



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 63 OF 2024

Osho International Foundation
A Public Trust bearing P.T.R.No.F-14570 (Mumbai)
through its Trustee Mr. Mukesh Sarda. ... Petitioner

Versus

1. Mr. Kishor Raval alias Swami Anandi
2. Mr. Yogesh Thakkar alias Sw. Pvergeet
3. Narain Dass alias Swami Chaitnya Keerti
4. Mr. Memant Malik alias Sw. Deva Urja Cassia Court CHS.
5. Miss Kashmiri Mody alias Ma Amrit Nirvana Cassia Court CHS
6. Mr. Ramkrishna Narayana Reddy alias Sw. Prem Prahtek
7. Mr. Ravinder Singh Panesar alias Swami Anand Nikhil
8. Dr. Amaendra Narain Jha alias Swami Amarendra Bharti
9. Arohana Srivastava alias Ma Jeevan Smita D/o. Late Shivraj Prasad Srivastava
10. Mr. Rajendra Ramchandra Wagaskar
11. Mr. Chandravardan Bhalchandra Shastri alias Swamy Chandrayogi son of Me. Bhalchandra Prabhuram Shastri
12. Mr. Ravi Nair

13. Mr. R. Chandrashekar

14. Mrs. Gunjan alias Ms. Divyam Suhasini

15. Mr. Girish Kashwani
alias Swamy Dhyan Siddhesh

16. Sudha Shashikant Gandhi alias
Maa Veet Chhaya

17. Mr. Yashwant Rai alias Swami Chetan Arup

18. Mr. Amit Kumar Patel
alias Swami Veet Vikalpa

19. Ms. Chandrekha Tulsiram Rakshe
alias Ma Prem Amina

20. Dr. Vijaya Mishra alias Ma Nirdosh Preeta

21. Ms. Sonu Goyal alias Maa Prem Soma

22. Mr. Vithal Lalji Thakker
alias Swami Vitthal Bharti

23. Mr. Mukund B. Sanchala
alias Swamy Krishna Vedant son of
Mr. Bhagwanjibhai Sanchaala

24. Mr. Sunil Mirpuri aka Swami Yoga
Sunil Aka Sadhak Yoga Suneel

25. Rajesh Kripaldas Wadhwa

26. Ms. Shweta Manojkumar Rana

27. The Charity Commissioner,
Maharashtra State

28. The Jt. Charity Commissioner – I,
Maharashtra State

...Respondents

Mr. Aspi Chinoy, Senior Advocate a/w. Mr. Vineet Naik, Senior

Advocate, Mr. Sagheer Khan, Mr. Sharique Nachan, Mr. A.H. Ansari and Mr. Parth Zaveri i/b. Judicare Law Associates for the petitioner.

Mr. Anil Anturkar, Senior Advocate a/w. Mr. Ashish Venugopal, Mr. Aman Dutta and Ms. Vibha Joshi i/b. RHP Partners for respondent no. 2.

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Vaibhav Kulkarni for respondent no. 24.

Mr. Radhikesh Uttarwar a/w. Ms. Pooja R. Thakur for respondent nos. 8, 17, 20, 25 and 26.

Ms. Shruti D. Vyas, Addl. G.P. a/w. P.J. Gavhane, AGP for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

Reserved On: 04 April, 2024.

Pronounced On: 08 April, 2024.

Judgment : (Per G.S. Kulkarni, J.)

1. This petition under Articles 226 and 227 of the Constitution challenges an order dated 7 December 2023 passed by the learned Joint Charity Commissioner-I, Maharashtra State, Mumbai, whereby the application filed by the petitioner under Section 36 of the Maharashtra Public Trusts Act, 1950 (for short '**the MPT Act**') has been rejected. By such application, the petitioner had sought sanction for alienation of immovable property situated at Koregaon Park, Pune, in favour of one Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Rajivnayan Rahulkumar Bajaj, stated to be at the cost of Rs.107 crores.

2. By the impugned order, which is a detailed and a well reasoned order, the learned Joint Charity Commissioner has rejected the petitioner's

application under Section 36(1)(a) of the MPT Act in terms of the following operative order:

ORDER

1. Application No. 2 of 2021 is rejected.
2. Applicant Trust is directed to refund the earnest amount of Rs.50 Crores received from offeror Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust without interest.
3. The Special Audit of the Osho International Foundation (OIF) bearing P.T.R. No. F-14570 (Mumbai) shall be conducted for the period from 2005 to 2023 by a team of two Special Auditors to be appointed by concerned Ld. Assistant Charity Commissioner, Greater Mumbai Region, Mumbai within one month from the date of this order.
4. The fees for the Special Audit shall be fixed for Rs.25,000/- per year or 1 % of the gross Annual Income of OIF as per Rule 20 of the Maharashtra Public Trusts Rules, 1951, whichever is less.
5. The trustees of OIF are directed to deposit an amount of Rs.2,25,000/- provisionally in the P.T.A. Fund to meet the cost thereof within 15 days from the date of this order.
6. The trustees, managers and/or any other person looking after the accounts of OIF shall make available all the record and Books of Accounts, Receipt Books, Vouchers, Ledgers etc to the Special Auditors during the said period and shall co-operate the Auditors in all respects.
7. The Special Auditors shall submit their consolidated report to this Authority within a period of six months from the date of their appointment.”

3. Insofar as the direction No.2 (supra) of the operative part of the impugned order is concerned, it is stated on behalf of the petitioner that the advance amount of Rs.50 crores received by the petitioner, as an earnest money from the purchaser, namely, Rajivnayan Rahulkumar Bajaj and Rishab Family

Trust through Rajivnayan Rahulkumar Bajaj, was refunded on 15 December 2023.

4. With the aforesaid preface, the relevant facts can be noted.

5. The petitioner was registered as a public trust under the MPT Act, and was granted a certificate of registration on 16 April 1991. In the year 2008, for better administration and management and for carrying out common activities of the petitioner, it was decided to amalgamate one Abhilasha Foundation with the petitioner. This was permitted by an order dated 31 December 2008 passed by the learned Assistant Commissioner, Greater Mumbai Region. By virtue of amalgamation, the movable and immovable properties of Abhilasha Foundation became the properties of the petitioner including leasehold rights of Abhilasha Foundation in Plot No.15 bearing CTS no.15 and Plot No.16 bearing CTS No.16 totally admeasuring 11764 sq. yards equivalent to 9836.20 sq. meters together with the bungalow and other structures admeasuring 4032.56 sq.ft. situated at Koregaon Park, Pune (“**the said property**”). In pursuance of such amalgamation order, the petitioner was absolutely seized and possessed of the said property. There was a similar amalgamation with one Dhyan Foundation in the year 2011.

6. The main objects of the petitioner are *inter alia* to spread, impart education by formal training in the field of arts, science and humanities and

conducting courses in yoga, meditation, physiotherapy, physic healing and various forms of ancient medicine and to disseminate knowledge of ancient and contemporary philosophies, study of comparative religions etc. to grant scholarships and other educational assistance to deserving students for study of ancient and contemporary philosophers and other fields etc. It is also the case of the petitioner that majority of the participants in the mediation activities travel to India from around the world.

7. It is the case of the petitioner that the finances of the petitioner had depleted in or around the period when the country was hit by the Covid -19 pandemic. The regular activities of the petitioner were adversely affected. A situation prevailed that it was not possible to immediately restart the meditation activities in the near future. This severely affected the cash flow of the petitioner resulting into an inability of the petitioner to meet its financial obligations for maintaining the premises and the properties. The petitioner has contended that for the period from 1 April 2020 to 30 September 2020, the income of the petitioner was Rs.28,17,628.94 whereas the expenditure was Rs.3,65,36,073.83. Such deficit was met by the petitioner by closing fixed deposit of Rs.4,40,00,000/- out of the fixed deposit of Rs.11,15,00,000/- which left the balance to Rs.6,75,00,000/- in the hands of the petitioner.

