

PARSI ZOROASTRIAN ANJUMAN, MHOW

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v.

THE SUB DIVISIONAL OFFICER/THE REGISTRAR OF  
PUBLIC TRUSTS & ANR.

(Civil Appeal No. 490 of 2022)

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JANUARY 28, 2022

**[UDAY UMESH LALIT, S. RAVINDRA BHAT AND  
BELA M. TRIVEDI, JJ.]**

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*M.P. Public Trusts Act, 1951 – s.14 – Sale etc. of property belonging to a public trust – Power conferred on the Registrar of public trusts u/s.14 to grant or withhold sanction – Ambit and scope – Held: From a reading of s.14(1) and (2), it is clear that the grant or refusal of sanction by the Registrar have to be based on either “the directions in the instrument of trust”, or “any direction given under this (i.e., M.P. Public Trusts Act) or any other law by any court” – The discretion is relatable to directions in the trust document, or any provision of the Act, or any other law as ordered (or directed) by any court – The Registrar, is not empowered to read into it her own notions of what is beneficial and what is prejudicial to the trust – The refusal has to be specific to the requirement of law, wherever such law clearly stipulates so, or any specific provision of the trust document – A plain look at rr.9(1) and (2) of the M.P. Trust Rules would show that the conditions mentioned in those rules, are in conformity with the framework of s.14 – However, if r.9(3) were to be read independently, it can be construed as conferring additional power to impose conditions – Such a reading would lead to r.9(3) being rendered ultra vires – However, a proper and harmonious reading of r.9(3) would be that the Registrar, in a given case may impose conditions, if the instrument of public trust, or any law, relating to public trusts, results in a court direction to such effect – In the absence of these objective factors, the Registrar cannot unilaterally impose conditions which in her, or his opinion would inure to the interest of the public trust – M.P. Trust Rules, 1962 – r.9 – Trusts and Charities – Public Trust.*

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- A *Trusts and Charities – Public trust – Regulation – Public control– Objective – Held: The aim of public control is to ensure that the trust is administered efficiently and smoothly – The state interest is that far, and no more; it cannot mean that the state can dictate what decisions can or cannot be taken – In the specific*
- B *context of alienation of properties, depending on the nature of the oversight, the state’s interest is to ensure that valuable assets of public trusts are not frittered away – Any organization which is self-governed, cannot be subjected to overarching state control – As long as its decisions are well informed, and grounded on relevant*
- C *considerations, the interests of the trust are those defined by its members – Any measure of public control enacted through express stipulations in law, should not be expanded to such an extent that the right to freedom of association, under Art.19(1)(c), is reduced to an empty husk, bereft of meaningful exercise of choice– Constitution of India – Art.19(1)(c).*
- D *M.P. Public Trusts Act, 1951 – s.14 – Powers conferred on the Registrar, u/s.14 – Nature of – Difference from powers conferred u/s.36 of the Bombay Public Trust Act – Held: There is a marked difference in the nature of the powers under the two enactments – The Bombay law confers a wider supervisory role; however, such a wide power is not available to the Registrar, under the M.P Public*
- E *Trusts Act – s.36 of the Bombay Public Trust Act, confers decidedly wider powers on the Commissioner (including imposition of “such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust”) than the kind of powers conferred on the Registrar, u/s.14 of the M.P. Public Trusts Act –*
- F *Bombay Public Trust Act, 1950.*
- G *Cyrus Rustom Patel v. Charity Commissioner (2018) 14 SCC 761 : [2017] 9 SCR 277 (8); Chenchu Rami Reddy & Anr. v. Govt. of Andhra Pradesh & Ors. (1986) 3 SCC 391 : [1986] 1 SCR 989; Bhaskar Laxman Jadhav & Ors. v. Karamveer Kakasaheb Wagh (2013) 11 SCC 531 : [2012] 11 SCR 767; and Mehrwan Homi Irani & Anr. v. Charity Commissioner Bombay and Ors. (2001) 5 SCC 305 – referred to.*
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**Case Law Reference**

[2017] 9 SCR 277	referred to	Para 8	A
[1986] 1 SCR 989	referred to	Para 17	
[2012] 11 SCR 767	referred to	Para 17	
(2001) 5 SCC 305	referred to	Para 17	B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 490 of 2022.

