

ORDER SHEET

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

ATA/4/2023

JAYANTA LALL SEAL
VS
TRUST ESTATE MUTTY LALL SEAL

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 19th February, 2025.

Appearance:

Mr. Debmalya Ghosal, Adv.

Mr. Arnab Dutt, Adv.

...for the petitioner

Mr. Sandip Ghosh, Adv.

Mr. Sudarshan Roy, Adv.

Mr. Debayan Ghosh, Adv.

Mr. D. Majumdar, Adv.

Mr. Aziz Amin, Adv.

...for the respondent

The Court:- Mr. Debmalya Ghosal, learned Advocate, is appearing for the petitioner.

Mr. Sandip Ghosh, learned Advocate, is appearing for the respondent.

The petitioner has prayed for an order to appoint the petitioner as trustee in place and stead of deceased trustee Amiya Nath Sain for residual period of five years in the present board of trustee formed with effect from 21st February, 2022 ending with 20th February, 2027 as per the trust deed dated 27th January, 1947. Initially, the present application was taken up for hearing and by an order dated 12th July, 2024, this Court disposed of the present application by passing the following order :-

“In view of the above, the application being A.T.A. 4 of 2023 is disposed of directing the trust board, particularly the trustees appointed from the branch of Gobinda Lal Seal to consider and dispose of the application submitted by the

petitioner before them within one month from the date of communication of this judgment upon affording reasonable opportunity of hearing to the petitioner, in terms of the deed of trust.”

Being aggrieved and dissatisfied with the said order, the petitioner had preferred an appeal before the Appellate Court being APOT No. 299 of 2024. In an application being GA 1 of 2024 in APOT No. 299 of 2024, the Appellate Court by an order dated 18th September, 2024 has disposed of the said appeal by passing the following order :

“Accordingly we modify the impugned judgment and order dated 12th July 2024 by directing that the application (ATA No. 4 of 2023) would be pending. The decision of the board shall be placed before the court for consideration. Upon hearing learned counsel for the parties the application made thereafter be disposed of finally, as early as possible preferably by 29th November 2024, subject to the convenience of the Court.

Till the application is finally disposed of the tenth trustee i.e. Narendra Nath Seal should not participate in any meeting of the trustees. Any decision of the trust may be taken by nine trustees by majority.”

In terms of the order passed by the Appellate Court, the respondent has filed supplementary affidavit disclosing the Resolution No. T-16/M-64 dated 9th August, 2024 wherein the trustees have taken a decision which reads as follows:

They further submitted that the Trustees from the branch of Gobinda Lall Seal would be opportunity to be a Trustee. Admittedly, Jayanta Lall Seal was already a Trustee in the Board for the term 2017 to 2022, and there is a likelihood of his appointment in the next Board also considering the sequence of rotation. Henceforth, to give an opportunity to others who have not

yet been appointed for a longtime, Mr. Narendra Lal Seal should be appointed at the vacant post.

The other Members of the Board, save and except, Sri Golok Lal Seal have also accorded their consent for appointment for Mr. Narendra Lal Seal, in consonance to the submissions made by Dr. Puspen Lal Seal and Mr. Soumendra Lal Seal. Mr. Golok Lal Seal from the branch of Gobinda Lal Seal however, raised an objection to such proposal but without making any comments as to who should be the Trustee for the branch of Gobinda Lal Seal.

Therefore, to summarise the statements of the Trustees present, it appears that out of 9 Trustees present in today's meeting 8 members have supported the appointment of Mr. Narendra Lal Seal by adapting and accepting the reasoning of Dr. Puspen Lal Seal and Mr. Soumendra Lal Seal. Accordingly, the application of Jayanta Lal Seal dated 02.06.2023 for the appointment of Trustee stand disposed of.

It is therefore resolved that 'Mr. Narendra Lal Seal be appointed as the member of the Board for the residuary period of 2022 to 2027, in place and stand of the vacant post upon death of Amiya Nath Sain. The Manager of the Trust present in the meeting is hereby requested to issue necessary letter of appointment to Mr. Narendra Lal Seal at once.

The petitioner has filed exception to the said supplementary affidavit taking the exceptions by stating the following:

- (a) Nobody from the sons / branches of Gobinda Lal Seal is eligible to be appointed for the vacant post if anybody from the said branch is already functioning in the present / existing Trust Board.*
- (b) The present trustees have no right or power to select any Trustee in the branch of Gobinda Lal Seal as per the provision of trust and the Trustees of the said branch shall be appointed in every 5 years by rotation from the family branch of Gobinda Lal Seal and this rotation shall*

commence with the eldest son. The said provision should also be followed in case of demise of any trustee in the middle of any term.