8. The petitioner considering such financial situation desired to alienate the said property as decided in the meeting of the governing body held on 20

July 2020. The decision of the petitioner to alienate the said property was to receive an adequate cash flow, to maintain its properties, upkeep its various premises, staff and salaries, so as to mitigate financial constraints. In pursuance thereto a tender notice dated 1 September 2020 came to be issued in the daily newspaper “Sakal” (Marathi) and ‘Financial Express’ (English) inviting offers in sealed envelopes from the public at large for the acquisition of rights in the said property. Simultaneously, a valuation report dated 20 October 2020 was obtained from Mr. Shekhar L. Thite of M/s. Thite Valuers & Engineers, Pune, who valued the property at Rs.92,11,00,000/-.

9. In response to the public notice, the petitioner received three offers as under:

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|--|----------------|
| (i) Mr. Atul Ishwardas Choradia | Rs. 72 crores. |
| (ii) A2Z Online Services Private Ltd. | Rs. 82 crores |
| (iii) Mr.Rajivnayan Rahulkumar Bajaj &
Rushab Family Trust through
Mr.Rajivnayan Rahulkumar Bajaj. | Rs. 100 crores |

10. Thereafter, a meeting was held on 30 October 2020 wherein the bidders were requested to reconsider and enhance their offers. They revised the offers as under:

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|---|------------------|
| (i) Mr. Atul Ishwardas Choradia | Rs. 90 crores. |
| (ii) A2Z Online Services Private Ltd. | Rs. 85.50 crores |
| (iii) Mr. Rajivnayan Rahulkumar Bajaj & | |

Rushab Family Trust through
Mr. Rajivnayan Rahulkumar Bajaj.

Rs. 107 crores

11. It is contended by the petitioner that after deliberation, the trustees of the petitioner found that the offer of Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Rajivnayan Rahulkumar Bajaj was suitable. Accordingly a resolution dated 30 November 2020 was passed unanimously agreeing to alienate its rights to the successful bidder. The said resolution reads thus:-

“MINUTES Of the 199th Meeting of the Governing Body of
OSHO INTERNATIONAL FOUNDATION
Held on 30th November, 2020 at 03:00p.m. (I.S.T.)
At 50, Koregaon Park, Pune 411 001

Following Members of the Foundation were present:

1. Mr. Devendra Singh Dewal - President
2. Mr Mukesh Sarda - Treasurer
3. Mr. Lal Pratap Singh - Member
4. Mrs. Sadhana Belapurkar - Secretary

President took the Chair and the notice dated 24th November, 2020 convening this meetin was read.

Minutes of the previous meeting dated 30th October, 2020 were read and confirme President signed the same.

Mr. Mukesh Sarda informed the Board that in response to the request for enhancement of offer dated 18.11.2020 issued through M/s. Hariani & Co., Advocates and Solicitors, Pune the following enhanced offers were received by them in their office for alienation of the rights in the properties bearing CTS no.15 and 16, Koregaon Park, Pune 411 001.

- | | |
|--|------------------|
| 1. Mr. Atul Ishwardas Choradia | Rs. 90 Crores |
| 2. A2Z Online Services Private Limited | Rs. 85.50 Crores |

3. Mr. Rajivnayan Rahulkumar Bajaj and
 Rishab Family Trust through Mr. Rajivnayan
 Rahulkumar Bajaj Rs. 107 Crores

The President, Mr. Devendra Singh Dewal acknowledged the information provided by the Treasurer, Mr. Mukesh Sarda about the response to the request for enhancement to the offers received in response to the Tender Notice dated 01.09.2020.

All three enhanced offers were discussed in detail by the Board and Mr. Devendra Singh Dewal proposed to the Board members that the enhanced offer of Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Mr. Rajivnayan Rahulkumar Bajaj at serial no.3 for Rs.107,00,00,000/- (Rupees One Hundred Seven Crores only) should be considered and accepted considering the financial credibility and credentials of the bidder and being the highest and bona fide offer and the same being in excess of the value as per valuation report and the buyer having furnished the requisite amount of fifty percent of the original offer value as earnest money.

The Board discussed the matter and unanimously resolved as under.

"RESOLVED THAT the offer of Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Mr. Rajivnayan Rahulkumar Bajaj at serial no.3 for Rs. 107,00,00,000/- (Rupees One Hundred Seven Crores only) be and is hereby approved and accepted considering the financial credibility and credentials of the bidder and being the highest and bona fide offer and the buyer having furnished the requisite amount of fifty percent of the original offer value as earnest money."

Mr. Mukesh Sarda placed before the Board the Memorandum of Understanding (M.O.U.) to be executed and signed between the Trust and the successful bidder Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Mr. Rajivnayan Rahulkumar Bajaj.

Mr. Devendra Singh Dewal proposed the name of Mr. Mukesh Sarda as the authorized signatory to sign the Memorandum of Understanding (M.O.U.) on behalf of the Trust. After discussion the Board unanimously resolved as under.

"RESOLVED that Mr. Mukesh Sarda, solely be and is hereby authorized to sign the Memorandum of Understanding (M.O.U.), Deed of Assignment cum Transfer, any other documents related to this transaction to be executed and signed between the Trust and the successful bidder Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Mr. Rajivnayan Rahulkumar Bajaj for and on behalf of the Board in respect of the alienation of rights in the properties of Osho International Foundation being all those pieces or parcels of Government Leasehold plots of lands bearing Plot No.15

admeasuring 5960 sq. yards that is 4983.30 square meters and Plot No. 16 admeasuring 5804 square yards that is 4852.90 square meters or thereabouts aggregating to 11764 square yards that is 9836.20 square meters together with bungalow and other structures thereon known as "Restmore" and bearing City Survey Nos. 15 and 16 in Koregaon Park in Pune within the limits of Pune Municipal Corporation, Registration District Pune, Registration Sub-District Haveli No. 1 and bounded on the North by Plot No. 17, on the South by Plot No. 14, on the East by Plot Nos. 34 and 35 and on the West by a public road."

Mr. Mukesh Sarda further informed the Board that the final sale agreement will be subject to the approval of the office of the Charity Commissioner under section 36(1)(a) of the Maharashtra Public Trusts Act, 1950, and the Trust will have to file the application as required. As per the M.O.U. the purchaser will be taking necessary steps to obtain the permission required. The Board informed Mr. Mukesh Sarda to sign and file the application under section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 for seeking approval of the office of the Charity Commissioner. After discussion the Board unanimously resolved as under.

"FURTHER RESOLVED that in the event the approval of the office of the Charity Commissioner under section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 and the U.L.C. Clearance are both not obtained on or before the 30th day of April, 2021 then the MOU shall stand cancelled and Mr. Mukesh Sarda be and is hereby authorized to refund the earnest money deposit immediately by issue of demand draft in the name of the successful bidders for the amounts that they have given as earnest money deposit to the Trust."

There being no other matter, the meeting was terminated with a vote of thanks to the Chair.

PRESIDENT"

(emphasis supplied)

12. In pursuance thereto the petitioner entered into a Memorandum of Understanding ("MOU") dated 8 December, 2020 with Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust through Rajivnayan Rahulkumar Bajaj. The said bidder also had paid the earnest amount of Rs.50 crores by a demand draft as per the public notice issued by the petitioner.

13. The petitioner accordingly preferred an application under Section 36(a) of the MPT Act before the learned Charity Commissioner seeking his sanction to sell the trust property in favour of Rajivnayan Rahulkumar Bajaj, Rishab Family Trust through Mr. Rajivnayan Rahulkumar Bajaj.

14. It appears from the record, that on information of the alienation of the said property, being received by large number of disciples and followers of 'Osho Acharya Rajneesh', who were intricately concerned with the petitioner and its activities, plenty of e-mails were received by the office of the Charity Commissioner raising objections to the proposed alienation. Taking note of such e-mails, on 25 March, 2021, the learned Joint Charity Commissioner passed an order recording such receipts. The inflow of such communications however did not stop. In these circumstances, an order dated 16 March, 2022 was passed below Exhibit 1, granting liberty to the persons having interest in the petitioner-trust, within the meaning of Section 2(10) of the MPT Act, to prefer appropriate applications under Section 73A of the MPT Act. In pursuance of such order, number of applications under Section 73A of the MPT Act came to be filed. The petitioner did not raise any objection for impleading all such persons as party opponents. Consequent thereto, as many as 26 interveners came to be impleaded as objectors to the proceedings filed by the petitioner under Section 36 of the MPT Act. Such parties filed their respective objections. Respondent nos.1 to 26 are the persons who have raised

objections and who were parties to the said proceedings before the learned Joint Charity Commissioner.

