

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

WRIT PETITION STAMP NO.34463 OF 2016

Amarjeet Kaur Anand D/o Ajabsingh Anand ..Petitioner
Versus
The State of Maharashtra and others ..Respondents

Mr. V. P. Sawant a/w Mr. P. M. Jadhav for the Petitioner.
Mr. S. D. Rayrikar, AGP for the Respondent No.1.
Mr. P. K. Dhakephalkar, Senior Advocate i/by Triyama Legal for the
Respondent No.3.
Mr. S. D. Patil a/w Mr. Amogh Singh i/by Ms. Anusha P. Amin for the
Respondent No.7.

**ALONGWITH
WRIT PETITION NO.917 OF 2017**

Chandrabhas Narayan Shetty ..Petitioner
Versus
The Joint Charity Commissioner (I)
and others ..Respondents

Mr. S. R. Nargolkar a/w Mr. Swapnil Mohite a/w Mr. Omkar
Amberkar i/by Lendl Coutinho for the Petitioner.
Mr. S. D. Rayrikar, AGP for the Respondent No.1.
Mr. V. B. Naik, Senior Advocate i/by Triyama Legal for the
Respondent No.2.
Mr. S. D. Patil a/w Mr. Amogh Singh i/by Ms. Anusha P. Amin for the
Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 2nd MARCH, 2017

PC.

1 The writ jurisdiction of this Court under Articles 226 and 227

of the Constitution of India is invoked against the order dated 19.10.2016 passed by the Learned Joint Charity Commissioner, Maharashtra State, Mumbai. By the said order, the application filed by the Respondent No.2 - Trust under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (For short "MPT Act") for permission to sell the property admeasuring 3480 sq.yards bearing Survey No.2/1388 of which old Survey No.1758, 'G' Ward alongwith the structures standing thereon situated at T. H. Kataria Marg, Matunga (W), Mumbai-400 016 came to be allowed.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent No.2 - Trust had invited offers for the sale of the said property by publishing notices in the local newspapers i.e. "Asian Age" in English, "Mumbai Lakshyadeep" in Marathi and "Jagruk Times" in Hindi in their editions dated 02.02.2016. In the said notices, it was mentioned that reserve price was fixed at Rs.10.50 Crores. It appears that the Respondent No.2 - Trust had got a valuation report from a Government Valuer one Shri. Hitendra Gangwar in respect of the said property. The said report was marked as Exh.6 to the proceedings. After the said advertisements were issued and the offer of the Respondent No.7 M/s. Perfect Infra at Rs.10.50 Crores which was the sole offer was received, the Respondent No.2 - Trust entered into a Memorandum of Understanding dated 07.03.2016 with the Respondent

No.7 in respect of the sale of the said property. The Respondent No.2 - Trust thereafter applied to the Learned Joint Charity Commissioner under Section 36(1) of the MPT Act for permission to sell the said property to the Respondent No.7. The proceedings had come up before the Learned Joint Charity Commissioner on 11.08.2016 when the Learned Joint Charity Commissioner passed the following order :-

“Considering the description of the trust property offer price is not adequate hence issue public notices in Daily Newspaper Loksatta and Times of India for open bid.”

It is an undisputed position that the course of action propounded by the said order dated 11.08.2016 was not followed by the Respondent No.2 - Trust.

3 The Learned Joint Charity Commissioner who was seized with the application took up the application of the Respondent No.2 – Trust for consideration. The order discloses that the Learned Joint Charity Commissioner impressed upon the Respondent No.7 that its offer was not adequate and therefore directed the Respondent No.7 to increase its offer. The Respondent No.7 pursuant to the said direction increased its offer by Rs.50 lakhs and therefore agreed to purchase the property at Rs.11 Crores. The Learned Joint Charity Commissioner thereafter adverted to the necessity of the Respondent No.2 - Trust to sell the

property and having regard to the fact that the buildings on the land in question are old buildings, opined that nobody would come to purchase the property at a higher price. The Learned Joint Charity Commissioner also observed that the amount deposited by the Respondent No.7 i.e. sum of Rs.10,85,73,650/- had also earned interest of Rs.35,73,650/- to the Trust and therefore he reached a conclusion that the transaction was for the benefit of the Trust and accordingly accorded his approval for the sale of the said property vide the impugned order dated 19.10.2016.

4 Heard the Learned Counsel for the parties.

5 The principal contention of the Learned Counsel Mr. V. P. Sawant appearing on behalf of the Petitioner is that the Respondent No.2 - Trust has not followed the mandate of the order dated 11.08.2016 i.e. issuing fresh advertisement in the daily newspapers Loksatta in Marathi and Times of India in English and without the Respondent No.2 - Trust going through the said exercise, the Learned Joint Charity Commissioner has dealt with the matter on the basis of the earlier advertisement issued on 02.02.2016, and the offer received from the Respondent No.7 which offer according to the Learned Joint Charity Commissioner was inadequate and therefore directed the issuance of a fresh advertisement by order dated 11.08.2016. It was therefore the submission of the

Learned Counsel that since the order dated 11.08.2016 was not complied with by the Respondent No.2–Trust, and since the matter was considered on the basis of the offer received pursuant to advertisements issued on 02.02.2016, the entire exercise is vitiated.