From the Judgment and Order dated 29.09.2018 of the High Court of Madhya Pradesh, Bench at Indore in W.A. No.1325 of 2018

A. K. Chitale, Sr. Adv., Kartik Chitale, Rahul Tripathi, Ms. Vaishnavi Paliwal, Niraj Sharma, Advs. for the Appellant.

Huzefa Ahmadi, Sr. Adv., Ninad Laud, Iva MS D’Costa, Sahil Tagotra, Ms. Anshula Grover, Advs. for the Respondents.

The Order of the Court was passed by

**S. RAVINDRA BHAT, J.**

1. Leave granted. This appeal by special leave is directed against the judgment of a Division Bench of the Madhya Pradesh High Court at Indore, dismissing an appeal<sup>1</sup>. The judgment confirmed an order of the learned Single Judge, who in turn, had affirmed the rejection of the application filed by the appellant, Parsi Zoroastrian Anjuman, Mhow (hereafter referred to as “the trust”), seeking sanction for the disposal of its trust property.

2. The appellant was registered as a public trust on 29.01.1973 under the provisions of the Madhya Pradesh Public Trusts Act, 1951 (hereafter “the Act”). The trust’s membership was made up exclusively of members of the Parsi community at Mhow. On 15.05.2011, at the behest of the trust and on its application, a revisited final scheme in relation to the trust was approved by the District Judge, Mhow<sup>2</sup>. The revisited scheme contained the following clause:

*“The Managing Committee members, after getting from a majority of the General Body Members and a specific*

<sup>1</sup> Dated 29.09.2018 in W.A. 1325/2018.

<sup>2</sup> Order dated 15.05.2011 in Case No.3/2010

A *concurrence of the FPZAI members, shall be entitled to*  
*liquidate the assets and immovable properties of the Anjuman*  
*which have taken vacant and utilize the proceeds of the objects*  
*of the Trust, including the upkeep of the consecrated holy*  
*fire from the Mhow Agiari and the maintenance of a priest to*  
B *look after it as also for the benefit of the Parsi and Irani*  
*Zoroastrian community, always giving preferences to those*  
*connected with Mhow and after ensuring that event he last*  
*Zoroastrian left in Mhow is duly cared for, if poor or needy.”*

3. In a meeting held on 14.12.2014, the members of the trust’s  
C Managing Committee unanimously agreed that five of its immovable  
properties should be sold. This decision was consented to by the individual  
members of the Managing Committee which included representatives  
of the Parsi Zoroastrian Anjuman community, i.e., the apex body of the  
Parsi community in the country. As a follow-up, the proposal was placed  
D before a general meeting of all members of the trust on 19.01.2015 in  
which a majority of members supported the Managing Committee’s  
decision to sell the five items of property. The trust had circulated what  
was termed as a “Vision Document” which listed the existing income,  
expenditure, and the likely projection in the event the properties were  
sold and the proposed use for which the funds received from such  
E transaction were to be utilized.

4. As was required of it, the trust applied under Section 14 of the  
Act to the Registrar of Public Trusts for previous sanction for the sale of  
the five said properties. The application languished before the Registrar,  
for a while. Resultantly, the trust approached the M.P. High Court by  
F filing a writ petition<sup>3</sup>. This petition was disposed of by an order<sup>4</sup> requiring  
the Registrar to take a decision preferably within 45 days. The trust  
approached the Registrar on 17.07.2017 with a request to dispose of its  
pending application; it filed relevant documents and a more detailed  
application in which it was contended *inter alia* that:

G *“7(c) The sale proceeds generated through the proposed sale*  
*will be invested only in scheme approved and permissible for*  
*charitable trusts. Such investment will generate sufficient*  
*income for achieving the objectives of the applicant Trust by*

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<sup>3</sup> W.P. 2903/2017.

H <sup>4</sup> Dated 10.07.2017.