15. A detailed objection was raised by respondent no.2 - Shri Yogesh Thakkar alias Swami Premgeet, who filed three replies, stated to be below Exhibits 45, 89 and 156. The objections to the petitioner's application under Section 36 were on several counts. Respondent no. 2 contended that the trustees were habitual in making alienation and misappropriation of the trust properties, and that they have committed various acts contrary to the scheme governing the trust. Serious allegations were made in regard to the nature of the cash dealings resorted by the trustees which was stated to be adversely affecting the beneficiaries of the trust. Insofar as the sale of the property in question to Rajivnayan Rahulkumar Bajaj, Rishab Family Trust was concerned, it was contended that the said property was being sold at a very low value of Rs.107 Crores. One of the serious allegations made by him was to the effect that the trustees had incorporated several "shell companies", to whom the trustees and the Governing Body had transferred benefits and income arising out of the activities of the trust. It was contended that the trustees were using the cash rich trust and its valuable infrastructure for personal gains. It was also contended that the petitioner had not disclosed the factual position in regard to the properties and infrastructure of the trust, pursuant to amalgamation of various trusts in selecting the valuable property in question situated at

Koregaon Park at Pune, to be sold. It was *inter alia* contended that a Public Charitable Trust known as Blue Lotus was amalgamated with the petitioner in 1997 and six other charitable trusts namely Satyam Foundation, Sambodhi Foundation, Shivam Foundation, Sundaram Foundation and Abhilasha Foundation were amalgamated with the petitioner during the period 1997 to 2008.

16. Respondent no.2 also contended that another trust by name Neo Sannyas Foundation (NSF) was acquired by disciples of Osho sometimes in the year 1974 of which the trustees of the petitioner were also trustees. This was formerly known as “Rajneesh Foundation, Mumbai”. He contended that there were several irregularities in regard to the said trust, as also an inquiry in that regard under Section 37 of the MPT Act was pending which was not disclosed. In regard to the property in question, it was contended that the area of the said property was incorrectly described with a difference of about 1000 sq. mtrs. It was also contended that the registered office of the companies and the petitioner was at Maker Chambers, Nariman Point, Mumbai, and to have so, it was alleged to be the strategy of the trustees to quietly alienate the properties and funds of the petitioner. It was contended that the trustees were occupying the position of ‘directors’ in all shell companies and were replacing each other in the trusts and companies from time to time. The claim made by the petitioner that there was a financial crisis, was denied in totality, it was stated to

be a false plea taken by the petitioner, in supporting its application under Section 36 of the MPT Act. It was contended that the average cost of participation was Rs.10,000/- per day per person and in some cases even more, and for foreigners, it was almost double. It was contended that on an average the trust receives Rs. 4 to 5 Crores monthly and Rs. 25 Crores annually from the participants. It is contended that the petitioner has its own currency credit vouchers which are required to be purchased in cash by the participants in advance, which was used by the participants towards certain in-house facilities such as community kitchen, entry fees boutique etc. which are offering 5-star services.

17. Respondent no.2 also contended that the claim of the petitioner and its trustees which was primarily on two factors namely lower cash flow and future expenses was far from true and correct case of the trust. It was contended that such plea was taken under the garb of Covid-19 pandemic, which in fact was long over and things having returned to absolute normalcy. It was contended that in fact, the whole attempt was to create an artificial cash crunch by mismanagement, so as to sell the trust properties, as the plea of dire need of funds could always be remedied without selling the valuable properties of the petitioner, however, techniques of intelligent cost management reducing the unnecessary expenses if any etc. were never adopted. It was hence contended

that in the absence of all such preventive measures a plea of any cash crunch was required to be regarded as totally without any basis.

18. Respondent No.2 made another serious allegation that the amounts paid for participation in the activities of the petitioner by the followers and disciples was in fact getting transferred to the accounts of one company (OMMR) held by the trustees who were the directors and shareholders, and not to the account of the petitioner-trust. Several illustrations were set out in regard to the participants who had made payment of fees in cash and which amount did not come to the trust, but went to the accounts of the other companies instead of the amount being credited to the account of the trust. There were several instances of misappropriation and/or siphoning of funds as alleged by respondent no.2, including by appointing a new Chartered Accountant by abandoning the auditors who for long years were associated with the petitioner-trust. Respondent no. 2 alleged that in fact there was a scam of Rs.1250 Crores by the trustees who have alienated the properties and the income of the trust was transferred to their private companies.

19. It was contended by respondent no.2 that the tender notice in question issued by the petitioner to sell the property in question did not disclose the name of the trust or that of the trustees, which according to him, was a trick to conceal the identity of seller being a public charitable trust to side-line the potential large number of interested parties. The other irregularities, which

according to respondent no.2 were significant, was to the effect, that the property in question was situated at Pune, the trustees are living in Pune and large number of disciples also live in Pune, however, the public (tender) notice was published only in Mumbai, which was totally against the interest and benefit of the trust. It was not initially published in Marathi newspaper to restrict the bids and that the tender notice was processed only for the sake of formality. Considering the nature of the trust and the valuable properties, it was contended that the petitioner and its trustees ought to have published global tender notice on the web portal of **osho.com**, **osho.info**, and on the other social media considering the large following and affinity of persons to the trust. It is thus contended that the entire process of tendering and bidding applied by the petitioner was sham and defective.

20. It was contended by respondent no 2 that the buyers were scripted and identified, being persons connected to the trust in their personal capacity. It was also held that bidder no.1 was an old associate of the trustees since past 20 years. Also the second bidder was a sister concern company of Shri Choradia Family and the selected bidder was the holder of Plot Nos.34 and 35 situated in Lane No.2 of Koregaon Park sharing the same boundary wall on the Eastern side of the trust property.

21. As far as the need to sell the said property is concerned, respondent no.2 alleged that the reasons as set out were strictly unrealistic, unbelievable and false. He contended that if in reality there was to be any cash crunch, the first step which could have been taken, was to approach 'Osho Community' for donations to meet the expenses required for genuine maintenance of "Osho Ashram". It was contended that as on 31 March, 2019, an amount of Rs.15.51 Crores was lying in the Fixed Deposit of the said trust and in between 01 April, 2019 to 01 April, 2020, the trustees had used Rs.4.36 Crores of the fixed deposit amount and the said fact was not brought on record of the proceedings, which would be required to be attributed to the illegal siphoning of the income of the petitioner. Respondent no.2 also gave instances of several alienations as undertaken by the trustees to cause loss to the trust in the sum of Rs. 12,59,16,01,991/-. The details of such properties were also set out in the objections. It was contended that the trust and its properties were situated at a prominent locality at Koregaon Park, Pune having an international pilgrims centre of millions of disciples and lovers of Osho spread all over the world. It was next contended that the petitioner trust and the purported highest bidder had adjacent properties and common network access and services spread over 16 acres of land. It was contended that the trust is in existence for more than 40 years, as also the disciples were contributing their time, money and millions of hours of volunteering out of love and dedication to their mentor. Also, there exists an Osho Auditorium having capacity of 5000 people mediating together,

as well as Osho Samadhi and six other Samadhis including parents of Osho and more than 100 rooms for providing accommodation to the visitors. It is contended that the trust provides individual, group meditation, group therapies and activities as well as residential facilities with ultra-modern kitchen facilities, recreation and sports facilities, etc. It was further alleged that the trustees had dealt with the properties in the manner causing losses to the trust including gift of Plot No.3 of Koregaon Park worth Rs. 50 Crores in the year 2011 to Darshan Trust, New Delhi and also sought transfer of six units constructed on Plot No.22 in favour of Darshan Trust, New Delhi, the proposal of which was subsequently withdrawn in the year 2013. There are large examples which are set out in supporting his objections against the alienation of the land in question. There are large objections raised by the other objectors who are also respondents before this Court. The other objectors had set out illustration of mismanagement and misappropriation of the trust property.

