

OD-7

ORDER SHEET

CSOS/9/2024

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

MAHENDRA KUMAR NATHANY
-VS-
NAVNEET NATHANY AND ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : October 7, 2024.

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Varun Kothari, Adv.
Mr. A.P. Agarwalla, Adv.
... for the plaintiff

Mr. Jit Ray, Adv.
... for the defendants

The Court: Mr. Rupak Ghosh, learned counsel, is appearing for the plaintiffs.

Mr. Jit Ray, learned counsel, is appearing for the defendants.

The plaintiff has filed the present suit praying for opinion of this Court on the following questions :-

- a) Whether the Deed of Trust dated 9th October, 2015 being Annexure "A" hereof creates any embargo upon the trustees from building or rebuilding or causing construction or reconstruction to be made on the said trust property morefully described in Schedule "J" hereto by development thereof by trust itself or through any outside agency or developer and to deal with and alienate parts or portions thereof?

- b) Whether trustees can enter into any agreement for development with prospective developer in respect of the said property for the benefit of the trust in terms of the deed of trust?
- c) Whether there is any legal necessity and/or benefit for the said trust to proceed for development of the said property by itself or through any developer given the objects of the said trust and the current state of affairs of the said trust?

The plaintiff submits that the plaintiff is a settler as well as one of the trustees of Bhagwati Prasad Sheo Kumar Trust which was formed by a registered deed of trust dated 9th October, 2015. The Trust is a Public Charitable Trust. The defendants are the other trustees of the said Trust. A Deed of Trust of Bhagwati Prasad Sheo Kumar Trust was executed on 9th October, 2015. In the said Deed of Trust, the concerned object for taking decision of the instant case is in Clauses 6(g) and (i) of the Deed of Trust which are as follows :-

“6.(g) To sell, dispose of alienate or otherwise deal with any property of the Trust.”

“6.(i) To let out, give on lease, demise any immovable property of the Trust.”

On coming into existence of the Trust to give effect to the order dated 15th October, 2015 passed in A.C.R. No.7 of 2013 as corrected by the order dated 8th September, 2017, Rai Bhadur Hazarimull Trust Fund by way of four registered Deeds of Transfer of Trust property, all dated 25th

September, 2021 transferred in favour of the plaintiff and the said Trust became the owner and beneficiary of the following properties :-

- a) 5.5 Cottah together with ground plus 4 storied old and dilapidated building ad-measuring 10,069.4 sq.ft. situated at 19D, Muktaram Babu Street, P.O.- Burrabazar, P.S. – Girish Park, Kolkata – 700007.
- b) 5.5 Cottah together with ground plus 4 storied old dilapidated residential building ad-measuring 10,859.36 sq.ft. situated at 2A, Doodwalla Dharmasala Lane, P.O. – Burrabazar, P.S.- Girish Park, Kolkata – 700007.
- c) 5.5 Cottah together with ground plus 4 storied old dilapidated residential building situated ad-measuring 10859.4 sq.ft. at 2B, Doodwalla Dharamsala Lane, P.O.-Burrabazar, P.S.-Girish Park, Kolkata – 700007.
- d) 5.5 Cottah together with ground plus 4 storied old dilapidated residential building ad-measuring 10,409.36 sq.ft. situated at 19C, Muktaram Babu Street, P.O.- Burrabazar, P.S.- Girish Park, Kolkata – 700007.

After the Deeds of Transfer dated 25th September, 2021, the said Trust got all the said four properties which are contiguous to be amalgamated into one municipal premises no.19C Muktaram Babu Street Kolkata – 700007 and the amalgamated property has been mutated in the name of the said Trust in the assessment records of the Kolkata Municipal Corporation.

The plaintiff says that the structure standing on the aforesaid property was constructed more than 100 years back and with the passage of time, the buildings have become dilapidated and the structures are not capable of repair and crumbling down. The plaintiff says that there is immense risk of life and property.

The plaintiff says that the income of the Trust is approximately Rs.7,50,000/- per annum and with the said income it is not possible for the Trust to manage and maintain the said property. The total expenses in connection with the said property on account of security, cleaning, staff salary, day to day repairs, municipal taxes, electricity and other expenses are about Rs.1,22,000/- per month without taking into account of the unforeseen expenses.

The plaintiff says that the Trust does not have sufficient funds to maintain the said properties and as such the plaintiff Trust has taken a decision for appointment of a developer for development of the said property and as per the Deed of Trust, Clause 6(g) and (i) as mentioned above, the Trust has the right to sell, dispose of, alienate or otherwise deal with any property of the Trust and the Trust also can let out, give on lease, demise any immovable property of the Trust.

Counsel for the plaintiff submits that as the defendants being the trustees of the plaintiff Trust have raised objection for entering any kind of deed or things for development of the said property, the plaintiff has filed the present suit praying for opinion to the questions raised above.

The plaintiff has made other trustees as parties who are the defendant nos.1 to 3 in the present suit. The defendants have entered

appearance after receipt of summons and have filed an affidavit affirmed before the Oath Commissioner of this Court on 1st October, 2024 wherein it is affirmed that the defendant nos.2 and 3 having due authority to do so in compliance with the order passed by this Court dated 27th September, 2024 and accordingly, the defendants have placed their No Objection for giving any opinion on the questions raised by the plaintiff in paragraph 17 of the present suit.

Heard learned counsel for the respective parties. Perused the materials on record.

A Deed of Trust of Bhagwati Prasad Sheo Kumar Trust was executed on 9th October, 2015 between Mahendra Kumar Nathany, Navneet Nathany, Rishi Nathany and Champalal Jhunjhunwala. After the demise of Champalal Jhunjhunwala, his daughter, namely, Urvashi Nathany has been made as trustee who is the defendant no.3 in the present suit. In the Deed of Trust dated 9th October, 2015, Clauses 6(g) and (i) provide to sell, dispose of or otherwise deal with the property of the Trust as well as to let out, give on lease, demise of immovable property of the Trust. There is no dispute that the property in question belongs to the Trust. It is also not disputed that the property is more than 100 years of age and is in dilapidated condition. It is the specific case of the plaintiff that the annual income of the Trust is Rs.7,50,000/- and the expense is Rs.1,22,000/- per month other than the unforeseen expenses. The defendants have not denied with regard to the conditions of the building and the income as well as expenses of the Trust.

Considering the above, this Court finds that the building is 100 years of old and is in dilapidated condition and there is immense risk of life and property and the Trust is not in a position to maintain the property or develop the said property due to not having sufficient fund with the Trust.

Considering the above aspect as well as Clause 6(g) and (i) of the Trust Deed, this Court finds that there is no impediment to give opinion to the questions raised by the plaintiff in the present suit.

This Court gives opinion in negative with respect of question no. (a) and affirmative in respect of question no. (c). This Court finds that question no. (b) is covered in the question no.(a) and as such there is no necessity to give any specific opinion to question no.(b).

In view of the above, CSOS/9/2024 is disposed of.

(KRISHNA RAO, J.)