*assisting those members who are in need of medical, educational and other financial assistance.”* A

5. The trust contends that the copy of the Vision Document (which was circulated to its members and formed the basis of majority opinion confirming the sale) was also filed with the Registrar. The Registrar notified Ms. Pervin Rumi Jehangir, the second respondent (hereafter referred to as “Ms. Jehangir”), asking her to respond to the trust’s application seeking previous sanction - apparently in view of her previous objection to the proposal. Accordingly, detailed objections were filed by Ms. Jehangir which was provided to the trust. The trust in turn filed its written submissions. It was pointed out that the details of the status of the properties proposed to be sold were given - most of them were in a dilapidated condition or required extensive repairs. The trust also pointed out that the properties would be sold after due and proper valuation and would be under the supervision of the Court. It was furthermore urged by the trust that the tenants occupying the premises were paying nominal rent and that its expenditure had increased to ₹26 lakhs per annum. Its income was not adequate to meet the continuously mounting expenditure. B C D

6. The Registrar, by her order dated 10.11.2017, rejected the trust’s application for previous sanction under Section 14(1), and noticed that the trust had previously sold other properties. The Registrar reasoned as follows: E

*“.....if property is continued to be sold for meeting expenses of the Trust, then the entire property would be exhaustive in that condition. No such plan has been submitted on behalf of the Trust from the Trust property remains secured and expenses of the Trust are also met. Information has also been given by the Trust that Trust expenses are about Rs.26 lacs per annum. In my opinion, it is necessary and proper to take expert opinion as to what measures can be taken to limit the expenses of the Trust and augment income of the Trust. For this purpose, services of some chartered accountant may also be taken. Trust property has become dilapidated. In this regard, no solid evidence has been produced either. For maintenance and security of the property also, it is necessary to take appropriate measures.”* F G

*Trust properties are located at extremely important places of Mhow Town which have lot of value. It is necessary to take measures for safety of the property while properly running* H

A        *activities of the Trust. In my opinion, there would be adverse effect from permission to sell the property on interest of the Trust, Therefore, the application for sale of property by the Trust is rejected after consideration.....”*

7. The trust approached the Indore Bench of the M.P. High Court  
B        alleging that the rejection of its application for previous sanction was unjustified. It contended that the sale was mooted to augment its income and that it was preceded by a proper Vision Document which outlined the income likely to be garnered by the sale and the expenditure to be borne by the trust. The trust highlighted that the Vision Document clearly  
C        showed that the interest accruing from the investment (made with the expected proceeds of the sale) would be used for the purpose of charity and the expenses of the trust. A copy of the Vision Document was also filed along with the writ petition.

8. Ms. Jehangir was arrayed as the second respondent; she  
D        resisted the trust’s petition. The learned Single Judge of the High Court, by his order<sup>5</sup> noticed the judgment of this Court reported as *Cyrus Rustom Patel v. Charity Commissioner*<sup>6</sup> and upheld the Registrar’s order rejecting the application under Section 14. The learned Single Judge reasoned that the record disclosed that the property sought to be sold were all old and that they had been donated by the members of the Parsi  
E        community. The learned Single Judge observed that:

“*in all fairness, the Trust should have made all possible endeavor to repair the buildings which are Trust properties and to ensure that the rich cultural heritage of the Parsis which is still alive in the township of Mhow, is not destroyed by selling it to builders and to other persons at throwaway price and therefore, this Court is of the considered opinion that the Registrar, Public Trust was certainly justified in rejecting the application filed by the Trust. No case for interference is made out in the matter. The present Writ Petition is dismissed.*”  
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The trust appealed, unavailingly, to the Division Bench.

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<sup>5</sup> Dated 18.07.2018 in W.P. 23231/2017.

H        <sup>6</sup> (2018) 14 SCC 761.

*Contentions of parties* A

9. It was argued on behalf of the trust by Mr. A.K. Chitale, learned senior counsel, that the High Court failed to consider that the power of the Registrar to accept or reject the application was limited. Learned counsel highlighted that unlike Section 36 of the Bombay Public Trusts Act, which conferred intrusive and pervasive supervisory powers upon the Registrar in regard to applications seeking approval for transfer or alienation of immovable property of public trusts, Section 14 of the Act, in the present instance, conferred extremely limited powers. B

