

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**RESERVED ON: 27.10.2025
DELIVERED ON: 12.11.2025**

**PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH**

WPA 17502 OF 2024

SREE SREE JANARDAN JEW

VERSUS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

Appearance:-

**Mr. Suddhasatra Banerji, Adv.
Mr. Aurin Chakraborty, Adv.
Mr. Pushan Kar, Adv.
Mr. Sagnik Majumdar, Adv.
Ms. Shreya Ghosh Dastidar, Adv.**

..... for the Petitioner.

**Mr. Achinta Banerjee, Adv.
Mr. Fazlul Haque, Adv.**

.....for the KMC

JUDGMENT

Gaurang Kanth, J.:-

1. The Petitioner has preferred the present Writ Petition challenging the impugned notice dated 09.05.2024 issued by the Respondent Corporation, whereby the Respondent directed the Petitioner to obtain an order from the competent court granting permission for construction, as a precondition for according sanction to the proposed building plan in respect of premises No. 59, B.T. Road, Kolkata, presently renumbered as 59A, B.T. Road, Kolkata – 700002.

2. The brief facts leading to the filing of the present Writ Petition are set out herein below:
3. On 09.11.1964, Kumar Brindaban Chandra Sinha, Kumar Sri Atish Chandra Sinha, and Kumar Sri Adhish Chandra Sinha executed a private *Deed of Dedication* in respect of the idol “*Sree Sree Ishwar Janardhan Jew*”, installed by their forefathers at premises No. 59, Barrackpore Trunk Road, Paikpara. The expenses for the daily *seva puja* and other rituals of the said idol were defrayed from the income of the joint family estate.
4. In terms of the said *Deed of Dedication* dated 09.11.1964, the aforesaid premises stood dedicated in favour of the idol *Sree Sree Ishwar Janardhan Jew* and thus became the property of the said deity in perpetuity. It was further recorded therein that, upon the demise of the executors, their male heirs would succeed as Shebaites, and that all Shebaites were to act jointly and unanimously in all matters concerning *seva puja* and the management of the *debttar* property.
5. The said Deed of Dedication was subsequently supplemented and modified by a Deed of Rectification dated 11.08.1976, executed for the better management and welfare of the trust property.
6. Owing to acute financial hardship, the Shebaites resolved to develop the said property for the welfare of the trust and in furtherance of their obligations under the Deed of Dedication dated 09.11.1964. Accordingly, the Petitioner engaged Om Infra Projects Pvt. Ltd. as the developer and executed a Development Agreement with the said company.
7. The Petitioner obtained a *No Objection Certificate* from the Urban Land Ceiling Authority on 04.07.2022. Thereafter, the Petitioner submitted an application before the Respondent Corporation seeking sanction of a

building plan for the proposed construction of a G+11 storied building on the said premises.

8. The Respondent Corporation, by its notice dated 27.02.2023, sought certain clarifications and information. The Petitioner duly responded by letters dated 08.03.2023 and 24.04.2023, furnishing all requisite details and documents. Despite such compliance, the Respondent failed to accord sanction to the building plan. Consequently, the Petitioner, by a Demand for Justice letter dated 08.02.2024, requested the Respondent to release the sanctioned building plan.
9. Subsequently, the Respondent Corporation issued the impugned notice dated 09.05.2024, directing the Petitioner to obtain an order from a competent court permitting the development of the debuttar property, and to furnish documents relating to the disposal of *Title Suit No. 523 of 2022*, failing which the Petitioner's application for building plan sanction would stand rejected.
10. The Petitioner submits that the property in question is a private Debuttar property, and therefore, no prior permission from any court is required for the sanction of the building plan. The Petitioner had already clarified this position by letter dated 24.04.2023. However, the Respondent Corporation has failed and neglected to release the sanctioned building plan. Being aggrieved thereby, the Petitioner has approached this Court by way of the present Writ Petition.

Submission on Behalf of the Petitioner

11. Learned Counsel for the Petitioner submits that on 09.11.1964, a private Deed of Dedication was executed in respect of the idol "*Sree Sree Ishwar Janardan Jew*" concerning the premises in question. In terms of the said

Deed of Dedication, the aforesaid property stood dedicated in favour of the said idol and thereby became the property of the deity in perpetuity. The said Deed of Dedication was subsequently supplemented and modified by a Deed of Rectification dated 11.08.1976, executed for the better management and welfare of the trust property. Accordingly, the Petitioner, being the deity represented through its Shebait, preferred an application for sanction of the building plan.

