

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 22nd DAY OF DECEMBER 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.P. No.753 of 2017

In the matter of the
Charitable and Religious
Trust Act, 1920

and

In the matter of the Public
Trust of Sir John Demonte
Trust

Sir John Demonte Trust,
rep. by its Sole Trustee,
Most Rev.Dr.George Antonysamy,
Archbishop of Madras-Mylapore,
Archbishop's House, No.41, Santhome High Road,
Chennai-600 004, rep. by his Power of Attorney
Rev.Fr.S.J.Antonysamy ... Petitioner

Original petition praying that this Hon'ble Court be
pleased in the interest of justice and equity, to approve
the scheme framed by the petitioner trust in paragraph 12
and 13 to lease the property namely, land together with the
superstructure situated at Old No.129 & 130, New No.149 &
151, Demonte Colony, T.T.K.Road, Chennai-600 018, comprised
the survey No.3676, Block No.73 of Mylapore Village,
Triplicane-Mylapore Taluk, Chennai District, Corporation of
Chennai, admeasuring 14099 sq.ft., and superstructure
consisting of the Basement, first floor, second floor and
third floor and the built up area each floor is 4846.70
sq.ft., approximately, morefully described in the schedule
hereunder, as per the aims and objects and the purpose for
which the Trust was created and as per the order passed by

the Supreme Court dated 14.12.2011 in Civil Appeal bearing No.3052/2006, by

- a) calling for public offers by placing advertisement in Newspapers;
- b) to scrutinize the offers in consultation with the property consultant appointed by the petitioner, and select the most advantageous offer, in the best comprehensive interest of the petitioner, and;
- c) to execute registered lease deeds with the prospective tenants.

This Original Petition coming on this day before this Court for hearing the court made the following order:-

This Original Petition has been filed, under Section 7 of the Charitable and Religious Trust Act, 1920 read with Order XIV Rule 8 of the Original Side Rules, to pass an order:-

- i. permitting the the Petitioner to approve the scheme framed by the Petitioner Trust in paragraphs 11 to 13 to lease the property, namely, land together with the superstructure, situated at Old No.129 and 130, New No.149 and 151, Demonte Colony, TTK Road, Chennai-18, comprised in S.No.3676, Block No.73 of Mylapore Village, Triplicane-Mylapore Taluk, Chennai District, Corporation of Chennai, measuring 14099 sq.ft. and superstructure, consisting of the basement, first floor, second floor and third floor and the built up area of each floor is 4876.70 sq.ft. approximately more fully described in the Schedule as per the aims and objects and the purpose for which the Trust was created and as per the order passed by the Honourable Supreme Court dated 14.12.2011 in Civil Appeal No.3052 of 2007, by

a) calling for public offers by placing advertisement in Newspapers.

b) to scrutinise the offers in consultation with the property consultant appointed by the Petitioner and select the most advantageous offer, in the best comprehensive interest of the Petitioner and

c) to execute the registered lease deeds with the prospective tenants.

2. The Schedule property is as follows:-

"All that piece and parcel of land together with the superstructure therein at Old No.129 and 130, New No.149 and 151, Demonte Colony, TTK.Road, Chennai 600018, comprised in S.No.3676, Block No.73, Mylapore Village, Triplicane-Mylapore Taluk, Chennai District, Corporation of Chennai measuring 14099 sq.ft. and the superstructure, consisting of basement, first floor, second floor and third floor and the built up area each floor is 4846.70 sq.ft. and bounded on the:

North By : Kolping Towers (MSSS building)
New Door No.329, Old No.128,
TTK.Road
South By : Bon Secures Convent New Door
No.329, Old No.128, TTK.Road
East By : Demonte Park (Corporation Park)
West By : TTK Road (formerly known as
Mowbry's road)

3. It has been stated in the petition that the Petitioner is Sir John Demonte Trust, represented by its Sole Trustee, Most Rev.George Antonysamy, archbishop of Madras-Mylapore, represented by this Power of Attorney, Rev.Fr.S.J.Anthonysamy, son of Somavarapu Joseph, Christian, aged 74 years, having Office at Archbishop's

