. Before coming to the facts and circumstances of the case,
we propose to take note of the decision relied upon by the respondent-
developer in *Vedica Procon Private Limited* (supra). In that case, this
G Court considered irregularity in the conduct of sale of the property. It
was observed that duty of the Court was to satisfy itself that having
regard to the market value of the property, the price offered was
reasonable and when rights had been acquired as per the law, it could
not be disturbed. No subsequent higher offer can be considered as a
valid reason. Once the Court reaches a conclusion that adequate price
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was offered, a subsequent increase in the value, or any subsequent higher offer, is of no avail. In case after the auction the value of the properties had increased, it would not be a ground to recall the auction, and to interfere in the auction sale. The offer of a higher price than that of the successful bidder was made after the sale had been confirmed, and there were no allegations of fraud, irregularity, and inadequacy of price when the sale was confirmed. This Court has observed:

“47. A survey of the above-mentioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Divya Mfg. Co. this Court departed from the principle laid down in Navalkha & Sons. We have already explained what exactly is the departure and how such a departure was not justified.

22. The provisions contained in Section 36 of the Act are extracted hereunder:

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 conditions 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

A 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.

It is apparent from the provisions of Section 36 that sale, exchange or gift of any immovable property or lease, extending beyond 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 not be valid without previous sanction of the Charity Commissioner.

23. The power to grant sanction has to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. “the interest, benefit, and protection” of the Trust. The expression that sanction may be accorded subject to such conditions as Charity Commissioner may think fit under section 31(1)(b) and Section 36(1)(c). The Charity Commissioner has to be objectively satisfied that property should be disposed of in the interest of public trust; in doing so, he has right to impose such conditions as he may think fit, taking into account

aforesaid triple classic requirements. It is also open to the Charity Commissioner, in exercise of power of Section 36(2) of the Act, to revoke the sanction, given under clauses (a) and (b) of Section 36 of the Act, on the ground that the sanction had been obtained by fraud or misrepresentation or those material facts have been suppressed while obtaining sanction. The intendment of the revocation provision is also to sub-serve the interest, benefit, and protection of the Trust and its property.

24. In the instant case, the Joint Charity Commissioner was required to consider the interest and benefit of the Trust. We are compelled to observe that Joint Charity Commissioner has totally abdicated its duty, and failed to act as per the mandate of Section 36. The observations made by Joint Charity Commissioner in its Order clearly reflect that Charity Commissioner has failed to exercise the duties enjoined upon to protect trust under Section 36 of the Act. It has not considered the interest, benefit, and protection of the trust at all. The order is wholly perverse. Joint Commissioner abdicated its responsibilities, in as much as it observed that it was the outlook of the Trust as to whom it wanted to sell the property, and as certain development was to be made; as such market value of the property was not a relevant consideration. There is the sale made in the form of Joint Venture development cum sell agreement and lease was for 999 years. Right from the beginning, it was to be a joint venture agreement coupled with a sale option, as apparent from the minutes of the meeting of the trust. The trustees had been acting in collusion with developer even before resolution had been passed. Negotiations were going on with M/s. Astral Enterprises- developer.

25. It was not disputed at Bar, by the trust or the developer, that it was a case of the sale, and right from beginning an option for sale was made. No effort has been made by the Trust, in case the sale was necessary, to ascertain the real market value of the property, nor has it been ascertained by the Joint Charity Commissioner. The property is located in a prime location of the city of Mumbai, at Malabar Hill Division near Central Mumbai Railway Station, and that the market value was, obviously, sky high as compared to paltry sum offered.

