

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3408 OF 2015

Jehangir Wadia and others

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Mr. Vineet Naik, Senior Advocate a/w Atul Daga, Levi Rubens Sujeeth Suryavanshi and Maneesh Trivedi i/by Vigil Juris, for the Petitioners.

Mr. Pankaj Savant a/w Mr. Chirag Sancheti, for the Respondent No.3.

Ms. Aparna Vhatkar, AGP for the Respondent Nos.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 16th JULY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 24.12.2014 passed by the Learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai, by which order the application under Section 36 of the Maharashtra Public Trusts Act, 1950 filed by the Petitioners came to be rejected. The Petitioners are the trustees of the Trust known as "A. H. Wadia Trust". The Petitioners claim to be the lessors of the land bearing CTS Nos.440, 441-A, 442, 442/1 to 2 admeasuring 1179.50 sq. mtrs. The Petitioners on the ground that the said property does not generate any income for the Trust resolved in the meeting of the Trust dated 22.05.2013 to alienate the said property on 'as

is where is' and 'as it is where it is' basis. After following the gamut of publishing a notice in the local newspapers and accepting the offer of the Respondent No.3 herein, the Petitioners applied to the Charity Commissioner for sanction under Section 36 of the said Act. Suffice it to state that the said sanction was rejected inter-alia on the following grounds. Firstly, that since the advertisement was issued on 17.06.2013 how could the offer be made by the Respondent No.3 on 02.06.2013 i.e. fifteen days prior to the advertisement. That the date of opening of the tenders was not mentioned, that the tenders were not opened in the presence of the tenderers, that though the address of the advocates for the Petitioners was mentioned in the tender notice, the tenders were received in the office of the Trust and it is not clear as to who opened the tenders and lastly, that the trustees cannot sell Trust properties which are under lease.

2. In the light of the aforesaid findings recorded by the Joint Charity Commissioner in the impugned order, the Petitioners have filed the affidavit of the Petitioner No.1 Shri. Jehangir Wadia bearing today's date i.e. 16.07.2015. In paragraph No.1 of the said affidavit, it has been stated that the Petitioners/trustees are agreeable to invite fresh bids by issuing a public notice in two local newspapers for sale of the property on 'as is where is' and 'as it is where it is' basis and it is thereafter that appropriate

application under Section 36 would be made before the Learned Charity Commissioner. In the light of the said affidavit, it is not necessary to set aside the impugned order as the Petitioners intend to carry out the exercise de-novo. This Court has therefore not gone into the merits of the case of either side. However, it is made clear that if any such fresh application is made after following the process as contemplated in law, the said application would be considered by the Charity Commissioner on its own merits and in accordance with law. In so far as the last ground on which the Learned Joint Charity Commissioner has rejected the application, prima-facie it cannot be said that a lease hold property cannot be sold especially having regard to the fact that in the instant case the Petitioners are desirous to sell the property on 'as is where is' and 'as it is where it is' basis meaning thereby the property will be sold with the encumbrances and whosoever bids would have to bid for a property with such encumbrances. With the aforesaid observations, the Writ Petition is disposed of. In so far as the Respondent No.3 is concerned, it would be at liberty to apply for refund of the amount which it has deposited with the Petitioner Trust and if any such application is made the Petitioner Trust would consider it appropriately.

[R.M. SAVANT, J]