- (c) The submission of Dr. Pushpen Lal Seal and Mr. Sounmendra Lal Seal who stated in support of their contention as per Trust Deed is to some extent correct in the sense that the vacant post due to death of one of the four trustees can be filled up only by the brothers started from the eldest as per the sequence of that person family falling therein but in the present case there is no other male family members of the said branch of Johurlal Seal from whom the deceased Trustee Amiya Lal Seal is coming, consequently the submission of the Dr. P. L. Seal and Mr. S. L. Seal can not be adopted in this particular case.*
- (d) It is apparently wrong in appointing Narendra Lal Seal from the branch of Brojo Lal Seal again as there is an existing Trustee of the said branch i.e. Party No.5 herein.*
- (e) It is worthless in discussing about the 5th Generation of Mutty Lal Seal as there is no such scope of provision in the Trust Deed. It is also confusing without mentioning any names actually who are the living members of 5th Generation of Mutty Lal Seal in the branch of Gobinda Lal Seal. Both Pashupati Lal Seal from the branch of 5th son and/or Kanak Lal Seal from the branch of 4th son Bolye Lal Seal were in the Board of Trust in the last term of 2017-2022 and they did not also apply for Trusteeship of the vacant post. The present Trustees for nothingly discussed the said issue in the resolution and I surmise that those discussion will hold good no purpose.*
- (f) It is stated that Golok Lal Seal has rightly raised objection in the appointment of Mr. Narendra Lal Seal. In as much as there is a provision for appointment by rotation Mr. Golok Lal Seal is right in committing any names of the Trustee to keep his generousness.*

(g) Mr, Narendra Lal Seal from the branch of Brojolal Seal has therefore no right to be selected as a Trustee for the vacant post on the demise of Amiya Nath Sain.

Counsel for the respondent submits that after the death of Amiya Nath Sain, as per by rotation based on sequence and as per seniority after the branch of Johar Lall Seal, the branch of Bolye Lall Seal should come. He submits that Narendra Lall Seal (5th Generation) Member of the senior most from the branch of Bolye Lall Seal has been nominated and accordingly out of 9 trustess, 8 turstees have agreed to appoint Shri Narendra Lall Seal being the trustee in place of Amiya Nath Sain.

Counsel for the respondent submits that the petitioner Jayanta Lall Seal, hailing from the branch of Manik Lall Seal, being the 6th generation, junior to Narendra Lall Seal (5th Generation) should not have been nominated, inasmuch as, Kanak Lall Seal, hailing from the branch of Bolye Lall Seal also could have been nominated in the Board of 2022-27 after demise of Amiya Nath Sain. He submits that Kanak Lall Seal did not apply for trusteeship because he was there in the earlier Board along with Jayanta Lall Seal from the tenure 2017-2022. Learned Counsel for the respondent submits that the petitioner Jaynata Lall Seal was the trustee for the year 2017-2022 and as such, the Board has taken a decision that he cannot be repeated as a trusteeship after the death of Amiya Nath Sain and Jayanta Lall Seal will get his opportunity of the trusteeship in the said trust from 2027-32.

Per contra, learned Advocate appearing for the petitioner submits that the resolution taken by the trustees is in violation of the trust deed. He submits that Amiya Nath Sain being the branch of Johar Lall Seal died who

was the trustee for the year 2022-27, there is no legal heirs of Johar Lal Seal after the death of Amiya Nath Sain, now the trust has to decide who will be the trustee in place of Amiya Nath Sain as per rotation sequence and seniority.

Counsel for the petitioner has drawn the attention of this Court to the chart of the legal heirs of Gobinda Lal Seal wherefrom it reveals that Peary Lal Seal is the senior most. Subsequently, the Peary Lal, the second one is Brojo Lal, third one is Manik Lal, fourth is Bolye Lal, fifth is Amrita Lal, sixth is Koonja Lal and seventh is Gosto Lal and eighth is Johur Lal. Now, no legal heirs of the Johur Lal family is available after the death of Amiya Nath Sain. Now, the seniority has to be taken into consideration from Peary Lal onwards. The legal heirs of Peary Lal and Brojo Lal are already in the trust as trustee. The petitioner is the legal heirs of Manik Lal who is 3rd in seniority but the respondents have chosen not to appoint the petitioner Mr. Jayanta Lal Seal who is the heir of Manik Lal but have taken a decision for appointment of Narendra Lal Seal who is the legal heir of Bolye Lal Seal who is coming 4th in seniority by rotation.

