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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 81/2023& I.A. 2204/2023, I.A. 14858/2023

GOSAIN GOKUL CHAND DHARAMSHALA TRUST THROUGH ITS MANAGING TRUSTEE ..... Plaintiff

Through: Mr. Amitabh Chaturvedi, Mr. Ayush Sharma, Advs.

versus

STATE (GOVT. OF NCT DELHI) THROUGH CHIEF SECRETARIAT ..... Defendant

Through: Mr. Udit Malik, ASC, GNCTD, Mr. Vishal Chanda, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% 30.01.2024

I.A. 2203/2023-EX.

1. Exemption is granted subject to all just exceptions.

2. The plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.

3. The application is disposed of.

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4. The plaintiff, i.e. Gosain Gokul Chand Dharamshala Trust, has filed the present suit under section 34 of the Indian Trust Act, 1920 read with section 7 of the Charitable and Religious Trust Act, 1920 and section 92 and 151 CPC seeking permission to sell the property of the plaintiff trust.

5. The plaintiff trust was initially created by Smt. Bindo Devi, wife of Late Gokul Chand Gosain, with a vision that even after her death the name of her husband shall remain alive in future and hence created a trust by virtue of her registered Trust Deed dated 13.12.1956 duly registered with the

office of Sub-Registrar Delhi, vide document No. 1470 in additional book No. 1 volume No. 3026 on pages 297 to 303.

6. The Trust property, i.e bearing No. 4227, Chatta Gosain Makkhan Lai, Jogiwara, Nai Sarak, Delhi-110006, was devolved upon the sole testator through her husband and after his demise as the sole legal heir, since she had no children.

7. The trust was established for the benefit of general public with the sole objective of making a *dharamshala* which would be used for marriages, *theravi/uthawnani* in case of death of any person in the locality and also as resting place/accommodation for passenger *(musafir khana),* and the income generated would be utilized to manage the temple made on the ground floor, drinking water tank (*piyau*), and to pay salary of the priest, watchman, pay house tax and other incidental charges levied by the government from time to time.

8. At the time of setting up of the trust, it was for a nobel object however with the passage of time the entire area of Chandini Chowk has been converted into a commercial hub and therefore the options of the society has changed wherein all the functions, such as *uthavni*, *theravi* and marriages etc., are performed at Banquet Halls and even people no longer wish to stay in *dharamshala*s.

9. On the ground floor, few shops have been made and let out. They are fetching rent of negligible amount of Rs. 1300/- to Rs. 1400/- per month, which is insufficient to maintain the trust or the trust property.

10. The composition of the Trust has changed over a period of time as under:-

a. That on 09.03.1975 Sh. Vimal Pershad Gupta Father of the present managing trustee has been appointed as trustee of the trust and a supplementary trust deed was executed in 1975 copy of the resolution with it's translation is annexed herewith.

b. That on 16.10.1991 Managing Trustee Sh. Sunil Gupta S/o Sh. Vimal Pershad Gupta entered into the trust for the proper management of the miscellaneous work of the trust, copy of the resolution with it's translation is annexed herewith.

c. That on 22.02.2015 Trustee Sh. Anubhav Gupta S/o Sh. Sunil Gupta entered into the trust for the welfare of the trust and to give opportunity to the young members, to work for the welfare of the trust, it has been enormously decided by the trustees and trustees has passed a resolution, copy of the same has been annexed herewith.

d. That on 19-12-2019 Sh. Rajeev Aggarwal S/o Sh. Tara Chand entered into the trust for the welfare of the trust and a resolution has been passed by the trustees regarding the same, copy of the same has also been annexed herewith.

e. That on 05-01-2022 one of the Trustee Sh. Vimal Pershad Gupta expired and after his said demise for smooth operation of the trust it was decided by the member trustees vide resolution dated 13.02.2022 that Sh. Sanjay Sharma S/o Sh. Vidyaram be appointed as a trustee, copy of the same resolution has also been annexed.

11. A supplementary trust deed was executed on 29.11.2022 which was duly registered with the office of sub-registrar 1 and a resolution was passed, wherein it was unanimously decided that the subject property would be sold off by the plaintiff trust through its managing trustee having consent of all other trustees.

12. All the trustees of the plaintiff trust have passed a resolution and also filed an Affidavit-cum-No Objection Certificate that the trust property should be sold and proceeds received from there would be utilized for charitable purposes.