10. Mr. Chitale, submitted that Section 14(1) subordinates and conditions the grant or withholding of approval to “*the directions in the interest of Trust*” or any direction given under “*this or any other law by any Court*”. Necessarily, this meant that the grant or withholding of approval had to relate to stipulations in the Trust Deed or instruments creating it or had to be embodied in any enacted law, and in accordance with directions by a Court. In the absence of any restrictive condition or external limiting factors located in a statute, the Registrar could not have validly withheld the sanction. Elaborating further on this, it was submitted that although Section 14(2) confers a slightly larger power of withholding sanction for any transaction, it is not unguided and should be based on an assessment of the materials (placed before the Registrar) that the transfer is prejudicial to its interest. C D E

11. Learned senior counsel emphasised that unlike Section 14, the Bombay Trusts Act, by Section 36 grants independent powers to the Charity Commissioner to impose conditions which were thought appropriate “*regard being had to the interest, benefit or protection of the Trust*”. Learned senior counsel submitted that the materials placed on record showed that *firstly* in the past too, properties had been sold to augment the trust’s income generating capacity. Secondly, of the 15 immovable properties owned by the trust, only 5 were proposed to be sold. The trust’s application was clearly based upon a carefully thought-out plan whereby the likely consideration expected to be received was proposed to be invested in securities. This would have resulted in income of ₹83 lakhs – considerably more than the existing annual income level of ₹ 20 lakhs (as was the case when the application was made). The Vision Document showed how this larger income was to be used for increased spending on charity, education, aid to senior citizens, maintenance of the trust’s buildings and increasing the salaries of its F G H

- A employees as also the increased expenditure towards fulfilling religious obligations created in the trust deed. Furthermore, the proposal by the trust and the resolution of the general meeting clearly was to have the properties duly valued and sell them to the highest bidder by inviting sealed tenders. It was argued that this process was transparent and could not have given rise to any apprehension that the sale was not for the benefit, let alone that it was prejudicial to the trust's interests.
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12. It was contended that the second respondent's objection with respect to the proposed sale being at the behest of a few members of the Managing Committee was baseless. Learned counsel sought to highlight that the second respondent's father was the President of the trust and during his tenure, sale of immovable properties had been carried out on previous occasions. Therefore, it could not be said that the trust had taken an unusual or novel step, and it could not be accused of frittering away its properties.

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13. Mr. Huzefa Ahmadi, learned senior counsel appearing for the second respondent urged this court not to interfere with the findings recorded by the High Court. It was urged firstly that the Division Bench affirmed the learned Single Judge's reasoning which is unexceptionable. Mr. Ahmadi urged that this court rarely interferes with concurrent findings in the exercise of its discretionary jurisdiction under Article 136. He highlighted that though leave was granted, nevertheless, the Court's residual discretion in confirming the concurring opinion has been recognized on previous occasions.

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14. Mr. Ahmadi next urged that the Registrar's determination that the trust's application for transfer of five immovable properties was prejudicial to its interest was based upon an independent and objective consideration of the materials placed before her. It was highlighted that although Section 14 does not expressly outline the requirements which a trust has to fulfil while seeking sanction, Rule 9 of the M.P. Trust Rules, 1962 contemplates three relevant considerations that were to be taken into account - namely whether the trust deed contains a stipulation with respect to alienation of immovable property; the necessity for the proposed alienation; and whether the proposed alienation is in the interest of the trust.

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15. It was further highlighted that by virtue of Rule 9(2), the Registrar is empowered to make necessary enquiry and by Rule 9(3), the Registrar may impose conditions "*as he may deem fit*", if (s)he is

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of the opinion that grant of sanction to the proposed alienation without imposing such conditions, will be prejudicial to the interest of the public trust. In the present instance, learned senior counsel stated that the Registrar was not satisfied with the proposal as it contained vague or little details with regard to how the property was to be sold, its likely valuation, and details of how the investments would be made of the consideration received through such sale. Furthermore, the Registrar was of the opinion that the trust could take other measures to augment its income and ensure that its properties were maintained properly without transferring any of them.

16. Mr. Ahmadi further submitted that even though the wording of Section 14 does not facially confer the kind of power which is given to the Bombay Charity Commissioner under the Bombay Public Trusts Act, nevertheless, Rule 9(3) clothes the Registrar with sufficient discretion to act in the best interest of a trust and make sure that no decision prejudicial to its interest is taken.