22. On the above conspectus, learned Joint Charity Commissioner proceeded with the adjudication of the petitioner's application under Section 36 of the MPT Act *inter alia* by calling pending change report, audit statements, scheme applications and other pending proceedings. Also, directions were issued to publish a fresh public notice for sale of the property in question as the first notice was issued by the petitioner suo-moto. A fresh

public notice accordingly was issued by the trust on 16 October, 2022, however, no offers were received, as nobody including the bidders who had earlier participated did not submit any bids. The objectors had also placed on record independent valuation reports.

23. In the aforesaid circumstances, a writ petition also came to be filed before this Court being Writ Petition No. 13234 of 2022 by respondent no.24 (one of the objectors) on which an order came to be passed by this Court on 31 March, 2023 directing the learned Charity Commissioner to frame and determine a specific point as to whether the proposed sale of the trust property was necessary and in the interest of the trust while adjudicating the petitioner's application under Section 36 of the MPT Act. The petitioner, however challenged the said order passed by this Court, before the Supreme Court, in which the Supreme Court passed an order dated 6 November, 2023 directing the learned Joint Charity Commissioner to submit a report on or before 07 December, 2023, as directed by this Court by the said order dated 31 March, 2023, by fixing a date to exercise jurisdiction as per Section 36 of the MPT Act, as also afford an opportunity to cross-examine the parties. In pursuance of the said directions of the Supreme Court, the learned Joint Charity Commissioner proceeded to record evidence of the parties by granting an opportunity of cross-examination. In the course of the evidence, the audit reports were also brought on record alongwith the other documents.

24. The learned Joint Charity Commissioner accordingly framed two points for determination **firstly** whether the petitioner - Osho International Foundation Ltd. (OIF) has made out genuine and compelling necessity to alienate its said immovable property (Plot Nos.15 and 16 at Koregaon Park, Pune altogether admeasuring 9837.20 sq. mtrs. equivalent to 11764 sq. yards) on 'as is where is' basis and **secondly**, whether the price/sale consideration offered by Rajivnayan Rahulkumar Bajaj and Rishab Family Trust was reasonable and in the benefit, interest and protection of the trust and its beneficiaries.

25. Learned Joint Charity Commissioner after examining the evidence and all materials, recorded substantive findings of fact to reach to a conclusion that the petitioner had not made out a genuine and compelling necessity to alienate immovable property in question. It was observed that the case of the petitioner-trust, that there was deficit and the compelling necessity made out at the time of filing of application in the year 2021 no longer subsisted. It was observed that the situation as alleged by the petitioner -trust by the Covid-19 pandemic, since had subsided long back, such basic reason to alienate the said property itself had vanished. The learned Joint Charity Commissioner observed that being confronted with this trustee Mr. Mukesh Sarda furnished fresh reasons as discussed in the impugned order, that the trust now requires money for the renovation of two buildings, which had remained incomplete

because of shortage of funds which required amounts upto 10 to 12 crores. However, when confronted as to why loans could not be availed for such renovation, there was no satisfactory answer. It was observed that the Section 36 application was also completely silent on such aspect of the proposed renovation. No estimates were produced on record. The requirement of Rs.10 to 12 crores for renovation was introduced during cross-examination for the first time. It was also observed that no reasons were forthcoming, as to what prevented the trust from applying for a loan to fulfill its interest in renovating two buildings and to what extent such renovation was actually compulsive was also not made clear. The learned Joint Charity Commissioner also referred to an admission in the evidence of Mr. Mukesh Sarda, that in the year 1997, the trust had advanced amounts to Spatio Land Development Pvt. Ltd., which was utilized for acquiring a land which later on came to be acquired by the Bombay Municipal Corporation for Jijamata Udyan, in lieu of which the Bombay Municipal Corporation had issued TDR/DRC of 180000 sq.ft. to Spatio Land Development Pvt. Ltd., which benefit was retained by Spatio Land Development Pvt. Ltd. of which the applicant-trustee and others were the Directors.

26. There were several other instances of development, which are discussed in the judgment of the learned Joint Charity Commissioner as impugned. The learned Joint Charity Commissioner taking into consideration the powers

which would stand vested with the Charity Commissioner, not only under Section 36 of the MPT Act, being the power to grant approval to the alienation of immovable property of the trust, but also considering the powers as vested under Section 33 which are in regard to the 'balancing and auditing of accounts', opined that this was a fit case where the special audit of the petitioner-trust needs to be conducted and accordingly passed the impugned order as noted by us hereinabove.

27. It is on the above conspectus, we have heard learned counsel for the parties.

Submissions on behalf of the petitioners

28. Mr. Chinoy, learned senior counsel for the petitioner in supporting the petitioner's assail of the impugned order has made the following submissions:

- i. There is an apparent illegality in the leaned Joint Charity Commissioner passing the impugned order, inasmuch as, the jurisdiction under Section 36 of the MPT Act which in regard to approval of alienation of immovable property, has been completely usurped by including on the scope of such enquiry, by adjudicating on an issue which fell under a distinct provision, namely, of Section 33 of the MPT Act which pertains to the accounts of the trust. It is submitted that the power and authority of the Charity Commissioner under Section 36 stands independent of Section 33. The scope of the provision is also different and hence there was no jurisdiction

with the Joint Charity Commission to direct a special audit of accounts of the trust in exercising jurisdiction under Section 36.

ii. That directing a special audit of the accounts of the trust is an order entailing civil consequences, hence, specific proceedings in that regard were required to be initiated. In absence of such proceedings, the impugned order would be required to be held to be in breach of the principles of natural justice and hence a nullity. In supporting the contention that a special audit could never have been ordered, reliance is placed on the decisions of the Supreme Court in **Rajesh Kumar & Ors. vs. Dy. CIT & Ors.**¹ and **S.L. Kapoor vs. Jagmohan & Ors.**²

iii. No case was made out even by the objectors to oppose the alienation of the property in question, as the petitioner had set out cogent reasons and financial difficulties which were faced by the trust in meeting its day-to-day expenses requiring alienation of such property.

iv. In fact similar allegations are made by the private respondents against the trustees in collateral proceedings which are reiterated in opposing the sale and hence, even otherwise it was not proper that on the contentions as urged on behalf of the objector, the permission for sale could be denied.

1(2007) 2 SCC 181

2(1980) 4 SCC 379

v. There was sufficient material/ evidence on record, which would justify alienation of the property, however, what weighed with the learned Joint Charity Commissioner are the transactions which had taken place in the past and inflow and outflow of funds which has been questioned to be doubtful so as to non-suit the petitioner in its application filed under Section 36. Such reasons can never form the basis of any order passed under Section 36.

vi. An appropriate and a lawful decision was taken by the trust to alienate the property in question and after following a fair and transparent procedure resolving the same to be sold in favour of Mr. Rajivnayan Rahulkumar Bajaj and Rishab Family Trust, who were the highest bidders. Hence the contention as raised by the objectors that a commercial activity being undertaken cannot be sustained, as the trust cannot carry out any commercial activity and such contentions were without any basis. Learned Joint Charity Commissioner ought not to have undertaken a roving enquiry, which was totally unwarranted.

vii. There is a non-application of mind by the learned Joint Charity Commissioner in passing the impugned order, as the consideration of deficit for the relevant years is contrary to the record. There is complete erroneous appreciation of facts inasmuch as the earnest money of Rs.50 crores which was received from the highest bidder had enhanced the fixed deposit of the petitioner, which could not have been taken into consideration to come to a

conclusion that there was no deficit and to reach to a conclusion that shortfall was only of an amount of Rs.2,78,012 when actual deficit of is of Rs.3,37,18,444/-. The findings as recorded in this regard, apart from being erroneous, are perverse. It is, therefore, submitted that the impugned order is required to be quashed and set aside

