

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO. 1642 OF 2006
WITH
NOTICE OF MOTION NO.446 OF 2007
IN
WRIT PETITION NO.1642 OF 2006**

Goel Ganga Estates & Properties
Pvt. Ltd. & Anr.

....Petitioners.

V/s

The Charity Commissioner & Ors.

..... Respondents.

Mr. Pradeep Sancheti, Senior Counsel alongwith Mr. Firoz Colabawalla, Mr Rohan Cama, Mr. K. Bilimoria & Ms. Khushboo Malviya i/b Desai and Chinoy for the Petitioners.

Mr. D.A. Nalawade, Government Pleader for Respondent Nos. 1 to 3.

Ms. Farzana Behram Kamdin i/b FZB & Associate for Respondent Nos. 4 and 6 to 9.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

**DATE: 23rd April, 2015
(At 2.35 P.M. in Chamber)**

P.C.:-

1. Respondent No.5 has expired and, therefore, Mr. Sancheti, the learned Senior Counsel for the Petitioners seeks leave to delete Respondent No.5. Leave to amend granted. Amendment to be carried out forthwith.
2. Heard Mr. Sancheti, learned Senior Counsel appearing on behalf of the Petitioners, Mr. Nalawade, learned Government Pleader appearing on behalf of Respondent Nos. 1 to 3 and Ms. Kamdin, learned Counsel for Respondent Nos. 4 & 6 to 9.
3. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are challenging the order of Charity Commissioner, who was pleased to reject the bid given by the Petitioners to purchase property of the Trust. The said bid was given after tenders were invited by Charity Commissioner upon application being made by the Trust under Section 36 of the Bombay Public Trusts Act, 1950. Alongwith the Petitioners, two other persons had offered their bid. Petitioners' bid was rejected by the learned Charity Commissioner, firstly on the ground that the advertisement was only given in the local news-papers. Mr. Sancheti, learned Senior Counsel appearing on behalf of the Petitioners submitted that, in fact, Charity Commissioner had not taken

into consideration the fact that the advertisement was given in two news papers; one in "Pawana Samachar" and the other in "Free Press Journal. It is submitted that the reason given by Charity Commissioner for rejecting the said bid, therefore, on the face of it, is illegal and he has committed an error of law in arriving at the said decision.

4. The second ground on which the said bid of the Petitioners was rejected was that there was a possibility of the land fetching more price and a chance could be taken by issuing fresh advertisement.

5. On the other hand, the learned Government Pleader appearing on behalf of the State submitted that Pawana Samachar is not even a local news-paper and it is circulated only in the rural District of Pune. He submitted that since long time has elapsed, proper course of action would be to invite fresh bids to find out whether better offer can be received.

6. This Petition was admitted in 2006. During the course of hearing, learned Senior Counsel appearing on behalf of the Petitioners was in a position to obtain fresh valuation report from the approved valuer. The said valuer had, after taking into consideration the encroachment on the land and other factors, felt that the valuation of the property would be

around Rs 27.6 crores.

7. The Trust also, thereafter, gave proposal to the Petitioners that if they pay interest @ 18% per annum on the price which was offered by them in November, 2003 then they would have no objection for accepting the said price. The learned Counsel appearing on behalf of the Trust submitted that corpus of the Trust would increase to Rs 45 crores approximately and, from that amount, they would be in a better position to give scholarships to needy students who wanted to study abroad. Petitioners, thereafter, accepted this offer and informed this court that they are willing to purchase the said property for the said amount of Rs 44,39,71,470/- as on 02/02/2015 which would also include further interest @ 18% per annum till the date of payment. Mr. Sanchethi, learned Senior Counsel appearing on behalf of the Petitioners, after taking instructions from the Petitioners, submitted that the Petitioners are willing to pay the said price.

8. We have perused the impugned order and heard all the parties. In our view, other two bids which were tendered before the Charity Commissioner could not be said to be genuine bids since no money has been deposited by those bidders and their offer was a conditional offer. It is an admitted position that there is an encroachment on the land

in question and the persons who had offered their bids wanted vacant possession of the land which was not possible at the relevant time or even now.

9. Secondly, in our view, the learned Charity Commissioner clearly erred in coming to the conclusion that if fresh bids are invited, there was a possibility of better price being offered to the Trust. In our view, Charity Commissioner is only expected to consider whether the price which is received is fair and reasonable price. It is no doubt true that power vested in Charity Commissioner under Section 36 of the Bombay Public Trusts Act is not confined to grant approval or sanction to a particular sale transaction and to see whether any other party who participates in the proceedings is willing to give better price than the one which has been received by the Trust. In the present case, two other offers which were received by the Charity Commissioner were conditional offers and, therefore, the Charity Commissioner ought to have accepted the offer which was given by the Petitioners and granted permission under Section 36 of the Bombay Public Trusts Act.

10. Be that as it may, since the Petition was admitted in 2006 and we are in 2015, much time has elapsed. Similarly, encroachment had increased on the said land. The Valuer's report which is submitted to this Court and which is not

disputed or denied by the Respondents clearly shows that market value of the said land comes to Rs 27.6 crores. Petitioners have offered an amount of Rs 44,39,71,370/-. It is also not in dispute that the Petitioners will have to spend huge amounts for taking steps to evict the encroachers on the said land.

11. It has also come on record that the Petitioners have protected the property by engaging services of private security which fact has not been denied by the Charity Commissioner in his impugned order.

12. Taking an overall view of the matter, we are of the view that the impugned order will have to be set aside and the offer which is now made by the Petitioners will have to be accepted. Respondent - Trust has already given its no objection. No useful purpose, therefore, will be served in again remanding the matter.

13. Petition is therefore allowed in terms of the Minutes of the Order dated second February, 2015 which is signed by the Advocates appearing for the Petitioners and the Advocate for Respondent Nos 4 and 6 to 9. The said Minutes of the order is taken on record. Undertaking given by the Petitioners is accepted.

14. Petition is accordingly disposed of. Since Petition is disposed of, Notice of Motion does not survive and it is also disposed of.

15. The concerned authorities of Stamp/Sub-Registrar's Office to act on the copy of this order duly authenticated by the Registry of this Court.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)