12. Learned Counsel for the Petitioner further contends that the Shebait of a private Debuttar estate are not required to obtain prior permission of any Court for the development of the property belonging to the deity. The Shebait, being the manager and custodian of the deity, is empowered to undertake all acts necessary for the service, benefit, and preservation of the deity and its property. There exists no statutory provision mandating prior judicial approval for the development of a private *Debuttar* estate.
13. It is further submitted that, in view of the *savings clause* contained in Section 1 of the *Indian Trusts Act, 1882*, a private *Debuttar* is not governed by the provisions of the said Act. Consequently, Section 34 of the *Indian Trusts Act, 1882*, which enables trustees to seek the opinion of a principal civil court of original jurisdiction, has no manner of application in the present case. The *Shebait* therefore cannot be compelled to invoke the said provision for managing or developing the trust property. In support of the aforesaid proposition, reliance is placed on the judgments in ***Shakuntala Devi Dalmia vs. Howrah Municipal Corporation***, reported as **2009 SCC OnLine Cal 2375**; ***Kunal Kumar Adhikary v. Kolkata Municipal Corporation*** (MAT 2506 of 2023); and ***Risabh Ruia v. Nirmal Mukherjee***, reported as **2019 SCC OnLine Cal 998**. The

Petitioner has also placed reliance on the *Office Memorandum* issued by the Government of West Bengal dated 25.08.2021, wherein it has been clarified that no permission of the District Judge is required by *Shebait*s for the alienation of a private *Debttar* property when such alienation is for the benefit of the deity.

14. Learned Counsel for the Petitioner further submits that as per the *impugned notice* dated 09.05.2024, the Respondent Corporation had raised only two objections. However, during the pendency of the present proceedings, the Respondent Municipality is attempting to raise additional grounds which do not form part of the said impugned notice. Relying upon the decision of the Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi***, reported as (1978) 1 SCC 405, it is argued that an administrative or quasi-judicial authority cannot supplement or improve its impugned order by adducing fresh reasons during the course of litigation, and hence, the Respondent's additional grounds are untenable in law.
15. It is further submitted that the *Arpannama* itself expressly empowers the *Shebait*s to develop the said property for the upkeep, maintenance, and benefit of the deity. Therefore, the Respondent Municipality cannot question or interpret the *Arpannama* in a manner contrary to its express terms, nor can it deny sanction to the proposed construction on the basis of any perceived restrictions under the said *Arpannama*.
16. It has also been pointed out that the present *Shebait*s have been lawfully and validly appointed, as the *Arpannama* clearly stipulates that the male descendants of the original executors shall continue as *Shebait*s. There exists no embargo in the *Arpannama* preventing the *Shebait*s from

developing the *Debutter* property for the benefit of the deity. Even assuming that the subsequent *Deed of Rectification* is disregarded, the *Arpannama* itself sufficiently empowers the *Shebait*s to undertake development of the property in question.

17. Learned Counsel for the Petitioner further submits that the provisions of the West Bengal Land Reforms Act, 1955 and the West Bengal Estate Acquisition Act, 1953 have no application in the present case, as the property in question is a *private Debutter* estate.
18. In view of the aforesaid submissions, it is prayed that this Court may be pleased to allow the Writ Petition and grant the reliefs as prayed for therein.

Submission on behalf of the Respondent Municipality

19. Learned Counsel for the Respondents vehemently opposes the prayer of the Petitioner and challenges the maintainability of the present writ petition. It is submitted on behalf of the Respondent Municipality that, in view of the provisions of the West Bengal Estate Acquisition Act, the settlers, as on the date of execution of the *Arpannama*, had no legal right or authority to execute the said *Arpannama* in favour of the Deity.
20. Learned Counsel further submits that the rectification deed materially changes the *Arpannama*. Once settlers have dedicated the property in favour of the deity, the *Shebait*s have no right to modify the terms and conditions of the deed of *Arpannama*. In order to substantiate this point he relies upon the judgment of this Court in ***Rashika Mohan Nandy Vs Amrita Lal Nandy*** reported as **1946 SCC Online Cal 3**, ***State of West Bengal Vs Atis Chandra Sinha*** reported as **2000(10) SCC 376**, ***Mukundji Mahraj Vs Persortam Lalji Mahraj*** reported as **1955 SCC**

Online ALL 420, Shri Shri Dayaleswar mahadeb Jew Vs Junior Land Reforms Officer, Balurghat reported as **1984 SCC Online Cal 3, Manisha Mahendra Gala Vs Shalini Bhagwan Avtaramani** reported as **2024 (6) SCC 130**. It is further contended that the Deity, being a perpetual minor in the eye of law, could not have been made the recipient of such dedication.

