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IN THE HIGH COURT AT CALCUTTA
(ORDINARY ORIGINAL CIVIL JURISDICTION)
ORIGINAL SIDE

ATA 5 of 2024

IN THE MATTER OF:

SWAR SANGAM

-AND-

JAYANT SOGANI AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Hearing Concluded On: 21.08.2024

Order On: 28.08.2024

Appearance:

Mr. Utpal Bose, Sr. Adv.
Mrs. Suchismita Ghosh Chatterjee, Adv.
Mr. Malay Kumar Seal, Adv.
... for the applicants.

ORDER

1. This is an application under Section 34 of the Indian Trusts Act, 1882 filed by the Trustees of Swar Sangam Trust praying for necessary opinion, advice and direction from this Court on the following questions:

“(A) Whether the Trustees of the Trust “Swar Sangam” can sell the undivided un-demarcated 16th/17th share in the Premises being 22A and 22B, Southern Avenue now known as Meghnad Saha Sarani, P.S. Lake, Kolkata 700 029 as stated in Schedule, “X” hereto?.

(B) Whether the Declaration of Trust dated March 27, 2018 give power to the Trustees to sell immovable property, comprising the trust fund?

(C) Whether it is necessary for the purpose of the Trust namely “Swar Sangam” to sell the property, as detailed in Schedule “X” hereinafter?”

2. Originally, Birla Academy of Art and Culture, a Public Trust was settled by a registered Deed of Trust dated 24th January, 1962. The Trustees of the said Trust had maintaining an educational institution in the name of “Swar Sangam” since 1966 wherein painting, music, dance as well as Fine Arts and Visual Arts classes were conducted. As per Resolution taken by the Trustees of the said Birla Academy, “Swar Sangam” was resolved to be an independent and autonomous Educational Institution and by way of a Declaration of Trust dated 27th March, 2018 by the Settlor, namely, Sarat Priya Patjoshi who is one of the applicants in the present application, it was declared as a Public Trust.

3. The Trustees have all along been carrying on the activities of the Trust in strict compliance of the Deed of Declaration of Trust and in compliance of the statutory regulations, as may be applicable in law. By a registered Deed of Conveyance dated 31st March, 2008, the “Swar Sangam” Trust purchased all undivided and un-demarcated 16/17th Share in piece and parcel of land measuring an area of 10 Cottahs 35

Sq.ft. more or less together with partly three storied and partly four storied building standing thereon since the year 1935 being premises No. 22A and 22B, Southern Avenue, now known as Meghnad Saha Sarani, P.S. Lake, Kolkata – 700 029 and became the absolute owner thereof.

4. The said property was purchased for the purpose of meeting the objects of the Trust and at the time of purchasing the said property, the then owners assured that the occupants of seven (7) Flats would move out immediately on negotiation. The Trustees have tried their level best to have the property vacated by negotiating with the occupiers so as to use the same for the activities of the Trust in order to meet its object. The Trustees could not get into any sort of settlement with the said occupiers.
5. As the Trust could not get the said property free from encumbrances totally so as to enable the Trust to carrying on its activities in the said property without any disturbance, the Trustees unanimously decided to sell the said property and to use the sale proceeds for purchasing another property free from encumbrances, having a clear marketable title for the Trust to function therefrom and to carry on its activities in accordance with law.
6. The Trustees received certain offers from various intending purchasers but the sale could not take place as the financial demand of the occupants kept on increasing leading to the said intending purchasers

losing their interest in the said property declaring such transaction was no longer viable for them. Now the Trustees have received an offer from one Gajraj Homes LLP, a Limited Liability Partnership who offered to purchase the property, on “*as is where is whatever there is*” basis together with the occupants and intended to deal with such occupants by themselves. After discussions by the Trustees with the intending purchaser, an Agreement for Sale was entered between the Trustees and the intending purchaser with respect to the said property subject to approval by this Court.

7. Birla Academy of Art and Culture, a Public Charitable Trust, was founded by a Deed of Trust dated 24th January, 1962. On and from 20th March, 1970, as per Resolution taken by the Trustees of the Birla Academy. “Swar Sangam” was resolved to be an independent and autonomous Educational Institution.
8. One of the objects of the Trust is to promote education in music both vocal and instrumental, dance, painting and all Fine Arts and Visual Arts, printing, design, sculpture, print making, product design, multimedia and animation graphics, visual communication, film making and for such purpose to hold classes, to run regular courses, conduct examinations and grant Degrees, Diplomas or Certificates either by the Trust itself or as an affiliated body of any University or Institution in India or abroad.

