IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-04-2025

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THE HONOURABLE MR JUSTICE S. S. SUNDAR

A No. 1905 of 2025

1. Administrator General and official
Trustee of Tamil nadu
High Court, Chennai 600 104.

Applicant(s)

Vs

Mr.Vishal S.Ved Respondent(s)

For Applicant: Mr.D.Lingeswaran, AG&OT

For Respondent : Mr.A.K.Shriram, Senior Counsel
for Mr.Anish Gopi

ORDER

(1)This application is filed by learned Administrator General and Official Trustee [AG&OT] to permit learned AG&OT to pay the entire approved cost of constructions and other expenditures in one installment from the funds of the Trust Estate of Jamuna Bai or in the alternative, to permit the learned AG&OT to pay 50% of the rental income every month to the respondent to offset the cost fo constructions and other expenditures totaling Rs.1,42,83,260/- incurred by the respondent until the said amount is fully repaid.

(2)In the counter affidavit, a few allegations were made regarding financial management. It is further stated that this Court has earlier permitted the respondent to reconstruct the building and to receive 50% of the rent received from the building. The respondent relied upon the proposal submitted by him on 13.07.2022 and the subsequent order dated 22.02.2023 in Application No.3211. It is his contention that, due to his substantial investment towards redevelopment of the property, he is entitled to 50% of the rental income derived from the property and that out of 50% of the remaining share payable to the Trust Estate, the respondent is entitled to appropriate the same until the he offsets his construction costs towards redevelopment of the property and thereafter, he will remit the remaining 50% of rent towards the Trust Estate's account. In other words, it is the case of respondent that he would be entitled to the entire rental income from the property for a few months, until his construction costs are offset, and that thereafter, he is entitled to 50% of rent. He then claimed that he had spent Rs.1,70,43,700/- towards reconstruction. Learned Senior Counsel appearing for the respondent reiterated the points raised in the counter and opposed the application.

(3)Brief facts that are necessary for the disposal of this application are as follows:-

(4)One Smt.Jamuna Bai, wife of Tahkar Ramdas Kanji, executed her last Will and testament dated 28.08.1905. Under the Will, she created a Trust [known as Smt.Jamuna Bai Trust] and nominated her brother Sri.Ramji Kalianji as beneficiary of the Trust and as the sole Trustee to carry out the objects of the Trust as specified in the Will. After the death of Jamuna Bai on 28.08.1905, the testatrix and the original trustee by name Mr.Ramji Kalianji, there had been a dispute among the children of Mr.Ramji Kalianji, which led to filing of OP.No.88/1960.

(5)By order dated 23.09.1960, the Official Trustee was appointed as sole custodian to manage the properties and to administer the affairs of Jamuna

Bai Trust. The respondent herein, who is also one of the beneficiary of the Will executed by the testatrix Jamuna Bai, filed an application in A.No.283/2021 seeking permission to effect demolition and reconstruction of the building in the property bearing door No.151A, Mint Street, Sowcarpet, Chennai-79 and thereafter, apportion the rental income derived from the lease of the portions in the reconstructed building in a fair and equitable manner so as to expeditiously offset the cost of construction expended by the Applicant.

(6)Not only in the prayer but also in the application, the respondent sought permission from this Court to demolish and reconstruct at his cost and to apportion a portion of the rental income towards cost of construction. The application was not for sharing the income or for permitting to make investment to get return out of such investment. In the application, this Court, while permitting the respondent to demolish and reconstruct, observed that the respondent is entitled to get 50% of the rent received from prospective tenants after completion of the construction (till the construction cost is offset).

(7)Paragraph No.4 of the order dated 01.07.2022 in A.No.283/2021 reads as follows:-

"4.IN view of the submissions made by the learned counsel for the applicant and the learned AG&OT and also taking into consideration the averments stated in the affidavit filed in support of the application, I permit the applicant to demolish and reconstruct the building in the property bearing Door No.151A, Mint Street, Sowcarpet, Chennai 600079. So far as the lease of the portions in the reconstructed building is concerned, the applicant shall file appropriate application before this Court after completion of the construction. I make it clear that the applicant is entitled to get 50% of the rent received from the building to be constructed in the above said property."