17. Learned senior counsel relied upon the decision of this Court in *Cyrus (supra)*. He also cited other judgments *Chenchu Rami Reddy & Anr. v. Govt. of Andhra Pradesh & Ors.*<sup>7</sup>; *Bhaskar Laxman Jadhav & Ors. v. Karamveer Kakasaheb Wagh*<sup>8</sup>; and *Mehrwan Homi Irani & Anr. v. Charity Commissioner Bombay and Ors.*<sup>9</sup> to highlight that the best interests of a public trust are always paramount and are at the forefront of the concern of statutory authorities and courts. He highlighted that this is even more so when a proposal for long term alienation such as long-term lease or sale of trust property is involved. All these relevant considerations were kept in mind by the Registrar in her rejection order. It was submitted that as a consequence, the impugned order does not call for any interference by this court.

#### *Provisions*

18. “Public trust” is defined by Section 2 (4) of the M.P. Public Trusts Act as follows:

*“public trust” means an express or constructive trust for a public, religious or charitable purposes and includes a temple, a math, a mosque, a church, a wakf or any other religious or*

<sup>7</sup>(1986) 3 SCC 391.

<sup>8</sup>(2013) 11 SCC 531.

<sup>9</sup>(2001) 5 SCC 305.

A        *charitable endowment and a society formed for a religious or charitable purpose;*

19. By Section 4, every public trust has to apply for registration, when it comes into existence. Section 14, which is relevant for the present purpose, reads as follows:

B        ***“14. Previous sanction of Registrar, in cases of sale, etc., of property belonging to a public trust. (1) Subject to the directions in the instrument of trust or any direction given under this or any other law by any Court,-***

C        *(a) no sale, mortgage, exchange of gift of any immovable property; and*

D        *(b) no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building; belonging to a public trust, shall be valid without the previous sanction of the Registrar.*

*(2) The Registrar shall not refuse his sanction in respect of any transaction specified in sub-section (1) unless such transaction will, in his opinion, be prejudicial to the interests of the public trust.”*

E        Rule 9 of the M.P Trust Rules, 1962 reads as follows:

***“9. Applications under Section 14 for sanction of alienations.—***

*(1) Every application for sanction of an alienation shall contain information inter alia on the following points,-*

F        *(i) whether the instrument of trust contains any directions as to alienation of immovable property;*

*(ii) what is the necessity for the proposed alienation;*

G        *(iii) how the proposed alienation is in the interest of the public trust; and*

*(iv) in the case of a proposed lease, the terms of the past leases, if any.*

*Such application shall be accompanied by a valuation report of an expert.*

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(2) *The Registrar, before according or refusing sanction, may make such inquiry as he may deem necessary'* A

(3) *In according sanction, the Registrar may impose such conditions, as he may deem fit, if he is of the opinion that the grant of sanction to the proposed alienation without imposing such conditions will be prejudicial to the interests of the public trust."* B

*Analysis and conclusions*

20. As can be seen by Section 14 (1), *previous sanction* of the Registrar of public trusts is a precondition, for the (a) "*sale, mortgage, exchange of gift of any immovable property*" or (b) "*lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building.*" If Section 14 (1) had stopped there, the embargo on alienation of the types enumerated in the provision (sale, gift, exchange, mortgage etc., or long-term lease(s) of agricultural or non-agricultural properties) i.e., obtaining previous sanction, could well have meant that the Registrar's role was conceivably intrusive. However, the provisions of Section 14 (1) and the power conferred on the Registrar under it, are controlled by Section 14 (2) which states that the Registrar "*shall not refuse his sanction*" unless in his opinion the alienation, or transfer is prejudicial to the interests of the public trust. The clear reference in Section 14 (2) is to the power exercisable under Section 14 (1). The controlling expression in Section 14 (1) significantly, is that previous sanction in respect of the two situations (i.e., alluded in clauses (a) and (b)) is "*subject to the directions in the instrument of trust or any direction given under this or any other law by any Court.*" This controlling or, rather opening words, clearly indicate that the grant or refusal of sanction by the Registrar have to be based on either "*the directions in the instrument of trust*", or "*any direction given under this (i.e., M.P. Public Trusts Act) or any other law by any court*". The discretion thus, is relatable to directions in the trust document, or any provision of the Act, or any other law as ordered (or directed) by any court. Therefore, the Registrar, is not empowered to read into it her own notions of what is beneficial and what is prejudicial to the trust. The refusal has to be specific to the requirement of law, wherever such law clearly stipulates so, or any specific provision of the trust document.