Submissions on behalf of the objector/ respondents

29. The arguments in opposition to the petition were canvassed by Mr. Anturkar, learned senior counsel who represents respondent no.2 and 24 and Mr. Uttarwar, who represents for respondent nos. 8, 17, 20, 25 and 26. Their submissions are also adopted by the learned counsel appearing for other private respondents. The following are the submissions:-

- i. At the outset, it is submitted that the impugned order is a reasoned order, which is passed after taking into consideration the documents as also the oral evidence which was led before the learned Joint Charity Commissioner, and on appreciation of the entire facts and the materials, on which cogent findings have been recorded in the impugned order, so as to reject the petitioner's application under Section 36 of the MPT Act, as also, with all justification and powers available with the Charity Commissioner, an order under Section 33(4) has been passed.
- ii. There is nothing illegal in the learned Joint Charity Commissioner having taken an approach to pass an order also invoking the provisions of

Section 33 when prima facie large material was placed on record of several instances in relation to the misappropriation of the funds and manipulation of accounts, which were apparent on the face of the record.

iii. There is no bar on the learned Joint Charity Commissioner invoking the powers under Section 33(4) of the MPT Act to order a special audit even in adjudicating a Section 36 application although it is in such proceeding which is in relation to prior permission for alienation of property.

iv. That merely ordering an inquiry under Section 33(4) would *per se* not cause any prejudice to the petitioner as it is only a fact finding which would be undertaken by any special audit being conducted and by recording findings. The prejudice would be only if there is an adverse fact finding report and the same being utilized for any further enquiry or action to be taken against the petitioner by resorting to the provisions of Section 41-B of the MPT Act. Thus, it is not a situation that there is any lack of jurisdiction with the Joint Charity Commissioner in having such approach of ordering a special audit. The case of the petitioner that the impugned order entails civil consequences is hence untenable. It is submitted that in fact, respondent no.2 had raised a categorical contention that a forensic audit which is required to be carried out in the accounts of the trust, would reveal more details of transactions taking place in the trust. For such reason, it is not the case that the petitioner was not put to any notice of meeting such contention

on the ground of irregularity in the accounts.

v. In regard to the findings as recorded on the Section 36 application, the findings are wholly based on the materials on record which clearly demonstrate that the case of the petitioner of any dire financial requirements was misconceived and untenable. In fact, the reasons which were set out for sale of the prime property were clearly not borne out by the record and what was intended was a malafide sale of the property for extraneous reasons and not for the benefit of the trust.

vi. The conclusion to reject the section 36 application could be the only conclusion, which could be derived and reached on the facts of the case and the evidence on record.

vii. In exercise of the powers under Article 226 of the Constitution, this Court would not re-appreciate the evidence to come to a different conclusion than what has been arrived at by the learned Joint Charity Commissioner on the facts of the case.

viii. This is not a case where there was not even a *prima facie* material for the learned Joint Charity Commissioner to form an opinion, that there was any need to sell the valuable property of the trust in favour of Rajivnayan Rahulkumar Bajaj and Rishab Family Trust. There was substantial material on record of the proceedings before the learned Joint Charity

Commissioner , including materials that bogus losses were being shown, hence no case was made out for interference.

ix. A specific case was put up and on the basis of materials that the trustees had formed shell companies in order to divert the income of the cash rich petitioner and to cause a wrongful gain to themselves. Also a categorical case was asserted that the audited statement of accounts of the petitioner, as well as the other accounts reflected accounting malpractices deployed by the trustees of the petitioner in order to show losses to the petitioner and the gradual decline in the income of the petitioner, so as to create a false picture of losses being suffered. Such case was pleaded on the purported audited statements of accounts of the pre-pandemic era as also the pandemic and post pandemic period.

x. In fact, the Supreme Court in the proceedings of Special Leave Petition No. 19086 and 19087 of 2023 filed by the petitioner considering the directions of this Court (in its order dated 31 March, 2023 in Writ Petition No.13234 of 2022 and the order dated 16 June, 2023 in Writ Petition No. 6364 of 2023) had passed an order directing the Joint Charity Commissioner to decide the said issues and make a report of the same available to the Supreme Court on the proceedings, after affording an opportunity of cross-examination to the existing parties. It is according to such orders of the Supreme Court, the adjudication had taken place leading

to the impugned order. In view of the impugned order, the Supreme Court permitted the petitioner to withdraw the said special leave petition and approach this Court to challenge the impugned order. It is hence submitted that the approach of the learned Joint Charity Commissioner in passing the impugned order ought not to be objected by the petitioner.

xi. That the learned Joint Charity Commissioner has rightly observed that the initial reason of an alleged financial crisis having come to an end, a further false reason was submitted namely renovation of two existing buildings, which has been rightly rejected by the learned Joint Charity Commissioner as the same was not only false, but completely unsupported by any materials which even otherwise, as per the petitioner, required an amount of about Rs.10 crores. It is submitted that even otherwise it was untenable to conceive a situation that for any renovation of the building, much valuable property is required to be sold. It is submitted that in fact, the sale was for extraneous reason and that it appeared to be more of a commitment to Rajivnayan Rahulkumar Bajaj, Rishab Family Trust rather than any necessity.

xii. It is, therefore, submitted that no case whatsoever has been made out by the petitioner for interference in the impugned order and therefore, the petition would be required to be dismissed.

30. Mr. Uttarwar, learned counsel for other respondents has submitted that various admissions are made in the evidence which would show that in fact there was no financial crisis. He states that an admission was made on behalf of the petitioner that despite having FDs worth Rs.6.75 Crores, it was decided in the Governing Body meeting held on 20 July, 2020 to alienate the trust property. He submits that several other aspects in this regard are taken into consideration by the learned Joint Charity Commissioner, which would go to show that there was no real need to sell the property in question. He has also drawn the Court's attention to the Minutes of the Meeting held on 20 July, 2020 in which according to him it was expressly recorded that by Mr. Mukesh Sarda had informed the Board that the petitioner has funds which can take care of the fixed costs for next 8 to 10 months, which would be a period upto May 2021. It is hence his submission that when the impugned order takes into consideration such evidences and documents to record findings to reject the petitioner's case on the need to alienate the said property, this petition would not call for an interference in its extraordinary jurisdiction.

Analysis and conclusion

31. We have heard learned counsel for the parties at length, we have also perused the record. At the outset, we need to note that the writ jurisdiction of the Court which is called upon to be exercised in the present proceedings would be very limited. It is settled principle of law that the Court would

exercise its writ jurisdiction only in the event, there is a patent illegality and an apparent perversity in the order passed by the tribunal. Such illegality can be instances like the tribunal passing an order patently lacking jurisdiction or the order passed by it was ex-facie perverse, such perversity being of a nature that no reasonable person/body of persons, could take such view of the matter, on the materials on its record. In adjudication of such proceedings the Court would not re-appreciate evidence so as to come a different conclusion than the one reached by the tribunal. Any factual enquiry possible in an appeal is also not the jurisdiction of the court in writ proceedings. The principles in law in this regard are well settled. (See: **Sayed Yakoob Vs. K.S. Radhakrishnan**³ ; **Anup Sharma Vs. Executive Engineer, Public Health Division No.1**⁴ ; **Devinder Singh Vs. Municipal Council, Sannur**⁵)

32. The question before the Court therefore is whether the impugned order passed by the tribunal is of such nature that it would require interference applying the aforesaid principles.

33. At the outset, we deal with the issue as raised on behalf of the petitioner, namely, whether was it permissible for the learned Joint Charity Commissioner in the proceedings under Section 36 of the MPT Act to exercise powers under Section 33(4) of the MPT Act, to order a special audit of the accounts of the

3 AIR 1964 SC 477

4 (2010) 5 SCC 497

5 AIR 2011 SC 2532

petitioner, so as to hold the impugned order in such regard to be wholly without jurisdiction.

