

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

WRIT PETITION NO.7630 OF 2016

**The Handmaids of the Sacred Heart
of Jesus Society**

Through one of its Trustees

Sr.Aleena Rodrigues

: Petitioner.

versus

The Joint Charity Commissioner

Greater Mumbai Region, Mumbai and anr.

: Respondents.

Mr. G S Godbole i/by Mr. Parag M Tilak for the Petitioner.

Mr. S B Kalel, AGP for the Respondent No.1.

Mr. P G Chavan for the Respondent No.2.

CORAM : R. M. SAVANT, J.

DATE : 22nd March 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 20/08/2015 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai by which order the application filed by the Petitioner under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 came to be rejected.

2 The Petitioner Trust by passing resolution dated 08/08/2011 had resolved to sell its property i.e. Plot admeasuring 36 Ares along with the constructed structure standing thereon having total built up area of about 2000 sq.ft. bearing Survey No.75 Hissa No.2/1 situated at Pune Nagar Road behind EON I T Park, Kharadi, Tal. Haveli, Dist.Pune. In terms of the said resolution,

the Petitioner Trust had published advertisement in two local newspapers viz. Prabhat and Sakal Times having circulation in Pune calling for offers for the said property. However, in the said advertisement, after mentioning the extent of the property as also the extent of the built up area, it was mentioned that the said property is Survey No.75 Hissa No.2. Pursuant to the said advertisement, offers were received by the Petitioner Trust and the offer of the Respondent No.2 herein at Rs.2,52,00,000/- (Rupees Two Crores Fifty Two Lakhs) was the highest offer that was received. It seems that negotiation took place between the Petitioner Trust and the Respondent No.2 as a consequence of which the Respondent No.2 increased the offer to Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs). Accordingly a memorandum of understanding was executed between the Petitioner Trust and the Respondent No.2 on 16/02/2011. Thereafter the Petitioner Trust passed a resolution dated 08/08/2011 accepting the offer of the Respondent No.2 but the amount mentioned therein was Rs.2,62,80,000/- (Rupees Two Crores Sixty Two Lakhs Eighty Thousand). The Respondent No.2 has deposited a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) with the Petitioner Trust. The Petitioner Trust thereafter applied to the learned Joint Charity Commissioner for sanction being accorded for the said sale to be effected in favour of the Respondent No.2.

3 The learned Joint Charity Commissioner has by the impugned

order dated 20/08/2015 rejected the said application filed by the Petitioner Trust. The rejection is principally on the ground that the description of the property mentioned in the newspapers was not correct. The learned Joint Charity Commissioner observed that the notices in the newspapers were issued in respect of the property bearing Survey No.75 Hissa No.2 which is not the property of the Petitioner Trust and which property is in occupation of various other persons. The learned Joint Charity Commissioner observed that in spite of bringing the said fact to the notice of the advocate for the Applicant i.e. the Petitioner Trust, no corrective steps were taken and therefore it would not be possible to consider the application by overlooking the said discrepancy which the learned Joint Charity Commissioner termed as a major discrepancy. Hence the application has been rejected principally on the ground that the description of the property in the public notices issued in the two daily newspapers was defective.

4 In the said context, it is required to be noted that in the decision taken by the Petitioner Trust by virtue of the resolution passed by it, the property which is of the ownership of the Petitioner Trust has been properly described viz. Survey No.75, Hissa No.2/1. The said description is also found in the application made under Section 36(1)(a) of the said Act. However, it is in the notices issued in the newspapers that the discrepancy in the description of the property has crept in that to only as regards the Hissa No. of the

property being not mentioned.

5 In my view, the learned Joint Charity Commissioner for the said discrepancy had erred in rejecting the application itself when the learned Joint Charity Commissioner could have called upon the Petitioner Trust to rectify the said description of the property and issue a fresh public notice in the daily newspapers for calling of offers for the sale of the said property. The discrepancy in respect of the description of the property in the public notices, in my view, was not such as to have an effect on the maintainability of the application filed under Section 36(1) of the said Act by the Petitioner Trust. The parties who had submitted their offers have not made any grievance as regards the description of the property, but can be presumed to have submitted their offers being aware of the property which is actually put up for sale by the Petitioner Trust. Hence though by the impugned order the application itself has been rejected by the learned Joint Charity Commissioner, in my view, it would be just and proper to dispose of the above Writ Petition with the following directions :-

- 1] The impugned order dated 20/08/2015 passed by the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai is set aside. The Application filed by the Petitioner Trust under Section 36(1) of the said Act is restored to file.

- 2] The Petitioner Trust is directed to issue a fresh public notice in two daily newspapers having circulation in Pune for the sale of the property i.e. Plot admeasuring 36 Ares along with the construction of structure standing thereon having total built up area about 2000 sq.ft. situated in land bearing Survey No.75 Hissa No.2/1 situated at Pune Nagar Road behind EON I T Park, Kharadi, Tal. Haveli, Dist.Pune. The same to be done by the Petitioner Trust expeditiously.
- 3] Since the property is now under public reservation under the Development Plan of Pune, the Petitioner Trust to disclose the said reservation in the public notices that would be issued in the two daily newspapers having circulation in Pune.
- 4] After the receipt of the offers, the Petitioner Trust may process them and place them before the learned Joint Charity Commissioner for a de-novo consideration of the application under Section 36(1) of the said Act.
- 5] In so far as the Respondent No.2 herein is concerned, it would be open for the Respondent No.2 to submit its offer pursuant to the fresh advertisement that would be issued.

- 6] If the Respondent No.2 retains the amount of Rs.20,00,000/- (Rupees Twenty Lakhs), which it has deposited with the Petitioner Trust, it will do so at its own peril and would not claim any interest on the said amount from the Petitioner Trust.
- 7] After the offers are received and are placed before the learned Joint Charity Commissioner, Greater Mumbai Region, Mumbai, the learned Joint Charity Commissioner would decide the application on its own merits and in accordance with the well settled principles applicable whilst dealing with an application under Section 36(1) of the said Act. However, the same would also be done by the learned Joint Charity Commissioner expeditiously.
- 8] With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]