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A        21. On behalf of the second respondent, considerable emphasis  
was placed on Rule 9, especially Rule 9 (3), to say that the Registrar can  
– in addition to the stipulations which condition grant of previous sanction  
– also: “*impose such conditions, as he may deem fit, if he is of the*  
B        *opinion that the grant of sanction to the proposed alienation without*  
*imposing such conditions will be prejudicial to the interests of the*  
*public trust*”. If one recollects that the power to impose conditions is  
absent in the main provision of the parent enactment, i.e., Section 14 (1)  
or (2), clearly, sub-rule (3) goes beyond enacted law. A plain look at  
Rules 9 (1) and (2) would show that the conditions mentioned in those  
rules, are in conformity with the framework of Section 14. However, if  
C        Rule 9 (3) were to be read independently, it can be construed as conferring  
*additional power to impose conditions*. Such a reading would lead to  
Rule 9 (3) being rendered *ultra vires*. However, a proper and harmonious  
reading of Rule 9 (3) would be that the Registrar, in a given case may  
impose conditions, if the instrument of public trust, or any law, relating to  
D        public trusts, results in a court direction to such effect. In the absence of  
these objective factors, the Registrar, in this court’s opinion, cannot  
unilaterally impose conditions which in her, or his opinion would inure to  
the interest of the public trust.

22. It is now necessary to discuss the case-law cited on behalf of  
the parties. In *Chenchu Rami Reddy* (supra) Section 74 (1) (c) of the  
E        Andhra Pradesh Charitable and Hindu Religious Endowments Act, 1966  
obliged that public trust property had to be put to auction by the  
Commissioner (of trusts). In that case, the property of the trust was  
sought to be sold by private negotiation, despite an offer of three times  
more consideration, by another party. The Commissioner had approved  
F        such private sale. This court set aside the sale, holding *inter alia*, that:

“*property of such institutions or endowments must be*  
*jealously protected. It must be protected, for, a large segment*  
*of the community has beneficial interest in it (that is the raison*  
*d’etre of the Act itself). The authorities exercising the powers*  
G        *under the Act must not only be most alert and vigilant in such*  
*matters but also show awareness of the ways of the present*  
*day world as also the ugly realities of the world of today.*  
*They cannot afford to take things at their face value or make*  
*a less than the closest-and-best-attention approach to guard*  
*against all pitfalls. The approving authority must be aware*  
H        *that in such matters the trustees, or persons authorised to sell*

*by private negotiations, can, in a given case, enter into a secret or invisible 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 then permit sale by private negotiations which will not be visible to the public-eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment. With these words of caution we close the matter.”*

23. Section 36 of the Bombay Public Trust Act, 1950, *inter alia*, stipulates that:

*“(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.”*

In the decision in *Mehrwan Homi Irani* (supra), the nature of this power, of imposing conditions having regard to the interest or benefit or protection of the public trust, was emphasized:

*“In the best interests of the Trust and its objects, we feel it appropriate that Respondents 2 to 4 should explore the further possibility of having agreements with better terms. The objects of the Trust should be accomplished in the best of its interests. Leasing out of a major portion of the land for other purposes may not be in the best interests of the Trust. The Charity Commissioner while granting permission under Section 36 of the Bombay Public Trusts Act could have explored these possibilities. Therefore, we are constrained to remit the matter to the Charity Commissioner to take a fresh decision in the matter. There could be fresh advertisements inviting fresh proposals and the proposal of the 5th respondent could also be considered. The Charity Commissioner may himself formulate and impose just and proper conditions so that it may serve the best interests of the Trust. We direct that the Charity Commissioner shall take a decision at the earliest.”*

A           24. In *Bhaskar Laxman Jadhav* (supra) approval to sell trust  
property was sought, in 1994. The trustees prevaricated; on different  
occasions, extension to carry out the sale was sought. Ultimately, in  
2006, the property was sought to be sold. However, the approval  
application was rejected. This was impugned before the High Court,  
B           which in its order, required the Commissioner to re-examine the matter  
afresh, and also take into consideration altered circumstances, i.e., the  
passage of time had led to a considerable increase in the value of the  
property. This court endorsed the view of the High Court.

