

05.09.2022

WPLRT 60 of 2022

Court : 04
Item : 03
Matter : WPLRT
Status : DO
Transcriber: nandy

Belilious Trust Estate
Vs.
The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh, Advocate

.....for the Petitioner

Mr. Chandi Charan De, Advocate

Ms. Reshmi Rahaman, Advocate

.....for the State

The application filed by the writ-petitioner before the Tribunal was dismissed on two counts. Firstly, the heirs and legal representatives of some of the deceased Trustees have not been impleaded as party in the said proceeding and secondly, there was no resolution taken by the Trustees of the said Trust empowering the Managing Trustees to look after the legal affairs as well as the proceedings initiated before the Court/Tribunal concerning the trust property.

At the vey outset we must record that so far as the first point is concerned, the Tribunal is fundamentally wrong as the Trust being a juristic/legal entity is primarily an office and upon the death of any of the trustees, such office does not devolve upon the heirs and legal representatives by operation of normal rule of succession. The Trustees held the office of the Trust and, therefore, in absence of any express provision in the trust deed, the heirs and legal representatives cannot be impleaded as Trustees upon the death of the Trustee. The Trustees are to be appointed or nominated in terms of the provisions contained in the trust deed and, therefore, mere absence of the heirs and legal representatives of the deceased trustee does not invalidate the proceeding initiated by the conglomerate of the trustees surviving at the relevant point of time.

In so far as the second point is concerned, we invited the attention of the learned Advocate of the writ-petitioner and directed him to produce the resolution, if taken by the surviving trustees empowering the Managing Trustee to look after the legal affairs and continue with the legal proceeding initiated before the Court or the Tribunal. It appears from the resolution dated 19.08.2022 taken by the Trustees present and voted that the Managing Trustee is empowered to deal with all legal affairs and proceedings or to take any action before the Court of law or the competent authority in order to protect and preserve the property of the Trust.

Although the resolution has been taken after passing the impugned order by the Tribunal but the moment all the Trustees uniformly nominated the Managing Trustee to look after the property and the proceedings before the Court, it would be an idle exercise if the writ-petitioner is directed to initiate a fresh proceeding on the basis of such resolution. It is merely a procedural defect which is curable in nature and does not have a vital impact on the competence of the Managing Trustee to initiate and/or continue with the proceedings. Even otherwise if a direction is passed to initiate a fresh proceeding before the Tribunal, it will only give a new number and year and would consume more time rendering the exercise already undertaken to be wasted.

We, therefore, feel that instead of relegating the party to a fresh proceeding, the resolution taken subsequently would sufficiently take care of the lapses which was patent at the initial stage and in absence of any express embargo in the law there is no fetter on the part of the Court to permit

such proceeding to be continued on the basis of a subsequent resolution taken by the Board of Trustees.

The procedure is handmade of justice and cannot be treated as a jealous mistress. If the procedural lapses are capable of being remedied subsequently, it would save time and the valuable rights accrued to the parties.

In view of the above, the order impugned is set aside.

The tribunal application is restored to its original file and number.

The Tribunal is directed to consider the said application on merit and we trust and hope that such application would be brought to its logical end within four months from the date of the communication of this order.

With these observations, the writ-petition being **WPLRT 60 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