House, at No.41, Santhome High Road, Chennai 600004. It has been stated that the Petitioner Trust was created by the last Will and Testament of Sir John De Monte, dated 19.07.1820 and the Archbishop of Madras Mylapore is the sole trustee of the Trust. The Will was probated by the Court on 28.09.1827. A scheme suit in CS.No.156 of 2002 was filed before this Court by certain persons under Section 92 of CPC for proper administration of the said Trust. An appeal in Civil Appeal No.3052 of 2006 was also filed, wherein the Petitioner Trust had filed an affidavit, stating as follows:-

"I, Sole Trustee of John D'Monte Trust, hereby undertake that I will not dispose of or part with or lease or deal with the properties of the De Monte Trust, in any other manner to the detriment of the Trust, unless, necessary permission is obtained from the competent Court, under Section 7 of the Charitable and Religious Trusts Act, 1920. Further, I undertake that the aims and objects and the purpose for which the Trust was created would be fulfilled and I will make all attempts to fulfil the wish of the testator as per the Will and Codicil. '

4. It has been stated that in Civil Appeal No.3052 of 2006, the Honourable Supreme Court had passed the following order on 14.12.2011, based on the undertaking filed by the Petitioner, dated 15.11.2011:-

"11. After having gone through the affidavit of the Respondent No.2 and the additional affidavit of the Appellants, we are of the considered opinion that looking to the stature

of the 2nd Respondent No.2, it can reasonably be expected that he would abide by the aforesaid undertaking mentioned in the affidavit and the rents thereof, after paying for the repairs of the Houses, (as I wish them to be always preserved and kept in the best order) shall be added to the residue of my Estate for pious and Charitable used, as hereinafter declared and mentioned - and with regard to my Plate, furniture and fixtures, I have already directed that those which are at cove long are to kept and retained for the use of my wife, and those at my dwelling house in madras, for my niece Mary Bilderbeck, and the person who after their respective death may be entitled to inherit the same, with my two houses at covelong and Madras as hereinafter mentioned .

"Thirtieth - Having left establish aforementioned Charitable Institutions principally under the control and management of the Bishop or Vicar General of St.Thome, and allotted sufficient funds for keeping and maintaining them in a decent and respectable way- It is now my particular desire and request that the Bishop or Vicar General and his successors who may receive the interest monies of the said funds will be pleased to render an account of the receipts and disbursements annually to the Archbishop of Goa, and also to my executors and the survivors of them, and I further request that that Bishop or Vicar General for the time being in conjunction with my Executors will have the kindness to nominate and appoint annually a Committee of Syndics, consisting of six Pious and respectable persons, three of whom shall be Clergymen, who may hold the Situation of Vicar at some of the Churches of St.Thome, Luz, and St.Thomas's Mount; and the other three to be Seculars of Roman Catholic Religion, who are to act jointly with the Bishop or Vicar General for managing and conducting the affairs of the different Trusts by a regular method, that they will employ a faithful clerk for keeping proper accounts of those Institutions, and that the salary and other expenses, and be paid from the

said Funds, and I further request the copies of the accounts be annually forwarded for the approval of the archbishop of Goa for the time being, who I beg and beseech a particular favour to inspect the same with every attention and he is hereby fully authorised to correct all abuses or misapplication of the property which may appear to him to be contrary to the intentions herein expressed - I have taken all these precautions with a view to procure those funds and property for as long as it may please the Almighty God, the author of all good, to favour and continue the said Institutions which I have founded through his infinite power and mercy, solely for his honour and glory and not from any vanity of this word."

12. In fact, on account of the undertaking furnished by the Respondent no.2 in the form of an affidavit, the apprehension of the Plaintiffs is set at naught. We are prima facie satisfied that the Trust properties would be dealt with in the manner in the Will and Codicil and the last wish of the Testator would be kept in mind."

5. It has been stated that Petitioner is the absolute owner of the Schedule mentioned property and that in order to fulfil the objectives of the Trust, it was decided to build a multi-storeyed building in the suit property and let it out for rent. It has been stated that in the year 2012, a multi-storeyed in the suit property was put up with the funds provided by Madras Social Service Society (MSSS), having its registered Office at No.329, Old No.128, TTK.Road, Alwarpet, Chennai-18. Initially, the Petitioner had engaged M/s.Design Works as Architect for the project. A Memorandum of Understanding and a lease

District 18.1.2012 was entered with M/s.Shrinidhi Holding in respect of the suit property and a dispute arose regarding the same, which was referred to arbitration and the Petitioner had also filed OP.No.788 of 2014 before this court. In the mean time, the said lease deed was cancelled by execution of cancellation of lease deed dated 15.09.2016, registered as Document No.3006 of 2016 and hence, the Petitioner withdrew the above petition.

