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5.4.1958. Thereafter, the trustees filed a Suit No.1703 of 1978 in the Bombay City Civil Court for certain amendments in the Trust Deed dated 5.4.1958 which was sanctioned by the Court vide Decree dated 20.9.1978. Further, the Trust was registered with the office of the Charity Commissioner on 23.4.1958 at P.T.R. No.E-1590(M). The main objects are elaborated in clause 2 of the Trust Deed to be read alongwith the amendments sanctioned by the Decree in Suit no.1703/1978. The said objects are elaborated in para 4 of the application. The position of the present trustees is as per clause 14(a) of the Trust Deed. There are five trustees at present whose names are listed in schedule-I. The trustees are empowered to alienate the property of the Trust as per clause 6 of the Trust Deed. The property in question is, all that piece or parcel of the land or ground being plot no.191, CTS No.1109, 1109/1 to 13 of B-1 tenure admeasuring 2053 sq.yds. or thereabouts lying and being at Ghatkopar Mahul Road, Chembur has been acquired by the Trust vide a Deed of Conveyance dated 31.1.1959. The said property is reflected as the property of the Trust in schedule-I. The current position of the property is having ground plus three floors. The said building is occupied by 43 tenants / occupants who are paying rent to the Trust. The trustees intend to alienate the aforesaid property in question on "as is where is basis" alongwith

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structures being rooms standing thereon, fully occupied by 43 tenants. According to the trustees, there is compelling necessity to alienate the property of the Trust as detailed in para 14 (a) to (h) of the application. The trustees have unanimously passed a resolution in the meeting held on 15.2.2011 for selling the property or the rights attached thereto by giving notice in newspaper calling offers from general public. Initially, a public notice was issued only in English newspaper i.e. "Free Press Journal" on 23.2.2011. Later on, the trustees passed a fresh resolution on 2.12.2011 to invite offers from general public by giving notice in two newspapers and also ratifying the decision taken on 15.2.2011 to alienate the Trust property. The trustees also obtained independent valuation of the aforesaid property from Government registered (approved) valuer, M/s. Talib and Associates and according to them the market value of the property and the consideration is Rs.75 lacs only. The trustees had received only one offer from M/s. Mahavir Enterprises for Rs.4 crores only in response to the notice published in "The Free Press Journal" dated 23.2.2011. Thereafter, public notice was issued in two local newspapers i.e. "The Asian Age" (English) and "Tarun Bharat"(Marathi) both dated 7.12.2011. In response to the said notice, two offers were received as detailed in para 23 of the application. The highest offer of M/s. Mahavir Millenium L.L.P for

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total consideration of Rs.4.25 crores was accepted by resolution dated 25.1.2012. M.O.U came to be executed with the highest offerer on 6.2.2012. According to the trustees the said transaction could be in the best interest of the Trust. The aforesaid facts have given rise to the present application.

3) I have heard advocate Shri Yogesh Singh for the applicant Trust. He took me through entire documents and submitted that there is compelling necessity to sell the trust property and the transaction would be in the best interest of the Trust.

4) The following points arise for my determination and my reasons for findings thereon are recorded serially:

Points	Findings
1)Whether there is compelling necessity to sell the Trust property?	Yes.
2)Whether the transaction is in the best interest of the Trust and its beneficiaries?	Yes.
3)What order?	As per final order.

REASONS FOR FINDINGS

As to point Nos.1 to 3:

5) A copy of the Trust Deed dated 5.4.1958 discloses that the Trust was created by the said Trust Deed on 5.4.1958 by the settler of the Trust, Shri Kishinchand Thadhomal Shahani with an intention of carrying out pious and charitable activities for the poor and the

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needy persons. Further, the copy of the decree passed in Suit No.1703/1978 discloses that certain amendments were allowed by the City Civil Court Bombay vide decree dated 20.9.1978. The registration certificate shows that the applicant Trust was registered with the office of the Charity Commissioner on 23.4.1958 at P.T.R. No.E-1590(M). Clause 2 of the Trust Deed and the amendments sanctioned under the decree passed in Suit No.1703/1978 elaborates the objects of the applicant Trust. Clause 14(a) of the Trust Deed states that the number of the trustees of the Trust shall not be less than five. The copy of schedule-I discloses that there are five trustees at present, namely, 1)Mr.Narain K.Shahni, 2)Mrs.Saroj N.Shahani, 3)Mr.Kishore K.Shahani, 4)Mrs.Maya K.Shahani and 5)Mr.Akhil K.Shahani. Clause 6 of the Trust deed empowers the trustees to alienate the property of the Trust by way of sale. There is Deed of Conveyance dated 31.1.1959 on record which shows that the property under consideration was acquired by the Trust under the said Conveyance. It is also clear that the property was acquired initially with an intention of constructing buildings on it and giving the same to the needy displaced persons from West Pakistan and thereby fulfilling the main objects of the Trust. Accordingly, the displaced and distressed families were given accommodation on nominal rent. However, now the whole

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idea of acquiring the property has become futile as in most of the cases the original tenants / allottees have sold their rooms and migrated to some other places. There is increase in taxes and other expenditure for maintaining the aforesaid property.

6) The trustees have placed on record the list of the tenants occupying the property under consideration. Thus, it is clear that the property under consideration is fully occupied by the 43 tenants / occupants who are paying rent to the trust at old rate. The said tenants are protected by the provisions of Maharashtra Rent Control Act. It would not be easy for the trustees to get back vacant possession of the property from the tenants. The trustees will have to file litigations in the courts. The said litigation will have to be fought in different courts. That apart, the trustees can not enhance the rent as the tenants are very much protected by the provisions of the Rent Control Act. Now, the whole idea of acquiring the property has gone vain and has become futile as the expenses has gone above the rent received by the Trust. The present rental income is far less compared to its out goings. This can be evinced from the statement of accounts . The property under consideration is very old and not in much good shape and is in dilapidated condition. The burden of cost of repairs is so high that it shall be

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unnecessarily burden on the Trust without any commensurate return to the Trust.