13. The Coordinate Bench in ***The Vishwa Nath & Santosh Bakshi Charitable Educational Trust (Regd.) & ANR. vs. State****, dated 04.07.2019,* CS.OS.119/2022, has passed a detailed order, para 26 of which reads as under:-

> *"26. As far as other procedural aspects of such a petition/ proceeding under Section 7 are concerned, the CRT Act gives complete freedom to the Court to modulate the procedure. The Court thus has freedom to devise the procedure as may be the requirement considering the nature of the opinion, advice or direction sought and no hard and fast rule can be laid down. In this judgment, the Court is to only grant the permission sought to sell the property on 'as is where is basis' at a price slightly below the prevailing market value of the property as per the circle rate; this will require determination by the Court of the prevalent market price and for which purpose, the Court besides seeking the opinion of the concerned State authority, would also be required to ensure that the sale is conducted in a manner best suited to fetch the best price available and ensure that the price received is applied in the manner provided in the Trust Deed. This purpose can be subserved by seeking valuation of the property in modes as may be found expedient and by directing vide publication of the sale, to fetch the best price, and ensuring that the price received is utilized for the purpose of the Trust."*

14. In terms of Para 26 of the said judgment, the Court has complete freedom to devise the procedure and the manner in which the opinion advice or direction sought is to be given.

15. In the present case, the plaintiff trust has sought permission of the court to sell the trust property, i.e bearing no. 4227, Chatta Gosain Makkhan Lai, Jogiwara, Nai Sarak, Delhi-110006.

16. The only objection by Mr. Malik, learned Additional Standing Counsel for GNCTD is that the since the purpose of the trust was for a charitable purpose and the initial trustee did not have any intention to sell the trust property, hence the trust property should not be sold and if it is to be sold, then the proceeds must utilized for a charitable purpose.

17. Admittedly, the purpose for which the trust was set up for, i.e performing of marriage functions, *uthavni/theravi*, resting place/dharamshala, has lost its purpose.

18. Further, it is admitted that the trust is fetching only about Rs. 1,300/- to 1,400/- per month, which is a meagre amount to sustain the property as well as the purpose for which the plaintiff trust was set up. The trust deed has also been amended to sell and transfer the property.

19. The only concern of the respondent state is that the proceeds received from the sale of the property must be utilized for charitable purposes.

20. The trustees through its managing trustee have handed over an affidavit dated 25.01.2024, wherein it has been stated as under:-

> *"That the proceeds will be utilized to purchase another property in the vicinity of Delhi or NCR i.e. near Burari, Najafgarh (shortlisted till now) which will be easy to communicate for the needy Persons/Yatris and also where in a Dharamshala/blind home/orphanage/old age home be established so that modern day facility be provided to all those who cannot afford to have such facilities and the actual purpose of the plaintiff trust will be served i.e. wish of the testator that the name of her husband be used for the benefit of the public at large and name will remain alive even after her death and all the proceeds will be utilized for the same purpose only."*

21. Mr. Malik, learned Additional Standing Counsel for GNCTD has shown me the Valuation Report, pursuant to the last order, wherein the value of the property has been assessed at Rs. 4,88,13,815/-. The same is taken on

record.

22. In view of the facts as observed above, I am of the view that the property bearing No. 4227, Chatta Gosain Makkhan Lai, Jogiwara, Nai Sarak, Delhi-110006 should be sold, subject to the condition that the proceeds received from the sale must be utilized for a charitable purpose.

23. In the facts of the case, Ms. Kumud Singh, Adv. (Mob: 9810396060) is appointed as a Court Commissioner to ensure the sale of the property at best price and utilization of fund for charitable purposes. The Court Commissioner shall be paid a fee of Rs. 3 lakhs.

24. The Court Commissioner shall take steps for conducting auction of the property bearing no. 4227, Chatta Gosain Makkhan Lai, Jogiwara, Nai Sarak, Delhi-110006, wherein the minimum reserve price would be Rs. 5 Crores.

25. The notice as framed in paragraph 32 of the decision of ***Vishwa Nath & Santosh Bakshi Charitable Educational Trust (Regd.)*** *(supra)* may served as a draft Public Notice to be settled by the Court Commissioner.

26. The said notice shall be published in Times of India and Nav Bharat Times.

27. The plaintiff trust shall submit yearly Progress Reports to SDM, Kotwali about the utilization of the funds received from the sale of the property.

28. The Court Commissioner, SDM Kotwali as well as the petitioner are at liberty to approach the court in case of any difficulty/procedural formalities.

29. With these directions, the suit alongwith pending applications are disposed of.

30. The affidavit handed over in court is taken on record.

JASMEET SINGH, J

JANUARY 30, 2024/NG

Click here to check corrigendum, if any