Learned Counsel for the respondent submits that Narendra Lal is the senior in age and as per the deed, seniority and the sequence has to be taken into consideration. He submits that the trust has taken into the sequence and the seniority and found that Narendar Lal Seal was the senior most than Jayanta Lal Seal. Thus, the trustees have appointed Narendra Lal Seal ignoring the candidature of Jayanta Lal Seal.

The relevant clause of trust deed shall be read as follows:

Be it known that the Trustees appointed shall duly carry out the directions contained in the said Trust, and on the expiry of every five years, new Trustees

shall be appointed. And the newly nominated Trustees shall, as Trustees, remain in the possession of the said properties vested with rights of this Deed of Trust. Save and except the period when Srijukta Babu Krishna Lal Seal shall remain a trustee, the total number of trustees shall not be more than 10 (ten) persons at other times. Three persons from the family branch of late Panna Lal Seal, four persons from the family branch of Gobinda Lal Seal and three persons from the family branch of late Kanai Lal Seal shall be appointed Trustees. The Trustees shall be appointed by "Voting" in the manner of election, from out of the family branches of the late Panna Lal Seal and the late Kanai Lal Seal, but be it known that the three Trustees appointed from the family branch of the late Kanai Lal Seal shall be competent to act as Trustees as long as they are alive, should they so desire. (Seal of the Collectory of Stamp Revenue, Calcutta) Trustees shall be appointed every five years by rotation (by rotation) from the family branch of Gobinda Lal Seal and this rotation (rotation) shall commence with the eldest son.

In respect of nomination of Trustees after every five years the then Trustees shall inform election of Trustees (Election of Trustees) by duly registered notice to every Settler of family branch, or his heirs for the time being, at least three months before the expiry of their term of appointment. About election of trustees (they) shall inform only those whose term will come by rotation (by rotation) at the time of election of Trustees in the family branch of the late Gobindalal Seal only, and those who will be appointed Trustees shall carry on the duties according to the directions of this Deed of Settlement. (Seal of the Collector of Stamp Revenue, Calcutta) While acting as a Trustee, if any Trustee dies, or if he becomes incapable of acting (so) for any reason, or if he falls ill, or he goes out of British India and

resides (there), or if he retires, or expresses unwillingness to act in that case he, whose post as a Trustees will fall vacant on the aforesaid grounds, shall be competent to nominate one from the heirs of the late Motilal Seal as a Trustee in his place, should he so desire it. If, however he does not nominate anybody within a month in that case, the members of the family branch in which the post of Trustees falls vacant shall nominate a representative of them within (30)thirty days. If in the family branch of the late Gobindalal Seal, any post, of the four (posts of) Trustees becomes vacant on the aforesaid ground, in that case that post shall be nominated according to seniority only by a person who is a member of that person's family and (who is) eldest in age, either the brothers, or in their absence the eldest of the sons or of their descendants.

As per the clauses of the trust deed if the family branch of late Gobinda Lal Seal, any post of trustees became vacant, in that case the post shall be nominated according to seniority only by a person who is a member of the persons family and who is the eldest in age either the brothers or their absence the eldest of the sons of their descendants. In the present case, the trustees have taken a view that Narendra Nath Seal is the senior in age but the trustees have not taken into consideration that the family of the Manik Lal Seal who is number three in the seniority amongst the legal heirs of Gobinda Lal Seal. If the Manik Lal as 3rd seniority is to be taken into consideration, the petitioner will be the senior most than Narendra Nath Seal and if the Manik Lal's seniority is to be taken into consideration then the petitioner will be fitted in the vacant post of trustee instead of Narendra Nath Seal as per rotation, seniority and sequence.

Counsel for the respondent has submitted that this translated version is not correct to that of the Bengali version. This Court finds that since the

year 2023, the case is going on but the said objection has not been raised and this translated copy has also been relied by both the parties in the Appellate Court also.

Considering the above this Court finds that the decision taken by the trustee by a resolution dated 9th August, 2024 by appointing Narendra Nath Seal is in contravention to the trust deed by ignoring the candidature of the petitioner. Accordingly, the resolution dated 9th August, 2022 with respect of appointment of Narendra Nath Seal is set aside. Accordingly, the trustees are directed to immediately convene a meeting and take appropriate decision for appointing the petitioner in terms of the trust deed by maintaining rotation, sequence and seniority for the remaining tenure of 2022-27.

ATA/4/2023 is disposed of.

(KRISHNA RAO, J.)