

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

WRIT PETITION NO.4950 OF 2015

M/s. Kadri Construction Company

.. Petitioner

Versus

A. H. Wadia Trust and others

.. Respondents

**Mr. A. V. Anturkar, Senior Advocate i/by Mr. A. B. Avhad, for the
Petitioner.**

**Mr. Atul Daga a/w Mr. Levi Rubens, Suji Suryawanshi, Akohita Dubey
i/by Vigil Juris & Mr. Yohaana Rubens, for the Respondent Nos.1 to 5.**

**Mr. S. B. Amin a/w Mr. R. S. Wadhwa i/by A. A. Siddiquie &
Associates, for the Respondent No.6.**

CORAM : R.M. SAVANT, J.

DATE : 18th JUNE, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.04.2015 passed by the Learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai, by which order the application for intervention being Application No.96 of 2011 filed by the Respondent No.6 herein came to be allowed and the Respondent No.6 accordingly came to be permitted to intervene in the proceedings which are pending before the Learned Joint Charity Commissioner under Section 36 of the Bombay Public Trust Act, 1950. The said proceedings have arisen in view of the sanction sought by the Respondent No.1 Trust to the sale of the Trust property. The Respondent No.1 Trust invited offers by publishing

notice in the local newspapers for sale of the property in question. Pursuant to the said notice the Petitioner submitted an offer of Rs.1,50,00,786/-. The said offer being the highest offer received by the Respondent No.1 Trust, the Respondent No.1 applied to the Learned Charity Commissioner for sanction under Section 36 for acceptance of the said offer. The said application was made on 20.07.2011. The said proceedings are on going proceedings before the Learned Joint Charity Commissioner and the Respondent No.6 herein has filed the instant application on 03.02.2012. It is the case of the Respondent No.6 that he is ready to offer an amount of Rs.1,55,11,786/- for the property in question. It seems that the Respondent No.6 has also deposited an amount of Rs.55,78,692/- by way of demand draft with the Respondent No.1 Trust. The said deposit was made after the application came to be filed i.e. in December 2012. The Learned Joint Charity Commissioner in view of the facts as stated above, wherein the defining fact was the offer of Rs.1,55,11,786/- made by the Respondent No.6 which is higher than the offer of the Petitioner deemed it appropriate to allow the application for intervention. The Learned Joint Charity Commissioner has observed in the order that it is desirable to allow the Respondent No.6 i.e. the intervenor to join in the proceedings of the bid which will be gone through before the said authority.

2. The order dated 20.04.2015 is sought to be challenged by the Petitioner on the ground that the said course of action could not have been adopted by the Learned Joint Charity Commissioner. It is the submission of the Learned Senior Counsel appearing on behalf of the Petitioner that the Learned Joint Charity Commissioner in a proceeding under Section 36 has to firstly adjudicate upon the fact as to whether alienation of the Trust property is necessary and thereafter consider whether the offer received is in the interest of the Trust. In so far as the second aspect is concerned, it is the submission of the Learned Senior Counsel that if the Learned Joint Charity Commissioner comes to a conclusion that the offer is not adequate, then he has to invite fresh offers by issuing a fresh public notice. In support of the said contention, the Learned Senior Counsel for the Petitioner sought to place reliance on the (Full Bench) judgment of this Court reported in 2007(3) Bom.C.R. 7 in the matter of Sailesh Developers & ors. Vs. Joint Charity Commissioner Maharashtra & ors. and especially paragraph 29 thereof. In my view the reliance on paragraph 29 at the stage of considering the application for intervention is misplaced. The observations made by the Full Bench in the said paragraph that if the Charity Commissioner after considering the offers before him comes to a conclusion that the offers are inadequate then he can invite fresh offers can obviously be applied after the Learned Charity Commissioner

considers the offers. What has been done by the impugned order is that the Respondent No.6 is allowed to intervene and to take part in the proceedings under Section 36 as the Learned Joint Charity Commissioner is of the view that the intervention of the Respondent No.6 is necessary in the light of the offer that he has made. It is also the submission of the Learned Senior Counsel for the Petitioner that the Respondent No.6 has not challenged the offer of the Petitioner on the ground of malafides. In my view the same would not make any difference in the light of the higher offer made by the Respondent No.6. In my view, therefore, it is not necessary for this Court to interdict with the impugned order allowing the intervention. The Writ petition is accordingly dismissed. Needless to state that the Learned Joint Charity Commissioner would proceed with the application under Section 36 on its own merits and in accordance with law. At this stage, the Learned Senior Counsel for the Petitioner seeks continuation of the ad-interim relief. In the facts and circumstances of the case the said prayer is refused. The Learned Counsel appearing for the Respondent No.1 Trust prays for expeditious disposal of the application. In view of the fact that the application is pending since the year 2011, in my view it would be just and proper to direct the Learned Joint Charity Commissioner to expeditiously dispose of the said application.

[R.M. SAVANT, J]