6. It has been further stated that the Petitioner had appointed M/s.NVA as the Architect for the project and had redeveloped the Schedule mentioned property. The superstructure consisted of basement, first floor, second floor and third floor and the built up area of each floor is 4846.70 sq.ft. It has been stated that the Petitioner had appointed M/s.Jones Sang Lasalle (JLL) as a property consultant to lease the project for the most advantageous terms by executing a project initiation form with JLL. The property consultant had set out commercial terms and scope of work for the building as stated under:-

S.N o	Particulars	Commercial Offer from Landlord	Comments
1	Floor and Area	Built up area per floor: 4846.70 sq.ft. Carpet area per floor: 4061.18	Final chargeable area subject to joint measurement by both parties

S.No	Particulars	Commercial Offer from Landlord	Comments
2	Rental	GF: Rs.150 per sq.ft. 1 st Floor: Rs.100 per sq.ft. 2 nd & 3 rd : Rs.80 per sq.ft.	Average asking rent for the building is Rs.100.50 sq.ft. However, the closing rent may vary based on market conditions and offers from clients
3	Rent period	60 days from free hand over of the building to the client	Market standard is between 60 to 90 days depending on the size of the property
4	Security deposit	12 months' rent	Market standard that retailers pay is between 6 to 8 months
5	Escalation	15% every 3 years	Escalation could vary between 12% to 15% every 3 years depending on the size of the transaction
6	Tenure	3 years renewable for 3 additional years based on mutual discussion	
7	Lock in	3 years	
8	Maintenance Charges	To be ascertained	
9	Registration and Stamp Duty charges	Scope of client	Majority of the retailers would insist that the cost is borne equally by both parties
10	Service tax	Scope of client	
11	Property tax	Scope of Lessor	
12	Car parking ratio & charges	1:1000 (no charges)	

S.No	Particulars	Commercial Offer from Landlord	Comments
13	Time lines for building hand over	Tentatively Oct/Nov 2017	

7. It has been stated that the Petitioner proposed to place advertisement calling for offers for taking the property on lease. Under the above circumstances, this Original Petition has been filed to approve the scheme framed by the Petitioner Trust in paragraphs 11 to 13 of the petition as stated above.

8. By order dated 03.10.2017, this court had ordered for recoding of evidence by the Master. One Rev.Fr.S.J.Anthonysamy, Power Agent of the Petitioner Trust was examined as PW.1 and Ex.P1 to Ex.P4 were marked through PW.1. One Mrs.Sarita Hunt, Managing Director (Chennai and Coimbatore) of Jones Lang Lasalle Property Consultant (India) Private Limited, was examined as PW.2 and Ex.P8 were marked through PW.2. Ex.P1 to Ex.P8 are as follows:-

- 1.Ex.P1 is the copy of the Power of Attorney dated 9.9.2014 given by the Petitioner.
- 2.Ex.P2 (series) is the certified copy of the probate order dated 28.9.1927 along with certified copy of the Will and Testament dated 19.7.1820 and certified copy of the codicil dated 19.7.1820.
- 3.Ex.P3 is the copy of the order made in Civil Appeal No.3052 of 2006 dated 19.1.2012.

4.Ex.P4 is the copy of the commercial terms provided by Jones Lang Salle.

5.Ex.P5 is the copy of the power of attorney dated 21.5.2014.

6.Ex.P6 is the brochure of Jones Lang LaSalle (JLL) .

7.Ex.P7 is the original JLL project initiation form dated 15.3.2017.

8.Ex.P8 (series) is the photographs showing the property mentioned in the Schedule of the property along with CD.

9. In view of the above, this court is prima facie satisfied that there is need to lease out the Schedule property for the purpose of fulfilling the objectives of the Trust. According to the Petitioner, if higher amount is obtained, it would benefit the Trust. Consequently, this Original Petition is allowed as prayed for. The Petitioner Trust shall adhere to the procedures contemplated under law, while carrying out the tasks as prayed in this Original Petition.

Sd/-C.V.K.J
22/12/2017

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//Certified to be a true copy//
Dated this the day of 2018

jj 11/08/18

COURT OFFICER

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