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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11290 OF 2014**

C.A. Gupta

...Petitioner

Vs.

Institute of Banking Personnel Selection

A Public Charitable Trust & ors.

...Respondents

....

Mr. Ranjit Thorat, Senior Counsel along with Ms. Simeen Shaikh along with Ms. Priyanka Gharge i/b. S.K. Shrivastav & Co. for the petitioner.

Mr. Vishal Kanade along with Ms. Vastala Pant i/b. Udwadia & Udeshi for respondent No.1.

Mr. A.B. Kadam, AGP for respondent No.3.

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CORAM : M.S.KARNIK, J.

DATE : 4th DECEMBER, 2018.

P.C. :

Heard learned Senior Counsel for the petitioner.

2. The petitioner by filing this Petition under Article 226 and 227 of the Constitution of India impugns an order dated 30th September, 2014 passed by the Joint Charity Commissioner, Greater Mumbai, Mumbai. Learned Senior Counsel for the petitioner assailing the order passed by the Joint Charity Commissioner contends that the petitioner had offered a bid of Rs.2,81,00,000/- on 6th December, 2009. The respondent

No.1 – Trust intended to sell two flats. The petitioner paid the earnest money of Rs.5 lakhs on 19/12/2009. On 8th January, 2010, the valuation report of Rs.2,28,00,000/- was also submitted. Obviously the petitioner's offer was higher than the valuation report. Learned Senior Counsel points out that the governing body of the respondent No.1 – Trust approved the bid on 11th January, 2010. On 18th January, 2010, the respondent No.1 applied to the Charity Commissioner for a permission to sell the flats under Section 36(1)(a) of the Bombay Public Trust Act, 1950.

3. It appears that the respondent No.2 offered Rs.2,85,00,000/- for purchasing the property in the meantime. The petitioner objected to this course of action by his objection letter dated 23rd February, 2011. Since no decision was being taken by the respondent No.1 – Trust, the petitioner approached this Court by filing Writ Petition No. 1260 of 2014. This Court on 9/6/2014 disposed of the Writ Petition No.1260 of 2014 by directing the Charity Commissioner to decide the application for sale of the property made under Section 36 of the Bombay

Public Trust Act, 1950 and to dispose of the application without adjourning the same within a reasonable time.

4. It appears that thereafter on 27th June, 2014, the respondent No. 1- Trust made an application for withdrawal of the application for sale of the subject property as according to the respondent No.1 – Trust the same is required for its own use.

5. The earnest money of Rs. 5 lakhs which the petitioner had deposited was refunded to the petitioner on 14th October, 2014. It is not in dispute that the pay order has been encashed by the petitioner prior to filing of the Petition.

6. Learned Senior Counsel for the petitioner contends that in the reply filed by the petitioner at Exhibit 19 before the Charity Commissioner several contentions were raised. One of the contention raised was that the Trust has been making applications for sale of the property right from the year 2006 and on one pretext or the other withdrawing the applications. The fact that several advertisements were issued clearly

indicates that the Trust wanted to sell the suit property. Learned Senior Counsel submits that even at the time when the Writ Petition filed in this Court was disposed of, the respondent No.1 – Trust did not indicate that they wanted to withdraw the application for sale. He submits that even the application for withdrawal of sale permission is without authority and the same is in breach of Clause 13 and 16 of the Memorandum of Association of the Trust.

7. Learned Counsel for the respondent No.1 – Trust on the other hand points out that the Trust can always withdraw the application made for valid reasons at any time. The sale was yet to be confirmed. The Trust wanted to utilize the property for its own use. In his submission, even the earnest money of Rs.5 lakhs has been refunded to the petitioner and the same has been encashed by the petitioner. Filing of the Petition after the amount of earnest amount is refunded would indicate that this is a not a bonafide Petition.

8. I have gone through the order passed by the Joint

Charity Commissioner and the relevant records. No doubt, the petitioner had paid earnest money of Rs.5 lakhs and his bid was accepted. However, if the Trust has chosen to apply for withdrawal of the application for sale for the reasons indicated in the application for withdrawal, there is no prohibition under the Act for the Trust to adopt this course of action. Merely because the earnest amount is paid will not confer any right on the petitioner to have the sale confirmed.

9. I see no reason to interfere with the view taken by the Joint Charity Commissioner. Moreover, pursuant to the impugned order the earnest amount of Rs.5 lakhs has already been refunded to the petitioner which he accepted and it is only thereafter that the present Petition is filed. Taking an over all view of the matter, I see no reason to interfere with the order passed by the Joint Charity Commissioner.

10. The present Petition is therefore dismissed.

(M.S.KARNIK, J.)