9. For the purpose to give opinion or advice to the questions of the applicants, the following Clauses of Declaration of Trust is necessary :

“(iii) To invest and keep invested the Trust fund either in the purchases of immovable properties or in such securities and investments as are permissible under the provisions of the Income Tax Act, 1961 and to alter, vary, convert, deal with or transpose such investments and/or Trust property from time to time as the Trustees shall in their discretion think fit.

(iv) To sell, dispose off, alienate or otherwise deal with any property movable or immovable comprising the Trust fund.”

10. To meeting the objects of the Trust, the Trustees have purchased undivided and un-demarcated 16th/17th Share in piece and parcel of land measuring an area of 10 Cottahs 35 Sq.Ft. together more or less with partly three storied and partly four storied building standing since 1935 being premises No. 22A and 22B, Southern Avenue, now known as Meghnad Saha Sarani, P.S. Lake, Kolkata – 700 029. Though the land was purchased for the purpose of fulfillment of the objects of the Trust but the Trustees could not get into any sort of settlement with the occupiers as the terms of vacating the premises got varied and as a result, the Trust could not get the said property free from encumbrances so as to enable the Trust to carrying on its activities in the said premises without any disturbances.
11. The Trust has purchased the property for the benefit of the Trust but the Trust has not able to enjoy the property as the occupiers have not

vacated the property inspite of several negotiations between the Trustees and the occupiers of the property in question.

12. Now the Trust intents to sell the property and one of the intending purchasers has agreed to purchase the said property “as is where is whatever there is” basis and have also entered into an Agreement for Sale subject to approval of this Court.
13. By way of supplementary affidavit, the Trustees have submitted certified copy of the Resolution passed in the meeting of the Trustees dated 14th August, 2024, which reads as follows:

**“CERTIFIED TRUE COPY OF THE RESOLUTION
PASSED IN THE MEETING OF THE TRUSTEES
OF SWAR SANGAM HELD AT 10, CAMAC
STREET, INDUSTRY HOUSE, KOLKATA – 700
017 ON WEDNESDAY THE 14TH DAY OF
AUGUST, 2024 AT 5.00 P.M.**

PRESENT:

*Jayant Sogani
Saral Priya Patjoshi
Sharmila Nath
Sanjay Kumar Sinha*

The Sale of the property being All that undivided and un-demarcated 16/17 Share in the land and building lying and situated at 22A and 22B, Southern Avenue, Kolkata - 700 029 now known as Meghnad Saha Sarani on As is where is and whatever there is basis has been discussed

AND

RESOLVED THAT *in terms of the Resolution passed in the Meeting of the Trustees unanimously on 1 day of April, 2024 the undivided and un-*

demarcated 16/17 Share in the land and building lying and situated at Premises No. 22A and 22B, Southern Avenue, Kolkata 700 029 now known as Meghnad Saha Sarani, P.S. Tollygunge, has been unanimously agreed to be sold to Gajraj Homes LLP, having its Registered Office at 5A, Earle Street, PO and PS Ballygunge. Kolkata -700 026 at a consideration of Rs. 8 Crores out of which a sum of Rs. 2 Crores has been received by the Trust on the Agreement for Sale dated 7th August, 2024 entered into with the said Purchaser

AND

RESOLVED FURTHER THAT *all the Trustees unanimously ratify the stand taken by the Trustees in respect of the said property in the facts of the case as already recorded in the Resolutions passed from time to time.*

Certified True Copy

For Swar Sangam

*Jayant Sogani
Trustee*

*Sarat Priya Patjoshi
Trustee*

*Sharmila Nath
Trustee*

*Sanjay Kumar Sinha
Trustee."*

14. This Court finds that in Clauses 4(iii) and (iv) of the Declaration of Trust dated 27th March, 2018, the Trust has the authority to sell, dispose of, alienate or otherwise deal with any property movable or immovable comprising the Trust fund and also to invest and keep invested the Trust fund either in the purchases of immovable properties or in such securities and investments as are permissible under the provisions of the Income Tax Act, 1961.

15. Considering the above, this Court gives affirmative opinion of all questions i.e. Questions 1(A) to 1(C) of the application as mentioned in paragraph 1 (supra).

16. ATA 5 of 2024 is disposed of.

(KRISHNA RAO, J)

p.d/-