(8)Subsequently, the respondent filed an application in A.No.3211/2022 to consider the proposal regarding the manner of development in the property and the division and appropriation of the rents to be derived as per the proposal submitted by the learned AG&OT dated 13.07.2022. This Court on the basis of the submissions of the parties, recorded no objection of learned AG&OT and granted the relief sought for by the applicant.

(9)In the order dated 22.02.2023, while disposing of A.No.3211/2022, this Court passed the following order:-

> *"3.In view of the submission made by the parties, this application is ordered as prayed for. The parties have agreed for the terms and conditions as per the proposal dated 13.07.2022. The learned AG&OT is expected to make an application for planning permission before the authority concerned, who shall process and sanction the plan within a period of one month from the date of making such application. On getting proper sanction, the applicant is expected to complete the construction without any deviation/violation, within a period of 15 months from the date of sanction of the plant. It is reiterated that the construction should be in accordance with the plan that will be sanctioned."*

(10)It is by virtue of the order dated 01.07.2022 in A.No.283/2021 and the order dated 22.02.2023 in A.No.3211/2022, the respondent has raised an objection and pleaded that he is entitled to 50% of the income.

(11)Referring to his letter dated 13.07.2022, the respondent wanted specific directions for disbursement of 50% of the total monthly rent received in respect of the property and the remaining 50% to be transferred to the Trust account every month. The respondent states that out of the remaining 50% of the amount to be transferred to the Trust account should be utilised towards cost of construction, i.e, to offset the cost of construction.

(12)This Court, having regard to the admitted facts is surprised to note the change in the attitude of the respondent herein. This is probably on account of lack of clarity in the orders passed by this Court earlier in A.No.283/2021 and A.No.3211/2022 dated 01.07.2022 and 22.02.2023 respectively. The order passed by this Court in A.NO.283/2021 cannot be interpreted in the way in which the respondent tries to interpret now before this Court.

(13)This Court has carefully gone through the affidavit filed by the respondent in A.No.283/2021 dated 11.01.2021. While seeking permission from this Court for demolition and reconstruction, the applicant estimated the cost of construction at Rs.1.50 Crores. In the application, learned AG&OT was shown as respondent.

(14)It is very interesting to note the tenor of the application in A.No.283 of 2021. The real purpose and object behind the application can be gathered from paragraphs No.8 to 11 in A.No.283/2021. It is relevant to extract Para Nos.8 to 11 which read as follows :

"8. I state that after continued efforts and filing of very many applications by the tenants, ultimately, orders were passed by this Hon'ble Court in both the Applications, consequent to which, the tenants were given time within which they were to vacate the premises. The tenants accordingly vacated the premises also. During the hearing of the Application Nos.5364 of 2011 and 4174 of 2012, I also gave a proposal in relation to the proposed demolition and reconstruction at a total cost of Rs. 1,15,12,800/-. 1 state that after making provision for our residence in the property, I also proposed giving on lease various shops either to the tenants who were already in occupation or to new tenants and to apportion the rental income derived in the ratio of 75% in my favour and 25% to the Official Trust, so as to offset the cost of construction expended by me. I state that the proposal was given a few years back and taking into consideration the escalation in cost of materials and other inputs, the present cost of construction in terms of the plan already submitted, will be around Rs. 1,50,00,000/-

9. I state that this Hon'ble Court while deciding Application Nos.5364 of 2011 and 4174 of 2012, directed the

Official Trustee to consider the proposal. Consequently, I pursued the proposal with the respondent and attended several meetings in his office. The Official Trustee, after scrutiny of the proposal, would state that from the rental income derived, I would at best be entitled to 20%. This calculation was done by the Learned Official Trustee on the basis that the share in the rental income proportionate to the value of the land should be remitted to the Learned Official Trustee and the share in the rental income proportionate to the value of the construction should be taken by me. In effect, I would be entitled to around Rs.20,000/- per month from the rental income. