

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/2/2024

In

ATA/4/2003

SAMBHU GHOSH

VS

M/S CAREWELL PROPERTIES AND ORS.

BEFORE:

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 6th December, 2024.

Appearance:

Mr. Sudip Ghosh. Adv.

Mr. Subhojit Ghosh, Adv.

...for the petitioner and Carewell Properties .

Mr. Bidish Ghosh, Adv.

Mr. Samarjit Balial, Adv.

...for Sujit Kumar Rakshit & Kiran Patra.

The Court : This is an application seeking for following orders:

- a) *Grant leave to the petitioner to move this application upon service of notice of motion upon Carewell Properties, a registered Partnership Firm, having its office at 254/3/1, Panchanantala Road, Howrah – 711101 and Kiran Patra son of Late Bhutnath Patra and Sujit Rakshit son of late Panchkari Rakshit both of Village : Ichapur Dakshin Para, P.S. Jagacha, District : Howrah Pin : 711104;*
- b) *Grant leave to add the said M/s. Carewell Properties, a registered Partnership Firm, having its office at 254/3/1, Panchanantala Road, Howrah – 711101 and said Kiran Patra son of Late Bhutnath Patra and Sujit Kumar Rakshit @ Sujit Rakshit, son of late Panchkari Rakshit both of Village : Ichapur Dakshin Para, P.S. Jagacha, District : Howrah Pin : 711104, as party respondent to this proceeding and to allow amendment of the cause title of the proceeding in the manner as reflected in annexure 'L' to this petition underlined with red ink and the department be directed to carry out such amendment in accordance with law;*
- c) *To record the out of the Court settlement between the petitioner and said M/s. Carewell Properties, a registered Partnership Firm, having its office at 254/3/1, Panchanantala Road, Howrah – 711101 and said Kiran Patra son of Late Bhutnath Patra and Sujit Kumar Rakshit @ Sujit Rakshit, son of late Panchkari Rakshit, both of Village : Ichapur Dakshin Para, P.S. Jagacha, District : Howrah,*

*Pin : 711104, hereby resolving the dispute between the petitioner and said M/s, Carewell Properties, and Kiran Patra and Sujit Kumar Rakshit @ Sujit Rakshit, on such terms as contained in the out of the Court settlement between the parties being **'Annexure - I'** to this petition;*

- d) An order may be passed by approving the draft of joint venture/development agreement on the terms and conditions as contained therein being **'Annexure - J'** to this petition;*
- e) An order may be passed to provide for filing up post of Shebait in case of vacancy due to any eventuality of illness or incapacity of the present shebait Sambhu Ghosh due to his old age by his wife Smt. Rita Ghosh and daughter namely Mrs. Sromona Ghosh both of 4/2 Chowdhury Para Lane, near Santragachi Post Office Howrah, Pin - 711104 jointly and /or severally as the case may be, or any other person to be nominated by the present trustee.*

The petitioner is the sole shebait and trustee of the Trust concerning deity *Shree Shree Laxmi Narayan Jew* created in the year 1945 by Birendra Nath Ghosh, since deceased, the grandfather of the present petitioner. The present application has been filed to settle long standing dispute concerning the development of property of the trust situated at premises no. 24, Shastri Narendra Nath Ganguly Road, P.S. Shibpur, Howrah - 711104, between the petitioner on one hand and *M/S Carewell Properties*, a registered partnership firm and *Kiran Patra and Sujit Kumar Rakshit @ Sujit Rakshit* who is carrying on business jointly as partners in the name and style of *M/s. Standard Construction*. It is contended in the application that the entire management of the trust though initially was entrusted with the Official Trustee of Government of West Bengal, however, the daily seva puja and festives used to be maintained by the trustee and shebait, being the member of Ghosh family, the descendant of said Birendra Nath Ghosh. However, with the passage of time, it became difficult to continue with the purpose of the trust as the income generated from the remaining property of the trust was insufficient and Official Trustee expressed its inability to maintain the trust

and released the property at the disposal of the petitioner being the sole *Shebait* pursuant to order of this Court. The petitioner and *M/s Carewell Properties* thereafter entered into two agreements on 28th November, 2003 and modified on 11th August, 2004 to develop the properties by the order of this Court dated 29th April, 2003 passed in ATA 4 of 2003. Accordingly, steps were taken by *M/s Carewell Properties* for development of the property. In the meantime, the petitioner issued advocate's letter cancelling the aforesaid two agreements. The petitioner filed application being ATA 7 of 2013 for appointing a new developer and the said application was allowed appointing *M/s. Standard Construction*. Pursuant to order of this Hon'ble Court, a further development agreement was entered between the petitioner and *M/s. Standard Construction*. Thereafter, upon getting knowledge of the aforesaid, *M/s Carewell Properties* filed application being GA 3695/2013 for recalling of orders passed in ATA 7 of 2013. By order dated 29th August, 2014 the order dated 2nd, September 2013, 9th September 2013, and 16th September, 2013 was set aside in GA 3695 of 2013. *M/s Carewell Properties* also sought for execution of the earlier agreements by filling a suit before the learned Civil Judge, Senior Division, 3rd Court, Howrah being Title Suit No. 440 of 2016. In the meantime, the parties, namely, the petitioner, *M/s Carewell Properties* and *M/s Standard Constructions* have arrived at a settlement which has led to the filling of the present application for appropriate orders.

In support of the application the petitioner Mr. Sambhu Nath Ghosh and Mr. Pradip Kumar Singh, one of the partners of *M/s. Carewell Properties*

and Mr. Kiran Patra, one of the partners of *M/s. Standard Construction* were examined and they deposed before this Court that the dispute amongst them have been settled and they intend to enter into a development agreement being **Exhibit 'J'** as well as they have also executed a settlement agreement which is marked as **Exhibit 'F'**.

Mr. Sudip Ghosh, learned Advocate for the applicant prays for an order in terms of prayer (c) and (d) of the Notice of Motion since now the dispute has been amicably settled between the parties.

It is found from the materials placed before this Court as well as deposition of the parties that the parties have arrived at a settlement. Accordingly, let there be an order in terms of prayers (c) and (d) of the Notice of Motion.

With the aforesaid observation, the application being GA/2/2024 stands disposed of.

Let the order be drawn up expeditiously.

All parties and the concerned departments are directed to act on the certified copy of the exhibits.

With the consent of the parties, ATA 4 of 2003 is treated as on the day's list and the same is disposed of.

(BIVAS PATTANAYAK, J.)

gb/R.D Barua