34. When such issues touching the affairs, administration and management of public trust arise, that too in the context of a special enactment governing a public trust and which are not issues of private interest, the considerations would be certainly different, then what could otherwise apply in examining and adjudicating on individual rights under any other legislation governing individual, private or personal rights. The reason being that the paramount consideration for the authorities under the Public Trust legislation like the MPT Act is not on any private or personal interest of the trustees (who are supposed to act in a fiduciary capacity), but the overall welfare and administration of the trust, which is intended to be for public benefit. Thus, in examining such issues, in our opinion, the approach of the Charity Commissioner as also of the Court, would certainly be, to take a holistic view of the matter, and more particularly recognizing the variety of powers, the Legislature has conferred on the Charity Commissioner in regulating and administering public trusts, which he would be empowered to exercise on materials which come before him, in the course of proceedings under the Act.

35. We may observe that the MPT Act is enacted *“to regulate and make better provisions for the administration of public religious and charitable trust in the State of Maharashtra”*, as the preamble of the Act would indicate. The

‘Charity Commissioner’ is an officer appointed under Section 3 by the State Government to exercise such powers and perform such duties and functions as are conferred by or under the provisions of the MPT Act, and is empowered to superintend the administration and carry out the provisions of the Act. Section 3 of the MPT is required to be noted which reads thus:

“Section 3. Charity Commissioner

The State Government may, by notification in the Official Gazette, appoint an Officer to be called the Charity Commissioner, who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State.”

36. Similarly, by an amendment which was incorporated by Bombay Act 6 of 1960, Section 3A came to be incorporated to provide that the ‘Joint Charity Commissioner’, shall be empowered to perform the duties and functions of the Charity Commissioner. It is by virtue of Section 3A the Joint Charity Commissioner is expected to perform all the functions of the Charity Commissioner under the MPT Act. It is evident from the various provisions of the MPT Act and the legislative scheme underlying such legislation, that when Section 3 confers power on the Charity Commissioner, these are the powers which are not only judicial or quasi-judicial but also ‘administrative’, ‘inquisitorial’ and even as a delegate of the powers the Government would exercise to supervise and administer a public trust.

37. In the context of the jurisdiction of the Charity Commissioner under the MPT Act (*then the Bombay Public Trust Act*), we may usefully refer to the decision of Division Bench of this Court in the case of **Charity Commissioner Bombay Vs. Municipality of Taloda**⁶. In such decision a Division Bench of this Court considering the legislative scheme of the Act and functions of the Charity Commissioner, as conferred by the Act to be exercised in relation to public trust, held that there cannot be any scope for doubt that the Crown or Government is *parens patriae* in respect of wards, and is also the protector of charities in general. Referring to *Tudor on Charity* { 5th Edition page 174.} It was observed that the Charity Commissioner has an ‘**inquisitorial jurisdiction**’ or power over the public trust. The Court further observed that all powers conferred on the Charity Commissioner under the MPT Act, clearly depict that the Charity Commissioner is not merely a judicial or quasi-judicial authority who has merely to determine certain questions which are brought before him, however he exercises dual functions, one as a delegate of the Government’s power to have superintendence over trust and secondly as an authority, who is vested with quasi-judicial powers of deciding questions under the MPT Act. The relevant observations are required to be noted and which reads thus:

“3. In order to consider whether or not this contention is sound, we must consider the scheme of the Act and the functions which the Charity Commissioner exercises in relation to public trusts. There cannot be any scope for doubt that the Crown or Government is *parens patriae* in respect of wards and is also the protector of charities in general (see *Tudor on Charities*, 5th edn, p. 174). From time to time various Acts were made by

6 (1963) 65 Bom LR 27.

the Government both Central and State for controlling mismanagement in the properties of public trusts. However, it was only about 1950 in almost every State that Acts for the supervision of public trusts came to be passed. The purpose of the Act as shown by the preamble is to make better provision for the administration of public religious and charitable trusts in the State and having due regard to the purpose of the Act, i.e. it having been passed for the public good, it is the duty of the Courts of justice to put such a construction upon it as may tend to the furtherance rather than to the restriction of the powers conferred by it upon the Charity Commissioners: (See *In re Duncan*, *In re Taylor's Trusts* [(1867) 2 Ch. 359.] .) We must, therefore, proceed to consider what are the powers of the Charity Commissioner *vis-a-vis* a public trust and determine as to whether the Charity Commissioner would be a person interested to appeal against the decision of the District Court.

4. Section 3 of the Act enables the Charity Commissioner subject to the general or special orders of the Government to superintend the administration and carry out the provisions of the Act. The purpose of the provisions would appear hereafter. Section 37 gives a general power to the Charity Commissioner and others therein mentioned to enter on and inspect any property belonging to a public trust, to call for or inspect any extract from any proceedings of such trust as well as any books of account in the possession of the trustees as also any returns, statements, etc. Sub-section (2) of s. 37 creates a liability in the trustees to afford all convenience and reasonable facilities for such examination. Under s. 38 he is entitled to refer the matter to an auditor to look into the management and under s. 38 to call upon any of the defaulting trustees to give explanation, under s. 40 to determine if any loss is caused by the management to the public trust and under s. 41 to surcharge any of the defaulting trustees and the manager. This clearly shows that the Charity Commissioner has an inquisitorial jurisdiction or power over public trusts. Section 47-AA enables the Charity Commissioner to make an application to the Court for appointment of a new trustee if an existing trustee is convicted of any offence under the Act. Section 57 establishes a fund called the Public Trusts Administration Fund to vest in the Charity Commissioner and every public trust is liable to contribute towards this fund. The constitution of the fund and contribution to it by public charities in the State could not be without any purpose. It is meant for the expenses of establishment of the Charity Commissioner and his subordinates the purpose of which is the effective control and supervision over public trusts by the Charity Commissioner. Section 68 which defines the duties and powers of the Charity Commissioner gives a power of superintendence over public trusts. Section 50 gives a right to the Charity Commissioner to institute a suit in cases of breach of trust for recovery of possession of property belonging to any public trust or for directions where they are necessary and it also provides that if any other person wants to institute a suit on behalf of the Charity he must obtain sanction of the Charity Commissioner.

5. All these powers, which are given by the Act, clearly show that the Charity Commissioner is not merely a judicial or quasi-judicial authority

who has merely to determine certain questions which are brought before him. He exercises a dual function, one as a delegatee of the Government's power of superintendence over trusts and second as an authority who is vested with quasi-judicial powers of deciding questions under the Act.

(emphasis supplied)

38. The observations of the Division Bench in **Charity Commissioner Bombay Vs. Municipality of Taloda** (supra) are significant when it holds that the jurisdiction of the Charity Commissioner is an inquisitorial jurisdiction. Such jurisdiction would not merely be a jurisdiction which would be confined to the mere adjudication of a *lis* which is brought before him for adjudication within the parameters of the MPT Act, but a jurisdiction, conferring overall powers on the Charity Commissioner to regulate the administration of the charitable trust, and for which the powers of investigation would not be limited merely to the materials / evidence before him, but empowering him to proceed with an inquiry on his own initiative. The contours of such jurisdiction of the Charity Commissioner would also be required to be borne in mind and recognized in any adjudication, on the issues falling for consideration of the Court in relation to a public trust under the MPT Act. We may observe that the alternate of the inquisitorial jurisdiction would be the “accusatory system” or the adversarial system, involving two sides or two or more parties having conflicting interest.

39. To appreciate as to what is the concept of an ‘*inquisitorial Court*’, ‘*inquisitorial procedure*’, ‘*inquisitorial process*’ and ‘*inquisitorial system*’, it

would be necessary to refer to the description of these concepts as made by the learned Author **P. Ramanatha Aiyer** in the celebrated works **Advance Law Lexicon** (*Third Edition*), describing such concept as under:-

Inquisitorial Court. A Court in which the inquisitorial system prevails.