7) The property under consideration is fully occupied by the tenants and the Trust is not in actual possession of any part thereof. Thus, it is clear from the record that the Trust is receiving very meagre income as rent from the occupants of the property compared to the out goings such as, Municipal taxes, property tax etc. It is not possible for the Trust to increase the rent of the property due to stringent provisions of the Maharashtra Rent Control Act. Thus, the Trust has to divert its funds which otherwise could have been utilized for the objects of the Trust. The structures on the property are very old and demanding major repairs. Due to such dilapidated and dangerous condition of some of the structures, the lives of the tenants and their families are in constant danger and at high risk. The Trust does not have funds and expertise to develop the said property. However, if any mishap happens, the onus will be put on the Trust only. In view of the aforesaid circumstances, I am of the opinion that the Trust can not expect to get vacant and peaceful possession of the property and it would be herculean task before the Trust. Further, the financial benefit that would be derived by the proposal set out by the trustees will eliminate the future possibility of the future trustees being saddled

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with the same situation as the present trustees are facing. The trustees are duty bound to make the optimum use of the economic assets of the Trust rather than allow the said assets being wasted. There is regular deficit out of the said property which is eating up the corpus of the Trust. Hence, for the aforesaid reasons, I hold that the trustees have established that the Trust has compelling necessity to alienate the Trust property under consideration.

8) The trustees had taken a decision in the meeting dt.15.2.2011 to sell the property under consideration. Accordingly, a notice was issued in Free Press Journal dated 23.2.2011. However, the trustees thought that the offers are required to be called in two local newspapers and therefore the trustees in their meeting dated 2.12.2011 passed a resolution to invite offers from general public by giving notice in two newspapers. The applicant has produced resolutions dated 15.2.2011 and 2.12.2011. The trustees issued public notice in two local newspaper inviting offers for sale of the property on as is where is basis in the "Asian Age" and "Tarun Bharat" both dated 7.12.2011. The copies of the newspapers are placed on record. In response to the said public notice, the trustees received offers from Dhaval Realtors (India)Pvt. Ltd. Of Rs.3.10 crores and M/s. Mahavir Millenium L.L.P of Rs.4.25 crores. The trustees had obtained valuation report from M/s. Talib and

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Associates who has valued the property at Rs.75 lacs. Detailed valuation report is on record at Ex.6. The offers of the aforesaid offerers are at Exs.7, 10 and 11. The highest offer of M/s. Mahavir Millenium L.L.P for total consideration of Rs.4.25 crores has been accepted by the trustees. A resolution dated 15.1.2012 has been passed and the same is placed on record at Ex.12. It is also clear from the record that the trustees have entered into M.O.U dated 6.2.2012 and the copy of M.O.U is placed on record. From the aforesaid facts, it is noticed that the trustees have followed due procedure for alienating its property. The offer accepted by the trustees is much higher to the market value determined by the valuer. In my opinion, the amount of consideration is fair and reasonable. The sale proceeds can be utilized solely for the purpose of the objects of the Trust by investing the amount in long terms investments as per the provisions of Section 35 of the Act, 1950 so that the income earned thereon could be beneficially utilized by the trustees for the objects of the trust. Moreover, the proposed purchaser has agreed to bear the expenses on stamp duty, registration charges etc. There is no litigation pending in any court of law nor there is any restraining order to alienate the property under consideration. The applicant Trust has filed detailed affidavit in support of the application. From the aforesaid facts and

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circumstances, I hold that the transaction in question would be in the best interest of the Trust and its beneficiaries. For the foregoing reasons, I answer point nos.1 and 2 in affirmative. In the result, following order is passed.

ORDER

1)Application No.J-4/109/2012 is allowed.

2)Sanction is hereby accorded to the trustees of, The Thadhomal Mushtakram and Jotsing Thadhomal Shahani Trust, P.T.R. No.E-1590(B) to sell the property being all that piece or parcel of plot of land or ground being plot No.191, CTS No.1109, 1109/1 to 13 of B-1 tenure admeasuring 2053 sq.yds. or thereabouts lying and being at Ghatkopar Mahul Road, Chembur alongwith structures standing thereon on " as is where is basis" to M/s. Mahavir Millenium L.L.P and/or their nominee or nominees for total consideration of Rs.4,25,00,000/- (Rupees Four Crores Twenty Five Lacs only) on the terms and conditions mentioned in Memorandum of Understanding dated 6.2.2012 and subject to the following terms and conditions;

a) The sanction shall remain in force for a period of six months from the date of this order.

b) The purchaser shall bear all the expenses including stamp duty, registration charges and other incidental charges required to complete the transaction.

c) This order is subject to all the laws and rules applicable to

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the present transaction.

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d) The amount of Rs.4.25 crores (Rupees Four Crores Twenty Five Lakhs only) shall be invested in Nationalised / Scheduled Banks or in Government approved securities an the interest earned thereon shall be utilized for achieving the objects of the Trust.

e) Necessary change report under Sec.22 of the Bombay Public Trusts Act, 1950 should be submitted to the concerned authority after completion of the transaction.

26/12/12
(Sharadkumar.S.Patil)
Joint Charity Commissioner
Maharashtra State, Mumbai

Mumbai
Dated: 26.12.2012

खरी नक्कल म्हणून प्रमाणित
अधीक्षक
धर्मादाय आयुक्त महाराष्ट्र राज्य यांचे कार्यालय, मुंबई
28/12/2012

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