C           25. In *Cyrus Rustom Patel* (supra), again, the applicability of  
Section 36 of the Bombay Public Trust Act was in issue. This court set  
aside a sale, after observing that the Commissioner neither ascertained  
the value of the property, nor made any attempt to secure the best price  
for it. Further, the Commissioner did not attempt to explore if other  
conditions could be imposed on the proposed developer or purchaser. It  
was observed that:

D           *“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*  
E           *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*  
F           *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*  
G           *revocation provision is also to sub-serve the interest, benefit,*  
*and protection of the Trust and its property.*

H           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."*

26. It is apparent that these decisions of the court were in the context of Section 36 of the Bombay Public Trust Act, which confers decidedly wider powers on the Commissioner (including imposition of "such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust") than the kind of powers conferred on the Registrar, under Section 14 of the M.P. Public Trusts Act. Under the latter enactment, the Registrar's power to grant or withhold sanction is guided by the stipulations in the trust instrument, or under a law, as directed by a court. There is, consequently, a marked difference in the nature of the powers under the two enactments. The Bombay law confers a wider *supervisory* role; however, such a wide power is not available to the Registrar, under the M.P Public Trusts Act.

27. Public control of charities (whether social or religious) has been recognized in our country for over a century. In the context of religious endowments, such public control is essential, for the simple reason that in its absence, there is likelihood of diversion of monies and properties accumulated through public donation and gifts. The role of the designated state official (commissioner, or registrar, etc.) is to ensure that accounts are properly maintained; monies are expended in accordance with the aims and objects of the endowments; the proper

- A rituals are conducted, etc. Such regulation does not mean that the state is allowed to appropriate monies which rightly belong to the endowment. In the case of public charities and trusts, slightly different considerations prevail. The aim of public control is to ensure that the trust is administered efficiently and smoothly. The state interest is that far, and no more; it cannot mean that the state can dictate *what decisions can or cannot*
- B *be taken*. In the specific context of alienation of properties, depending on the nature of the oversight, the state's interest is to ensure that valuable assets of public trusts are not frittered away. It is for this reason, that provisions like Section 36 clearly enunciate a principle that the Commissioner can impose such conditions *as may be appropriate*.
- C However, the statute in the present case (the M.P. Public Trusts Act) does not contain such a power to impose conditions; the only considerations that weigh with the officer (Registrar) are the stipulations in law, or in the instrument of public interest. Other than these considerations, the principle of autonomy and democratic decision-making cannot be undermined. Any organization which is self-governed, cannot
- D be subjected to overarching state control. As long as its decisions are well informed, and grounded on relevant considerations, the interests of the trust are those defined by its members. Any measure of public control enacted through express stipulations in law, should not be expanded to such an extent that the right to freedom of association, under Article 19
- E (1) (c), is reduced to an empty husk, bereft of meaningful exercise of choice.

28. In the facts of the present case, the record shows that the decision to sell the properties was a consequence of a two layered process, where all members participated and decided to dispose of the
- F property. The decision was based on a realistic assessment of the trust's existing and future liabilities, the obligations towards charity, aid to senior citizens, education, medical aid, and religious ceremonies, imposed by the trust instrument. Furthermore, the proposed spending from the returns earned through the investment made from the consideration arising from sale, were also outlined and clearly disclosed. Most crucially, the
- G properties were valued, and proposed to be sold by public tender. Disregarding all this disclosed transparency, the Registrar, on the basis of her subjective notion of what constituted best interests of the trust, could not have rejected the application, as she did. The High Court, in this court's opinion fell into error, in endorsing that rejection.
- H



29. Before parting, this court is of the opinion that the trust may proceed to implement its decision, but subject to fresh valuation of each of the properties, which is proposed to be sold. This valuation should be disclosed to the Registrar, who can facilitate the implementation of the decision to sell to the highest bidder, through public tender. A

30. The impugned judgment and the decision of the Registrar are hereby set aside. The appeal succeeds, in terms indicated in the preceding paragraph, and is allowed. There shall be no order on costs. B

Devika Gujral

Appeal allowed.