- 21.** Learned Counsel for the Respondent further submits that Debuttar property is inherently impartible. The Respondent Municipality also disputes the legitimacy and authority of the present Shebait.
- 22.** According to the Respondent, under the Deed of Dedication dated 09.11.1964, the Shebait has no legal right or authority to develop the property belonging to the Deity. Since the Deity is a perpetual minor, any development or alteration of the said property mandates prior permission and sanction of the competent Civil Court. Learned Counsel for the Respondent further contends that, although the Deity is recognized as a raiyat and has been permitted to retain possession of its property, such property cannot be transferred, alienated, leased, or otherwise dealt with under the guise of "development" without the express approval of the competent Civil Court. It is further submitted that the present action is hit by the principle of delegatus non potest delegare and is therefore bad in law and void ab initio. Learned Counsel for the Respondent relies upon **Narayan Vs State of Maharashtra** reported as **2014 (11) SCC 790, A.A Gopala Krishnan Vs Cochin Devaswom Board** reported as **2007 (7) SCC482, Rabindranath Mandal Vs Chandi Chran Mondal** reported as **1931 SCC Online Cal 72, Bimal Krishna Ghosh Vs Jnanendra Krishna Ghosh** reported as **1937 SCC Online Cal 3**.

- 23.** Learned Counsel for the Respondent also submits that the building plan in question has been submitted by an incompetent and unauthorized person, who claims to be the constituted attorney of only two of the Shebaites, and hence lacks the requisite authority to act on behalf of the Deity or the Debutter estate. He relies upon ***Atmaram Ranchhodbhai Vs Gulamhusein Gulam Mohiyaddin*** reported as **1972 SCC Online Guj10**.

Legal Analysis

- 24.** This Court has carefully heard the learned Counsel appearing for the respective parties and has meticulously perused the pleadings, documents, and records produced.
- 25.** The rival contentions raise two principal issues for determination, firstly, whether the Shebaites of a private *Debutter* estate are required to obtain prior permission of a Civil Court before undertaking development of the property dedicated to the Deity; and secondly, whether the Respondent Municipality was justified in refusing to process the building plan application on that ground.
- 26.** The facts, as emerging from the records, are not in serious dispute. By a Deed of Dedication (*Arpannama*) dated 09.11.1964, executed by Kumar Brindaban Chandra Sinha, Kumar Sri Atish Chandra Sinha, and Kumar Sri Adhish Chandra Sinha, a private religious endowment was created in favour of the idol "*Sree Sree Ishwar Janardhan Jew*", installed by their forefathers at premises No. 59, Barrackpore Trunk Road, Paikpara. Under the said instrument, the premises in question stood permanently dedicated to the Deity and became its property in perpetuity. The Deed further stipulated that after the demise of the executors, their male heirs would succeed as Shebaites and that all Shebaites were to act jointly and

unanimously in matters concerning *seva-puja* and management of the *Debuttar* estate. A subsequent Deed of Rectification dated 11.08.1976 was executed for the purpose of better management and welfare of the trust property. It is thus manifest that the endowment in question is a private *Debuttar* estate, with a defined line of Shebaitship vested in the family of the founders.

- 27.** The materials on record further disclose that, owing to financial hardship and with a view to ensuring the sustained maintenance of the Deity's worship and estate, the Shebaites resolved to develop the said premises by constructing a multi-storied building with the objective of generating revenue for the *seva-puja* and the upkeep of the Deity's property. In pursuance of the said resolution, the Shebaites entered into a Development Agreement with *M/s. Om Infra Projects Pvt. Ltd.*, and duly obtained a *No Objection Certificate* from the Urban Land Ceiling Authority on 04.07.2022. Thereafter, an application was submitted before the Respondent Municipality seeking sanction of a building plan for construction of a G+11 storied structure. However, the Respondent Municipality, by the impugned communication dated 09.05.2024, raised two objections: (i) that the Shebaites must produce an order from a competent Civil Court permitting development of *Debuttar* property; and (ii) that a certified order showing disposal of *Title Suit No. 523 of 2022* by the Learned Civil Judge, Sealdah, be furnished prior to any further consideration.
- 28.** The jurisprudence governing Hindu religious endowments recognizes a Deity as a juristic person, competent to hold and own property. However, being a spiritual and non-human entity, it functions through its human agents, the Shebaites. The Shebaites are not mere managers; they hold a