"We should remember that in the 'inquisitorial Court' the roles of prosecutor, defender, and judge are combined in one person or group of persons. It is no accident that such a Court commonly holds its sessions in secret. The usual explanation for this is that the methods by which it extracts confessions cannot stand public scrutiny. But the reason runs deeper. The methods employed by an inquisitorial Court, even if open to the public, could scarcely be a secret of meaningful observation by an outsider. It is only when the roles of prosecutor, defender, and judge are separated that a process of decision can take on an order and coherence that will make it understandable to an outside audience and convince that audience that all sides of the controversy have been considered." Lon. L. Fuller, *Anatomy of the Law* 35-36 (1968).

Inquisitorial procedure. A Court procedure commonly practised in Continental Europe whereby the trial judge conducts inquiry into the facts, rather than the parties. The judge will lead the investigations, examine the evidence and interrogate the witnesses.

Inquisitorial process. The procedure by which the judge takes an active part in determining the facts of a case. (*Cyber Law*)

Inquisitorial system. The system of criminal procedure in which the detection and prosecution of the culprit are not left to private initiative. It originated in the later Roman Empire and was adopted by the Roman Church and the influence of these sources made the system common in Europe by the sixteenth century. Some forms of this system have involved secret inquiries and the use of torture. In all forms the judge's investigation is not limited to the evidence put before him, but he proceeds with an inquiry on his own initiative. The alternative is the accusatory system: (*Walker*)

40. The **Black's Law Dictionary** (*Eighth Edition*) defines "inquisitorial Court" to be a Court in which inquisitorial system prevails. An inquisitorial system has been defined to be a system used in civil law whereby the Judge conducts a trial, determines what questions to ask and defines the scope and

extent of inquiry The following is the relevant extract as contained in the Black's Law Dictionary:

Inquisitorial system. A system of proof-taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the inquiry. This system prevails in most of continental Europe, in Japan, and in Central and South America. Cf. ADVERSARY SYSTEM.

Inquisitorial Court. A court in which the inquisitorial system prevails.

41. Thus, applying the aforesaid principles which are recognized by the Division Bench of this Court in the case of **Charity Commissioner Bombay Vs. Municipality of Taloda** (supra), it would be required to be held that the Charity Commissioner is well within its powers to be not only concerned but involved and benevolent, in the judicious approach he needs to take in regard to the affairs of a public trust, and particularly on matters which became evident on materials before him, so as to exercise all the powers as conferred on him under the MPT Act and pass appropriate orders in the best interest of the administration of the public charitable trust.

42. It is, therefore, not only conceivable but an absolute necessity that when substantial material comes before the Charity Commissioner in the course of any proceedings before him under the MPT Act, he cannot adopt an approach to disregard such material and not pass appropriate orders, merely for the reason, that there is no substantive application before him for such direction to be made against the trust. This would be a position recognized in an adversarial

system and not when an inquisitorial jurisdiction is to be exercised. If such approach is to be accepted to be the correct method, this would amount to the Charity Commissioner negating his duties and powers under the Act, apart from abdicating such powers. It would be certainly an unacceptable position that a Charity Commissioner although has substantive materials before him, to order an inquiry, he would nonetheless not order an inquiry. Such interpretation of the legislative scheme of the MPT Act qua the powers conferred on the Charity Commissioner, would lead to render the legislation insignificant and nugatory.

43. Considering the above discussion, in our opinion, in the facts of the present case there was no jurisdictional error on the part of the learned Joint Charity Commissioner to order a special audit, which even otherwise could be ordered under the provisions of Section 33(4) of the MPT Act. It is not the case that the MPT Act does not confer any power on the Charity Commissioner to order a special audit, when there are substantive materials to make such order. For convenience we would also note the provisions of Section 33, which pertains to ‘Balancing and auditing of accounts’ and Section 36, which pertains to ‘Alienation of immovable property of public trust’, which reads thus:

Section 33. Balancing and auditing of accounts:

(1) The accounts kept under section 32 shall be balanced each year on the thirty-first day of March or such other day, as may be fixed by the Charity

Commissioner.

(2) The accounts shall be audited annually by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, or by such persons as the State Government may, subject to any conditions, authorize in this behalf:

Provided that, no such person is in any way interested in, or connected with, the public trust.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of or under the control of the trustee; and it shall be the duty of the trustee to make them available for the use of the auditor.

(4) Notwithstanding anything contained in the preceding sub-sections;

(a) the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary. The provisions of sub-sections (2) and (3) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit; and

(b) State Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-section (2) , subject to such conditions as may be specified in the order.

(emphasis supplied)

Section 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.

Provided that, the Charity Commissioner may, before the transaction for which previous sanction is given under clause (a), (b) or (c) is completed, modify the conditions imposed thereunder, as he deems fit;

Provided further that, if such condition is of time limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.

(1A) The Charity Commissioner shall not sanction any lease for a period exceeding thirty years under this Act.

(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) or, 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.

Provided that, no sanction shall be revoked under this section after the execution of the conveyance except on the ground that such sanction was obtained by fraud practiced upon the Charity Commissioner before the grant of such sanction.

(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.

(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a *bona fide* purchaser for value, the Charity Commissioner may grant *ex post facto* sanction to the transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017], if he is satisfied that,—

- (a) there was an emergent situation which warranted such transfer,
- (b) there was compelling necessity for the said transfer,
- (c) the transfer was necessary in the interest of trust,
- (d) the property was transferred for consideration which was not less than prevalent market value of the property so transferred, to be certified by the expert,
- (e) there was reasonable effort on the part of trustees to secure the best price,
- (f) the trustees actions, during the course of the entire transaction, were bonafide and they have not derived any benefit, either pecuniary or otherwise, out of the said transaction, and
- (g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force.

Explanation.— For the purposes of sub-section (5), the term “the Charity Commissioner” shall mean only the Charity Commissioner appointed under section 3.

(emphasis supplied)

44. On a bare perusal of the Section 33 it is clear that the Charity Commissioner wields an authority and control on the accounts of a public charitable trust, including to order a special audit whenever a special audit is necessary. When the MPT Act itself confers such jurisdiction to be exercised by the Charity Commissioner, for which the provision mandates that he forms a opinion, in such event it cannot be said that when material is available before the Charity Commissioner to form such opinion, he would nonetheless not exercise jurisdiction. This would also defeat the very intention and object of the said provision and would cause damage to the fair, transparent and lawful administration of a public trust. We therefore reject the petitioners submission that the Charity Commissioner had no authority or that in the present case he

could not have ordered a special audit in passing an order on the Section 36 proceedings.

45. Having dealt with the powers of the Charity Commissioner to pass an order directing the special audit, we may also observe that the *raison d'être* to order such special audit itself was borne out by the material on record of the proceedings before the learned Charity Commissioner when a reference is made to large amount of documentary as well as oral evidence, which formed part of the proceedings, for the learned Joint Charity Commissioner to get apprehensive, disturbed and quite alarmed, so as to form an opinion of a special audit being required to be ordered. Moreover, such material had formed part of the enquiry in the proceedings of which the petitioner had sufficient notice as a specific plea was taken/ raised by the objectors, demanding a forensic audit, as there were substantive allegations of large scale irregularities being resorted by the trustees on defalcation of the trust properties and funds. Such contentions for a special / forensic audit were specifically asserted by respondent No.2 and the other objectors. The following are the contentions as raised by respondent No.2 on the necessity of a forensic audit:

“iii. The copy of Audited Accounts for the year ending on March 2020 is not enclosed with the Application. The reasons for not submitting the copy audited accounts for the year ending on 31st March 2020 is malicious on the following grounds:

iv. Notably on 31st March 2019 a Fixed Deposit of Rs. 16 Crores is seen on the accounts of the trust.

v. The Applicants on page 5 of the Application has stated that fixed deposit 01.04.2020 is stated as 11,15,00,000/- Eleven Crores fifteen lakhs.

vi. Whereas, it appears that from 01.04.2019 till 1.4.2020 the Fixed deposit of Rs. 5,00,00,000/- Rs. Five Crores has been used by the trustees which is not brought on the records of this proceedings. The Applicants have deliberately concealed the Audited Reports from 1.4.2019 till 31.3.2020.

vii. **The Objector submit that prior to decide this Application a Forensic Auditing should be carried out in the accounts of the trust which would reveal more details of transactions taking place in the trust. This Forensic Auditing would also enlighten the overall health of the Trust.”**

(emphasis supplied)

46. The learned Charity Commissioner has made significant observations based on materials and on discussing such materials, of a prima facie substance being found in the case of the objectors on both the counts, namely, on there being no necessity arising to alienate the prime immovable property, as also on defalcation of the funds as extensively discussed in Paragraph Nos.83, 84, 86, 87, 88, 93, 94 & 96 of the impugned order, the gist of which we have referred in the foregoing paragraphs. Such observations as made by the learned Joint Charity Commissioner are to the effect that the contentions of depletion of the corpus of the funds of the petitioner trust was not supported by the audit reports. It had come in evidence that Mr. Mukesh Sarda the trustee could not account for the discrepancies as reflected from the amounts mentioned in the corpus of Rs. 22,60,61,855/- and the value of immovable property in the sum of Rs.45,57,37,664/- as reflected in the audit statement for the year 2020-2021-2022.