26. This is a prestigious locality, where one would cherish to own a property, and in the true sense, it would be like a treasure house. We unhesitatingly take judicial notice of the fact. that such a huge area could not have been sold for a paltry sum of Rs.2,95,00,000/-. Trustees,

A as well as Joint Commissioner, have failed to act in the interest, benefit and to protect the Trust, and the same could not have been sold by such private negotiations. In our opinion, the value was many a time more at the time of entering into the agreement. The paltry sum that was reserved by the Trust could not be said to be in the interest and benefit of the trust. Merely obtaining a valuation report, from a person of choice, without making any serious effort to ascertain the market value by way of any method known to law, and fixing its reserve price, was an eye-wash; such a dubious transaction was not at all acceptable, and it shocks conscience as to how such a valuable property could have been sold at such a throw-away price. Thus, we find, on the basis of the principles laid down in aforesaid decisions, and even on the basis of the decision relied upon by the learned counsel appearing on behalf of the developer, in *Vedica Procon Private Limited* (supra), that the respondents have no case at all. In the later decision, this court unequivocally held that sale should be at market price. In this case, no such effort had been made; it has not been considered as to why trust should sell such a valuable property at all, and as to what was the compelling necessity. Ordinarily, the trust property is to be protected, such property is held in trust; in case its condition was not good, there could be several other ways to improve it; it could not have been achieved by virtually throwing away the property.

E 27. A full Bench of High Court of Bombay considered the whole gamut of the powers of the Charity Commissioner to act in the interest, for the benefit, and to protect the trust property under the provisions of Section 36 have been considered in *Sailesh Developers* (supra); it observed:

F 27. While exercising powers under Section 36 of the said Act of 1950, the Charity Commissioner has to safeguard the interests of the trust as well as the interests of beneficiaries. The learned Single Judge in the case of *Arunodaya Prefab* (supra) has held thus:

G It may not be open for the Charity Commissioner to consider the offers of third parties except only to the extent that they might disclose to him what might be the market value of the land only for the limited purposes of ascertaining the market value of the land.

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The said view was rightly criticised before us by pointing out that if Charity Commissioner was to invite offers only for the purpose of ascertaining the market value of the property no genuine buyer or purchaser will come forward and offer a genuinely competitive price. It was submitted that no genuine buyer would be interested in coming forward with the offer if his offer is to be considered only for a limited purpose of finding out as to what the market value was on the relevant date. If offers are invited only for this purpose, there is every possibility that the offers will not be bonafide and genuine.

28. While exercising power either under Clause (b) or Clause (c), the Charity Commissioner can impose conditions having regard to the interest, benefit or protection of the trust. Before passing an order of sanction or authorization, the Charity Commissioner has to be satisfied that the trust property is required to be alienated. Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary and in the interest of the trust or for the benefit of the trust or for the protection of the trust it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to grant sanction to a particular proposal of the trustees or to reject it. It is the duty of the Charity Commissioner to ensure that the transaction of alienation is beneficial to the trust and its beneficiaries. He has to ensure that the property is alienated to a purchaser or buyer whose offer is the best in all respects. It is not necessary in every case that the Charity Commissioner has to ensure that property is sold by the trustees to the person offering highest price or consideration. What is the best offer in the interest of the trust will again depend on facts and circumstances of each case? In a given case, while alienating the trust property, the trustees may provide that as a part of the consideration for alienation, the purchaser should construct a building on a part of the trust property for the use by the trustees for the objects of the trust. In such a case, it may be necessary to ascertain the reputation and capacity of the purchaser apart from the consideration offered. When the charity Commissioner is satisfied that trust property needs to be alienated and when he finds that the offer received by the trustees may not be the best offer, he

