

OD-30

ATA 2 OF 2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

NILMONI DUTTA TRUST ESTATE SREE SREE ISWAR SREEDHAR
JIEU, SREE SREE DURGA AND SREE SREE JAGATDHATRI

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 23rd September, 2022.

Appearance:

S. Ghosh, Adv.

Siddharth Roy, Adv.

Sukumar Pal, Adv.

...for the applicants

Md. Farhauddin, Adv.

...for leasee

ORDER

The petitioners have filed the instant application praying for leave to execute the lease agreement with regard to the schedule property in terms and

conditions as recorded in the draft lease agreement annexed with the instant application.

The petitioner nos. 2 to 5 are the Trustees of the Estate of Nilmoni Dutta Trust Estate Sree Sree Sreedhar Jieu, Sree Sree Durga and Sree Sree Jagatdhatri i.e. the petitioner no. 1 (herein after referred to as "Trust"). The petitioner No. 1 is having the following properties:

"2.a) Premises No. 7, Doctor Bye Lane, Kolkata – 700 014 and

b) Premises No. 32, Sarang Lane, Police Station Taltalla, Kolkata – 700 014 fully described in the Schedule as appended herein (hereinafter referred to as "the said properties").

The said properties are more fully described in the schedule written hereunder and are also described in a Sketch Plan, a copy of whereof is annexed hereto and marked with the letter "A" with the boundaries thereof being delineated by red link."

The Trust is a Religious Trust created sometimes in the year 1915 by one Nilmoni Dutta, since deceased, primarily for the benefit of the Estate of Sree Sree Iswar Jieu, Sree Sree Durga and Sree Sree Jagatdhatri. The petitioners herein all are the descendants of Nilmoni Dutta.

One Kubair Chandra Dutta for self and as next friend of the deities had filed a suit against Nagendra Nath Dutta, Monilal Dutta, Madan Mohan Dutta and Smt. Pramila Dutta for declaration of the scheduled property to the Will of Nilmoni Dutta deceased constitutes the debutter estate for management of the

said estate, injunction and for appointment of receiver. The said suit was disposed of by an order dt. 19.07.1995.

On 04.04.2013, Deed of Trust was reconstituted. One of the trustee Kaashinath Dutta died intestate and his legal heirs Dipankar Dutta was substituted as trustee in his place. The premises no. 7, Doctor Bye Lane, Kokata-700 014 is admeasuring about 2 Cottahs with single storied building standing thereupon and premises no. 32, Sarang Lane, Police Station – Taltalla, Kolkata-700 014 admeasuring about 3 Cottahs 7 Chittaks 11 feet along with single storied building standing thereon are extremely old structure and due to the lack of maintenance and paucity of fund it has actually become dilapidated. The conditions of the buildings are such that there is high possibility that the portion of it may collapse at any point of time causing grave injury to the inhabitants. For the safety and security of the inhabitation in the said premises, it is indispensable that the building and structure in the said premises be reconstructed by demolishing the existing the dilapidated building. The tenants of the said premises no. 7, Doctor Bye Lane, Kolkata – 700 014 and premises no. 32, Sarang Lane including the respective rents and portions occupied by them.

The petitioners have earlier filed an application under Section 34 of the Indian Trust Act, 1882 before this Court being ATA No. 6 of 2017 praying for following reliefs:-

- “a) Leave be granted to the petitioners to execute the lease agreement in regard to the properties mentioned in the schedule herein in the terms and conditions as recorded in the draft lease agreement a copy whereof appears as annexure “J”.*
- b) Leave be granted to the petitioners to serve the instant application upon the proposed lessees, names of whom appears in Paragraph-30 of the petition and annexure “J” as “lessee”.*
- c) Costs;*
- d) Further and/or other order and/or orders, direction and/or directions be passed which this Hon’ble Court may deem fit and proper.”*

On 04.09.2017, the Coordinate Bench of this Court has passed the following order :

“The Court : A legal necessity being made out by the trustees for long term lease and/or joint development of the property in question. The trustees shall be permitted to lease out the property for an initial period of 21 years with option to renew for a further period of 21 years. The intended lessees shall be liable for making payment of all municipal rates and taxes, arrears present and future in respect of the property in question and the trust would see the responsibility for all liabilities in respect of the said premises including municipal rates and taxes and maintenance. The advertisement shall be published once in the English daily “The Statesman” and one in Bengali daily “Bartaman” by 31st October, 2017.

