

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

WRIT PETITION NO. 12336 OF 2017

Mohd.Yakub Abbas Ali Kadri

..Petitioner

V/s.

The State of Maharashtra,
Through The Secretary & Ors.

..Respondents

Mr.Prasad Dani, Senior Advocate a/w Mr.Bipin Joshi, Mr.Prayag Joshi and Mr.Sahil Ansari for the Petitioner.

Mr.S.D. Rayrikar, AGP for Respondent Nos.1 to 3-State.

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Mr.Atul Daga a/w Mr.Sushant Arora and Ms.Ruchi Mangoo i/b Vigil Juris for Respondent Nos.4 to 8.

CORAM : C.V. BHADANG, J.

DATE : 28th JANUARY 2020

PC.

1. By this petition the petitioner is challenging the order dated 07th January 2016 below Exhibit 60 and 61, passed by the Joint Charity Commissioner, Greater Mumbai, thereby directing the petitioner, who is the highest bidder, to deposit 35% of the enhanced amount towards earnest money deposit, as per the terms and conditions of the public notice dated 17th February 2011.

2. I have heard Mr.Dani the learned Senior Counsel for the petitioner and the learned Assistant Government Pleader for

Respondent Nos.1 to 3 and learned counsel for respondent Nos.4 to 8.

3. The only contention raised on behalf of the petitioner is that the petitioner could not have been directed to pay 35% of the enhanced consideration and that too, by way of compliance with the terms of the public notice. It is pointed out that the public notice was prior to the Trust moving for a permission under Section 36 of the Maharashtra Public Trust Act and the terms and conditions and the recitals of the public notice, cannot govern the terms which the Charity Commissioner may put the parties to, while deciding the application under Section 36 of the said Act.

4. The learned counsel for the respondent Nos.4 to 8 points out that in the public notice there was a specific condition for the intending purchaser to deposit an amount equivalent to 35% of the offer, as earnest money. He also pointed out terms and conditions agreed between the parties. He has specifically referred to clauses 5 and 6 of the terms and conditions. The learned counsel for the respondent points out that the Trust is entitled to forfeit the amount already deposited.

5. In my considered view it is not necessary to interfere with the impugned order, which is of an interim nature and inasmuch as the main application under Section 36 of the Act is still pending before the learned Joint Charity Commissioner. In my considered view, if at all there is non-compliance, with the impugned order by the petitioner the said aspect can be taken into consideration by the learned Joint Charity Commissioner, while deciding the application for grant of permission on its own merits and in accordance with law. Insofar as the issue of forfeiture is concerned it is neither necessary nor appropriate to go into the said issue or express any opinion, inasmuch as there is no such order passed by the learned Joint Charity Commissioner at this stage, nor the Trust has taken any action in this regard. Thus subject to the clarification that it will be open to the learned Joint Charity Commissioner to consider the aspect of non-compliance with the impugned order while deciding the application under Section 36 on its own merits, the petition is disposed of, with no order as to costs.

6. Rival contentions of the parties are left open.

C.V. BHADANG, J.