47. A finding on materials on record has been made by the learned Joint Charity Commissioner that at no point of time there was a situation of financial crisis, requiring such valuable property to be sold. The contention of the petitioner that merely because the earnest amount of Rs. 50 Crores was received from the highest bidder, the petitioner's fixed deposit had stood inflated and therefore a position otherwise than the fixed deposits, would show financial crisis, was also not supported by the materials on record, requiring any dire need to sell the valuable immovable property. It was observed that *prima facie* there was material on record of substantial amounts being transferred to companies which were set up by the trustees, in which the trustees were directors so that the funds can remain outside the scrutiny of the Charity Commissioner and accountability required to be reposed by the petitioner's trust. It is observed that the petitioner, through Shri Mukesh Sarda, many times attempted to give vague and irresponsible answers to the vital queries regarding accounting entries and more particularly the query as made by the objectors in relation to the accounts.

48. It appears to be quite clear that there exists multiple sources of revenue from which there was an inflow of revenue for the petitioner- trust. Its activities are large. Such sums received were substantial amounts. However, *prima facie* observations recorded by the learned Joint Charity Commissioner are to the effect that an ostensible cash crunch was being portrayed, to sell the valuable

trust property. Also, the substantial receipts were not going to the trust account, but the same was being collected in cash and such funds were being siphoned to the accounts of the company. The reasons as set out of the Covid-19 Pandemic and Ukrainian war by the petitioner to show the need to sell the properties were observed to be certainly not acceptable, much less any acceptable or cogent reasons for sale of such large property. Even assuming that there was a necessity of funds, there was no attempt of the petitioner to seek loans or invite donations from a trust which has large number of wealthy disciples.

49. There is a finding recorded by the learned Joint Charity Commissioner that the petitioner had sufficient resources to generate more cash flow on its own, however, the trustees had diverted the funds of the petitioner to several private limited companies to show losses incurred by the petitioner. The entries in the audit reports did not convince the Joint Charity Commissioner to accept such accounting calculations. Also when confronted with the situation that the reason of financial crisis during pandemic had ceased to exist, false reasons of renovation of two building that too involving a meager amount of Rs.10-12 Crores, as compared to the value of the said property being sold (which according to the petitioner was a minimum amount of Rs. 107 Crores) without details of such renovation was sought to be canvassed by the petitioner, as clearly recorded by the learned Joint Charity Commissioner. The question

before the learned Joint Charity Commissioner in such circumstances was whether these glaring issues could be overlooked on any of its facets. The obvious answer would be in the negative.

50. We have given our anxious and careful consideration to the observations and findings as recorded in the impugned order, which in our opinion certainly lead us to observe that all findings recorded are borne out by the record as also there was sufficient material for the learned Joint Charity Commissioner to order a special audit exercising this powers under the MPT Act as discussed by us hereinabove. We may thus observe that none of the contentions as urged by Mr. Chinoy would deserve acceptance of this Court, to exercise its writ jurisdiction to set aside the impugned order

51. Insofar as Mr. Chinoy's contention that the impugned order when it orders special audit of the accounts of the petitioner to be undertaken would entail civil consequences, as such order is passed without the petitioner being put to special notice in this regard would render the order illegal, is not worthy of acceptance for more than one reason. In such context, we may observe and as noted hereinabove that the petitioners were at sufficient notice in view of the specific case as put up by the objector/respondents that there were large scale irregularities in the accounts of the petitioner and the management of the fund and its income requiring such audit to be ordered by the learned Joint Charity Commissioner. The petitioners with open eyes participated in such enquiry, as

also several questions were put to them in this regard, in the evidence, which were attempted to be answered in an unsatisfactory manner, as observed by the learned Joint Charity Commissioner. Thus, when during the course of adjudication of the Section 36 application substantial material was available sufficient to form an opinion, of a need of a special audit there was nothing wrong for the learned Joint Charity Commissioner to conclude and order that this was a fit case, which required a special audit to be undertaken of the accounts of the petitioner-trust. Such approach of the learned Joint Charity Commissioner cannot be faulted. In fact it would have been required to be faulted, if the learned Joint Charity Commissioner was not to adopt such approach, as this would have amounted to abdicating his powers to pass appropriate orders in the interest of better administration of the trust and its properties.

52. Mr. Anturkar's contention that when it comes to administration of a public trust, there is no question of any civil consequences in mere ordering of a special audit, at this stage, for the reason that a special audit would be a scrutiny of the accounts of the trust and only when any adverse material is derived from such scrutiny, and a further action is sought to be initiated under section 41B, at such point of time, if at all any consideration on the issue of civil consequences would become relevant, commends to us. It is for such reason, we do not accept the contentions as urged by Mr. Chinoy referring to

the decision of *Rajesh Kumar (supra)*, firstly for the reason that this is not a case where it can be said that there are breach of principles of natural justice inasmuch as there was a full fledged enquiry even on such issue of accounts as specifically raised by the objectors in which the petitioners participated with open eyes and after substantial material in this regard was available before the learned Joint Charity Commissioner, the learned Joint Charity Commissioner opined that this would be a case which would require a special auditor to be appointed to examine the accounts. Secondly and most significantly the present case is not comparable to the case of *Rajesh Kumar*. The context and the situation in this case is not akin to the situation which had fell for consideration of the Supreme Court in *Rajesh Kumar (supra)* of an order being passed under section 142(2-A) of the Income-tax Act against the individual involving civil consequences. It is in such context the principles of natural justice were discussed by the Supreme Court. This apart a specific proviso was incorporated by Finance Act 2007 to Section (2A) brought into effect from 1 June 2007 which provided that no direction of a special audit shall be issued without affording a reasonable opportunity of a hearing to the assessee. Thus, the law itself provided for a prior opportunity of being heard before an order of special audit was to be made under the provisions of the Income Tax Act. Such is not the case when it comes to the provisions of Section 33 of the MPT Act. The legislature consciously does not incorporate such provision of a prior hearing, nor there is any scope to read, an opportunity of a prior hearing in the

provision of Section 33(4) of the MPT Act. Thus, reliance on the said decision to the facts of the present case and the specific powers as conferred on the Charity Commissioner is not well founded. For such reasons, even the reliance on the decision of the Supreme Court in *S.L. Kapur* (supra) is not well founded.

53. The aforesaid discussion would lead us to observe that the finding as recorded by the learned Joint Charity Commissioner in the impugned order to come to a conclusion that the petitioner had not made out a genuine and compelling necessity to alienate its valuable property situated at a prime location at Pune would require no interference. Such findings are based on materials and the record, hence these findings cannot be regarded as perverse or in any manner illegal or unconscionable, requiring interference of this Court. The orders directing special audit of the accounts of petitioner as ordered are also within the powers of the Charity Commissioner as conferred by the MPT Act and are justified in the facts of the present case.

54. The petition is devoid of merits. It is accordingly rejected. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)