The matter stands adjourned till 13th November, 2017. The returnable date of this application shall be specifically mentioned in the advertisement. The intending lessees shall be offered inspection of the property in question and all documents relating to the said property by Mr. Sukumar Paul Advocate.

The draft notice shall be settled by the Registrar, High Court Original side within two weeks from date.”

The said application was again taken up for hearing on 13.11.2017 and this Court has passed the following order :

“The Court : In spite of publication in two leading newspapers, the trustees have not received any offer over and above the offer annexed to the petition.

There shall be an order in terms of prayer (b) of the petition. The matter is made returnable adjourned after two weeks.”

On 27.11.2017, this Court disposed of the application being ATA 6 of 2017 by passing the following order :

“The Court: This Court is of the opinion that the proposed lease could not be beneficial for the interest of the deity. The petition also lacks in material particulars and on the basis of the particulars disclosed it is difficult for this Court to appreciate that there would be a legal necessity for sale of property in question. The intending lessee is not agreeable to the terms for a long-term lease as indicated in the order dated 4th September, 2017.

Under such circumstances, this application is disposed of with liberty to the petitioners to apply afresh with proper and better particulars and make out a case for sale of the long-term lease of the trust property as the trustees may be advised.”

The petitioners who had filed the earlier application being ATA 6 of 2017 have died in the mean time and now the Trust Estate has come to other trustees. The petitioners are not in a position to move to Civil Court for recovery of possession from the defaulting tenants due to paucity of funds at their disposal as the usurp/rent generated from the suit property are less than the actual amount paid towards municipal rates, taxes and bills. The petitioners are also not in a position to affect repair or renovation of the present structure standing on the suit property.

The intending lessees namely, Md. Mahfooz Alam, Md. Mansoor Alam, Md. Mehbboob Alam, Md. Manzoor Alam and Md. Shamimuddin have once again renewed their demand for execution of the registration of deed of lease in their favour and/or execution of deed of conveyance of the suit property in their favour subject to obtain order from this Court for outright sale of suit property or for long term lease of the suit property.

In both the premises i.e. 32 Sarang Lane and 7 Doctor Bye Lane there is no Deity and no religious functions are organized or there is any steps left over for organizing the same, but the Deity is being kept at the Nilmoni Dutta Trust Estate and were from all the ritual functions and pujas are being organized. The property for which the petitioners prayed for leave for grant of lease is in fact a financial burden to the petitioners and is not providing any financial assistance to the petitioners but at the same time, if the said property is being left unattended for any longer there is any possibility of serious mishap and also change of hands of the occupiers as there has been constant incoming of new tenants at the premises and the petitioners are being not given any credence.

On earlier occasion, this Court vide order dt. 04.09.2017 permitted the trustees to lease out the property for an initial period of 21 years with option to renew for a further period of 21 years. In the said order, this Court had directed the petitioners to publish the notice in the English Daily and Bengali Daily for leasing out the suit property but inspite of publication of notice, no

offer was received. Vide Order dt. 27.11.2017, this Court has disposed of the application being ATA 6 of 2017 as being intending lessee was not agreeable to the terms for a long term lease in terms of the order dt. 04.09.2017.

Now, the lessees are agreed to take the said property on long term lease for a period of 99 years and accordingly a draft deed of lease being Annexure - 'J' is enclosed with the instant application. The petitioners as well as the lessees are agreeable to execute deed of lease with respect of the schedule property for a period of 99 years and this Court has also gone through the lease deed annexed with the instant application.

In view of the above, the petitioners have granted leave to execute deed of lease with respect of the schedule property as per the terms and conditions has recorded in the draft lease of deed and to register the same in accordance with law.

ATA 2 of 2022 is thus disposed of.

(KRISHNA RAO, J.)

p.d