

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

ATA 7 of 2018

Dipak Koruri & Anr.
Vs
Pradip Prasad Karuri & Ors.

Mr. Suniti Chatterjee

Mr. Saptarshi Mal

...for the petitioners

Heard on : 23.11.2022 & 21.12.2022

Judgment on : 24.01.2023

Krishna Rao, J.:

The petitioners have filed the instant application under Section 34 of the Indian Trust Act, 1882 praying for grant of leave to the petitioners being the Trustees of the Trust Estate of Nandalal Koruri, since deceased to develop the Trust Properties Viz : 54, Raja Raj Bullav Street, Kolkata-700003 and 16, Rasik Mitra Lane, Kolkata-700003. The petitioners are interested to develop the said properties through developer and the proposed terms and conditions of development have been narrated in paragraph 23 of the instant application.

The parties to the instant application are sons and grandsons of the deceased Nandalal Koruri. The said Nandalal Koruri during his life time had executed a Will and Testament on 24th April, 1944 by revoking his last Will dated 20th September, 1933. In the last Will and Testament dated 24th April, 1944, the Testator had created a Trust in respect of various properties situated at Kolkata and appointed his wife Smt. Suhasini Dasi and his Son Sriman Sudhir Prasad Karuri as Trustees to the properties mentioned in the Will.

Nandalal Koruri died on 21st May, 1944 and the wife has died on 15.03.1962 leaving behind their seven sons, grandsons and sons of grandsons. In the year 1988, one son and one grandson namely Samarendra Nath Koruri and Debaprasad Koruri being the Trustee have applied before this Court for sale of one of the property situated at Bowbazar after the decision taken by the beneficiaries and Trustees. By an order dated 31st January, 1989, this Court had allowed to sale the property after publication of notice in the newspapers and the said order was challenged in appeal but the Hon'ble Division Bench had confirmed the order passed by the this Court and as per the permission granted by this Court the Bowbazar property was sold at a sum of Rs. 3,73,15,001/-. The said amounts were distributed amongst all the beneficiaries according to their proportionate shares and Rs. 15,00,000/- was kept in the fixed deposit for the purpose of running the Trust.

During the pendency of the instant application, Respondent no. 1 Arabinda Prasad Karuri, Respondent no. 5 Pranab Karuri, Respondent no.

7, Tapan Karuri and respondent no. 12 Goutam Prasad Karuri have passed away and their death have been recorded and legal heir of respondent no. 7 is substituted.

After the death of the above beneficiaries, the following beneficiaries are alive and having the following shares :

<i>Sl. No.</i>	<i>Name of the Beneficiaries</i>	<i>Share Holding</i>
1.	<i>Sri Pranab Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/7th Share</i>
2.	<i>Sri Dipak Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/6th Share</i>
3.	<i>Sri Rajat Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/12th Share</i>
4.	<i>Sri Jayanta Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/12th Share</i>
5.	<i>Sri Goutam Prasad Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/14th Share</i>
6.	<i>Sri Amitava Prasad Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/6th Share</i>
7.	<i>Sri Arabinda Prasad Koruri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/21th Share</i>
8.	<i>Sri Pradip Prasad Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/12th Share</i>
9.	<i>Sri Kingshuk Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/12th Share</i>
10.	<i>Sri Prabir Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/12th Share</i>
11.	<i>Sri Pradyut Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/24th Share</i>
12.	<i>Sri Prasanta Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/24th Share</i>
13.	<i>Sri Tushar Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/18th Share</i>
14.	<i>Sri Saurav Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/18th Share</i>
15.	<i>Sri Tarun Karuri, 54, Raja Raj Bullav Street and 16, Rasik Mitra Lane, Kolkata – 700003.</i>	<i>1/18th Share</i>

Now, the Trust is have two properties namely :

- “i) 54, Raja Raj Bulluav Street, Kolkata – 700003 comprised of 5 Cottahs 12 Chittacks of land with 3 storied building standing thereon.*
- ii) 16, Rasik Mitra Lane, Kolkata – 700003. Comprised of an area of 8 Cottahs 3 Chittacks approximately with 2 storied building standing thereon and 50 % open space therein.*

Both the properties are accessible from each other and are within one compound.”