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A can always direct that bids be invited by a public notice. When a better offer is received in public bidding or auction, it is very difficult to say that the power of the Charity Commissioner is restricted and he cannot enjoin the trustees to sell or transfer the trust property to a third party who has given an offer which is the best in the interest of the trust. The Trustees approach the Charity Commissioner only when they are satisfied that there is a necessity to alienate the trust property. The trustees hold the property for the benefit of the beneficiaries and therefore once they express desire to alienate the property, it is obvious that Charity Commissioner can always impose condition while granting sanction that the property shall be sold or transferred to a person who has come with an offer which is the best offer in the interest of the trust. The Section gives a power to the Charity Commissioner to impose conditions and the said conditions will include a requirement of selling or transferring or alienating the trust property to a purchaser who has offered the best deal having regard to the interest and benefit of the beneficiaries and the protection of the trust. The power to impose conditions cannot be a limited power when the law requires Charity Commissioner to exercise the said power having regard to the interest, benefit, and protection of the trust. Once the Charity Commissioner accepts the necessity of alienating the trust property, the trustees cannot insist that the property should be sold only to a person of their choice, though the offer given by the person may not be the best offer. The property may be vested in the trustees, but the vesting is for the benefit of the beneficiaries. The Charity Commissioner has jurisdiction to ensure that the property is sold or transferred in such a manner that the maximum benefits are available to the beneficiaries of the trust. Under clause (b) of Section 36 of the said act, the Charity Commissioner has jurisdiction to decide whether it is in the interest of the trust that the property of the trust be sold or transferred. Once the learned Charity Commissioner is to be satisfied that the property is required to be transferred or sold in the interest of the Trust, the learned Charity Commissioner cannot remain a silent spectator when he finds that the transaction proposed by the Trustees is not in the interest of the Trust or its beneficiaries. Once the necessity of sale or transfer is established, the Charity

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Commissioner can certainly ensure that best available offer is accepted, so that the transaction is for the benefit of the trust. If the trustees were to be the final authority to judge as to what is in the interest of the Trust, the legislature would not have enacted provision requiring prior sanction. While deciding which is the best offer, the learned Charity Commissioner is bound to take into consideration various factors, which cannot be exhaustively listed. However, the paramount consideration is the interest, benefit, and protection of the trust. It is obvious from the scheme of Section 36 that the legislature never intended that trustees could sell or transfer the trust property vesting in them as if it was their personal property. It is the duty of Charity Commissioner to ensure that the property should be alienated in such a manner that maximum benefits are accrued to the trust. The Charity Commissioner, while considering an application under Section 36 (1) of the said Act of 1950, in a given case, can opt for public auction or can invite bids.

30. Hence, we answer the questions referred to our decision as under:

(i) The power vesting in the Charity Commissioner under Section 36 of the Bombay Public Trusts Act 1950 is not confined merely to grant or refusal sanction to a particular sale transaction in respect of which sanction is sought under Section 36 of the said Act. The power of the Charity Commissioner extends to inviting offers from the members of the public and directing the trustees to sell or transfer the trust property to a person whose bid or quotation is the best, having regard to the interest, benefit, and protection of the trust. Hence we declare that the decision of the Division Bench of this Court in the case of Jigna Construction Co. Mumbai v. State of Maharashtra and Ors. does not lay down correct law.

(ii) The party, who comes forward and submits his offer directly before the Charity Commissioner and complies with other requirements as may be laid down by the Charity Commissioner in a pending application under Section 36 of the said Act of 1950 has a locus standi to challenge the final order passed in a proceeding under Section 36. However, the scope of the challenge will be limited as indicated in paragraph 29 above.

A (iii) We direct the Office to place the Writ Petitions before the appropriate Benches for deciding the same in accordance with law.

B 28. As discussed, this Court has directed a number of times that sale of trust property, which is like public property, if at all necessary, is not permissible by way of private negotiations; could be done only in exceptional circumstances, for reasons to be recorded. There was no exceptional circumstance, no urgency to throw away the valuable property of the trust, which was derogatory to its interest and would have defeated the very object of the creation of the trust for the preservation and protection of religion and Parsi culture.

C 29. The joint venture development was not an intended transaction; sale option was mentioned dubiously in the agreement; same indicated that transaction was not bonafide. It was a cloak or a device adopted by the Trust so as to sell the property, and the transaction could not be said to be in the interest and benefit of the trust at all. Unfortunately, Joint Charity Commissioner totally failed in observance of statutory duties and did not look into the various aspects, neither conducted an enquiry envisaged under Section 36 of the Act. Thus, we find that the transaction could not have been sanctioned, considering the spirit of the provisions of Section 36 of the Act. Though the aforesaid Full Bench decision of D High Court has come later on, however, intendment of the statutory E provision, even for a moment, could not be to sanction such a derogatory transaction. The decisions of this court were available, even in the absence of exposition of the ambit of Section 36 of the Act by the high court; they had been conveniently ignored. The sanction at a glance had been granted in flagrant violation of basic principles of the law; it cannot withstand F judicial scrutiny.