composite office involving both duties and beneficial interests. They are obliged to preserve and administer the endowed property in a manner that ensures the continued service of the idol and advancement of its spiritual purposes.

29. It is well settled that Shebait, while managing the property of the Deity, is empowered to undertake acts of preservation, benefit, and prudent management, including development or utilization of the property, provided such actions are bona fide and conducive to the interest of the Deity. There is no statutory requirement under any law obligating Shebait to seek prior permission of a Civil Court for every act of management, including development or improvement of the Deity's property.
30. It is also trite law that a Shebait is not a trustee within the meaning of the *Indian Trusts Act, 1882*. Hindu religious endowments are governed by traditional principles of Hindu law and not by the provisions of the said Act. Therefore, the Respondent's reliance on a supposed requirement of "Court permission" is misconceived and contrary to settled legal doctrine.
31. The question as to whether Shebait requires prior permission of a Civil Court for alienation, transfer, or development of private *Debutter* property is no longer *res integra*. This Court has, in a consistent line of authorities, held that no such prior sanction is necessary.
32. In *Shakuntala Devi Dalmia (Supra)*, it was held that where the Shebait acts for the benefit and preservation of the *Debutter* property, the municipal authority cannot insist on a Court order before considering a building plan. Similarly, in *Kunal Kumar Adhikary (Supra)*, the Hon'ble Division Bench of this Court reiterated that Shebait possesses inherent managerial authority to develop *Debutter* property for the welfare of the Deity. Again,

in *Risabh Ruia (Supra)*, it was held that the absence of a Civil Court order does not invalidate a development undertaken bona fide for the benefit of the idol.

- 33.** The consistent judicial view, therefore, is that the municipal or statutory authority has no jurisdiction to demand production of a Court order as a condition precedent for sanctioning development of *Debuttar* property. The enquiry of such authority must be confined to verifying compliance with building regulations, zoning laws, and other statutory requirements.
- 34.** Applying the above principles, it is evident that in the present case, the original Shebaites were the aforesaid three executors named in the Deed of Dedication, and upon their demise, the office of Shebaitship devolved upon their male heirs in accordance with the terms of the *Arpannama*. The current Shebaites are the lawful successors in office, and their authority to manage and develop the Deity's property flows directly from the instrument of dedication. It is neither alleged nor demonstrated by the Respondent Municipality that any rival claimants exist or that the Shebaites are acting contrary to the interest of the Deity. Moreover, it is not within the statutory competence of the Municipality to question the validity of the *Deed of Dedication* or *Rectification*. The role of the Municipality is purely administrative in nature, i.e., to scrutinize the building plan and ensure its conformity with municipal laws. It cannot assume or usurp the jurisdiction of a Civil Court by adjudicating upon matters pertaining to religious endowments.
- 35.** Learned Counsel for the Respondent has placed reliance on various judicial pronouncements. This Court is in respectful agreement with the legal principles enunciated therein; however, in view of the facts and

circumstances of the present case, the said decisions are distinguishable and hence not applicable to the present case.

- 36.** In light of the above discussions, this Court is of the considered view that the objections raised by the Respondent Municipality are unsustainable in law and unsupported by any statutory provision. The development proposed by the Shebait is not an act of alienation but one of preservation and beneficial utilization of the Deity's property. The insistence on obtaining a Court order prior to processing the building plan is, therefore, arbitrary and devoid of legal foundation. Accordingly, the Respondent Municipality is directed to forthwith process and consider the Petitioner's building plan application in respect of premises No. 59, Barrackpore Trunk Road, Paikpara, strictly in accordance with the applicable building laws and regulations, and to take a final decision thereon within a period of 8 weeks from the date of communication of this order.
- 37.** With the aforesaid observations and directions, the writ petition stands allowed.

(Gaurang Kanth, J.)