6 Per contra, the Learned Senior Counsel Mr. P. K. Dhakephalkar would initially make submissions questioning the locus of the Petitioner in Writ Petition No.34463 of 2016 to challenge the impugned order. It was the submission of Mr. P. K. Dhakephalkar that the Petitioner in the said Petition has a claim adverse to the Petitioner and therefore the Petition filed by him could not be entertained. The Learned Senior Counsel would also seek to draw this Court's attention to the observations made in paragraph 10 of the impugned order, wherein the Learned Joint Charity Commissioner directed the Respondent No.7 to increase its offer, pursuant to which the offer was increased by Rs.50 lakhs. It was therefore the submission of the Learned Senior Counsel that the order impugned need not be interfered with.

7 The Learned Counsel appearing on behalf of the Respondent No.7 would seek to make submissions based on equities. The Learned Counsel would contend that the Respondent No.7 has deposited an amount of Rs.10,50,00,000/- upfront. The Learned Counsel would also

question the locus of the Petitioner in Writ Petition No.917 of 2017 and Writ Petition Stamp No.34463 of 2016.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. It is well settled by the judgments of this Court as well as the Apex Court that unless the twin conditions of there being a legal necessity and the property fetching the best market price are satisfied, permission under Section 36 of the MPT Act cannot be granted by the Learned Charity Commissioner for sale of the Trust property. In the instant case, as indicated above, the Respondent No.2 - Trust had issued advertisements for sale of its property in the editions dated 02.02.2016 of three daily newspapers. The offer received from the Respondent No.7 pursuant thereto was found to be inadequate and therefore the Learned Joint Charity Commissioner at the hearing held on 11.08.2016 had in terms recorded so and had directed the Respondent No.2 - Trust to issue public notices in daily news papers Loksatta and Times of India. Hence the said order dated 11.08.2016 has transcended the offers which were received pursuant to the advertisement dated 02.02.2016. The cause for issuing the directions as contained in the said order dated 11.08.2016 was the fact that the offer received of the Respondent No.7 was inadequate. There can be no gain saying of the fact that the endeavour is to see to it that the Trust gets the best price for its

property. It is towards the said endeavour that the order dated 11.08.2016 came to be passed by the Joint Charity Commissioner. However in spite of the Respondent No.2 - Trust not complying with the said order, the Learned Joint Charity Commissioner has glossed over the said aspect and has proceeded on the basis of the advertisement issued on 02.02.2016 and the offer received pursuant thereto. The Learned Joint Charity Commissioner has thereafter undertaken the exercise of directing the Respondent No.7 to increase the offer as he found the same to be inadequate. In my view, the Learned Joint Charity Commissioner has totally misdirected himself in carrying out the exercise on the basis of the offer received pursuant to the advertisement dated 02.02.2016 in the light of the subsequent order dated 11.08.2016.

9 In so far as the contention urged on behalf of the Respondent No.2 - Trust and the Respondent No.3 developer as regards the locus-standi of the Petitioner in Writ Petition Stamp No.34463 of 2016. In my view, assuming that the Petitioner in the said Writ Petition has some interest adverse to the Petitioner that cannot come in his way from challenging the order passed by the Learned Joint Charity Commissioner when it is his case that he is also one of the prospective bidders for the property in question and that he is ready to offer a higher price. This Court cannot shut its eyes when a fact which has a bearing upon the

Trust getting the best value for its property is brought to the notice of this Court. The issue is as regards giving proper opportunity to all the intending bidders and therefore the net has to be cast as wide as possible so that Respondent No.2 - Trust receives the best value for its property. For the reasons aforesaid, the impugned order dated 19.10.2016 cannot be sustained and would therefore have to be quashed and set aside and is accordingly quashed and set aside and the following directions are issued:-

- I) The Respondent No.2-Trust to issue a fresh advertisement by publishing the same in the daily newspapers Loksatta (Marathi), Times of India (English) and in addition thereto in Mumbai Samachar (Gujarati) inviting offers for the plot of land in question after receipt of the offers place the offers in the instant application filed by them under Section 36(1) of the MPT Act. The Learned Joint Charity Commissioner may thereafter consider the offers and pass appropriate orders in accordance with law.
- II) The Respondent No.7 would be at liberty to seek refund of the amount deposited by it with the accrued

interest. If the Respondent No.7 retains the amount with the Respondent No.2 - Trust, it would be doing so at its costs and would not be entitled to any interest hereinafter and also cannot claim any equities on the said ground.

III) It would also be open for the Respondent No.7 to participate in the de-novo process which will be initiated pursuant to the instant order.

IV) The Respondent No.7, as well as the Petitioners would not offer less than Rs. 11 Crores for the plot of land in question.

10 With the aforesaid directions, the Writ Petitions are disposed
of.

[R.M.SAVANT, J]