The conditions of the above mentioned premises are more than 100 years old and required immediate repair and renovation for safety and security of the said premises as well as occupant of the said buildings. The Trust has to perform Durga Puja and Annapurna Puja every year. The petitioners have submitted audit report showing the expenditure incurred by the Trust every year from 2013 to 2018 which are as follows :

		<i>Amount of expenses (Average) for the Last 5 (five) years since 2013-14 to 2017-18</i>
<i>i)</i>	<i>For Durga Puja (yearly)</i>	<i>Rs. 55,082/-</i>
<i>ii)</i>	<i>For Annapurna Puja (Yearly)</i>	<i>Rs. 20,612/-</i>
<i>iii)</i>	<i>Retainership (Yearly)</i>	<i>Rs. 9,340/-</i>
<i>iv)</i>	<i>Telephone & Stationery expenses per years</i>	<i>Rs. 4,085/-</i>
<i>v)</i>	<i>Yearly corporation tax</i>	<i>Rs. 4,615/-</i>
<i>vi)</i>	<i>Maintenance expenses for petty repairs</i>	<i>Rs. 25,870/-</i>
<i>vii)</i>	<i>Audit fee and Accounting Expenses</i>	<i>Rs. 4,750/-</i>
<i>viii)</i>	<i>Legal and Professional Expenses</i>	<i>Rs. 5.164/-</i>
	<i>Total expenses :</i>	<i>Rs. 1,29,518/-</i>

The beneficiaries are not coming forward to share the expenses of repair the premises and accordingly petitioners have proposed to develop the

properties which have total 14 Cottahs of land approximately and in the new constructed building, accommodation of the beneficiaries according to their share would be provided and the amount which might be received from the developer as the owner's share would be distributed amongst the beneficiaries as per their respective share. On 16th August, 2017, a meeting amongst the beneficiaries were conducted and the proposal for development of the properties through the developer was discussed but the respondent no. 1 was not agreed to the proposal and now the respondent no.1 had passed away and the legal heirs of the respondent no. 1 are also on record but they have not raised any objection.

The beneficiaries after the meeting have fixed the following terms and conditions for development of the properties situated at 54,Raja Rajbullav Street, Kolkata – 700003 and 16, Rasik Mitra Lane, Kolkata – 700003 through the renowned and reliable developer :

- “(a) Both the properties to be amalgamated according to the Rules of Kolkata Municipal Corporation;*
- (b) The proposed building would be as per sanctioned building plan by the Kolkata Municipal Corporation and the Developer should provide 14000 sft. built up area to the trust.*
- (c) In the newly constructed building self contained 15 nos. flat would be allotted to the owners from first floor onwards as per their proportionate shares through lottery.*
- (d) 7 (seven) car parking spaces would be allotted to the owners.*
- (e) In addition to 15 flats and 7 car parking spaces, the owners shall be paid a lump sum non refundable minimum amount of Rs.60 lakhs by the Developer which will be distributed amongst the beneficiaries as per their shares after meeting the expenses in connection with the purpose of development and after allotment.*

- (f) *All expenses to be incurred for amalgamation of the properties, fees for sanction of new building plans, architect's fees and all related expenses thereto shall be borne by the developer.*
- (g) *The costs of construction of the building as per sanction plan shall be entirely borne by the developer.*
- (h) *Upon completion of the construction and completion certificate being issued by the Kolkata Municipal Corporation, the developer shall hand over possession of 15 nos. flats to the beneficiaries of the trust including 7 nos. care parking spaces.*
- (i) *The developer shall provide accommodation to each beneficiary in areas nearby to the said premises and shall pay and bear rent payable per month for such accommodation by the beneficiaries and shall also pay and bear shifting costs from the premises to the respective temporary accommodation of the beneficiary till completion and handing over possession of the flats to the beneficiaries.*
- (j) *The developer shall complete the construction in all respect strictly in accordance with the sanctioned plan within 30 (thirty) months from the date of sanction of the building plan and shall also obtained completion certificate within the said period.*
- (k) *The developer shall also deposit a sum of Rs. 10,00,000/- (Rupees Teen Lakhs) only as interest free security money along with the offer in favour of the petitioners which is adjustable against the non-refundable amount and if the proposed building be not completed within the period of mentioned in paragraph no. 23(J) of the petition in that event security money to be forfeited."*

The petitioners undertakes to perform Durga Puja and Annapurna Puja at 14, Ramkanta Bose Street, Kolkata which is also a part of another Debutter Trust of the estate of Nandalal Koruri till the development work in the said properties is completed.

In view of the above, the petitioners being the Trustees of the Trust of the Estate of Nandalal Koruri, since deceased are allowed to make publication in the English and Bangla News papers namely "The Hindu" and "Bartaman" two days in a week inviting offers from the developers to develop

the properties with the terms and conditions as mentioned in para 23 of the application along with the description of the properties. After receipt of the quotations from the developers, the petitioners and respondents shall take appropriate decision for appointment of developer by executing proper documents for development of the Trust properties i.e. viz. 54, Raja Rajbullav Street, Kolkata- 700003 and 16, Rasik Mitra Lane, Kolkata- 700003. The expenditure for publication of notices shall bear the petitioners at the first instance and the petitioners are at liberty to recover the same from the respondents.

In view of the above prayer (a) of the instant application is allowed.

ATA 7 of 2018 is thus **disposed of**.

(Krishna Rao, J.)