G 30. Apart from that, it is also apparent that prayer was made in the application to dispense with public notice in a newspaper on the pretext that it was joint venture agreement and development was to be made by trustees, whereas it was, in fact, not the actual factual situation. There was a clause for sale, and lease of 999 years would also tantamount to a sale, and admittedly sale option had been exercised. In the application, that was filed under Section 36 before Charity Commissioner, supported by the affidavit of Mr.Hoshang N. Wania, one of the trustees of B.C. Batliwala Trust, it was mentioned in para 6 thus:

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“EXEMPTION FROM INSERTING PUBLIC NOTICE IN A
NEWSPAPER”

(a) xxx that the arrangement contemplated in the said MOU is that of joint venture and the development is being done by the Trustees themselves with the active support and financial resources of Astral and hence the question of inserting public notice in newspaper does not arise. In any event, the Trustees pray that this procedural formality may please be waived in this case. B

(b) Further, no useful purpose will be achieved by inserting Public Notice, as the said property is totally encumbered and not easily marketable in its present form. C

(c) Also, some of the disgruntled occupants may find it convenient to stop the proposal and may embroil the trust in wasteful litigation.

31. It is apparent from aforesaid averment that there was a necessity of publishing a public notice in a newspaper, which requirement was sought to be waived on the ground that it was a joint venture and that development was being done by the trustees themselves, due to that, a public notice was not necessary. However, as a matter of fact, in Joint venture itself, the sale was contemplated and in fact it had taken place. The issuance of public notice could not have been waived. Inviting an offer by public notice would have disclosed actual worth of property; the aforesaid averments had been made designedly to evade the public notice, and it was not in the interest or for the benefit of the Trust to act in such a clandestine manner. It is clear that the application under Section 36 of the Act was not filed with clean hands, and it illegally aimed to get rid of public notice and unfortunately trustees succeeded in it. There was misrepresentation made as to the actual transaction that was intended and had ultimately taken place, in as much as it was stated in the application that no purpose would have been served by issuance of the public notice, as it was joint development venture, however, the property was totally unencumbered and easily marketable in its present form. The Joint Charity Commissioner also omitted to take into account actual nature of transaction how such property has to be sold and conveniently overlooked the provisions of the Act and decisions of this court. D E F G

32. As a matter of fact, the trust could not have entered into such negotiations with M/s. Astral Builders without public notice, which H

A was admittedly not given in the instant case and, thus, the joint venture-cum-sale and lease for 999 years amounted to a sale. In such a manner and method, the application could not have been entertained at all, much less allowed, by the Joint Charity Commissioner.

B 33. The High Court has also failed to consider the various aspects, and has rejected the petition mainly on the basis of the delay, that was not very material in the facts, as no development had taken place. When such a prime and valuable public property was involved, the aforesaid delay could not be said to be fatal in the facts and circumstances of the case. The High Court has also not looked into the market value of the property and has dismissed the writ application on untenable and flimsy grounds.

C 34. We refrain from making any further remarks in the matter. Suffice it to say that such a frivolous prayer could not have been entertained, and the order of the Joint Charity Commissioner is absolutely illegal. Learned counsel for the trust stated that it would be difficult to repay the money. When trust has obtained money, obviously it has to repay. Let trust repay the amount of Rs.2,95,00,000/- to the developer. Considering the value of the property and the arguments made on behalf of the trustees, we are of the view that the trustees were not up to the task of protecting the interest of the trust, and clearly colluded with the developer while entering into such an agreement for development-cum-sale.

D 35. The order passed by the Charity Commissioner as well as by the High Court is hereby set aside. The appeal is allowed with the costs of Rs.1,00,000/- to be deposited by the developer with the Supreme Court Advocates Bar Association Welfare Fund within six weeks from today.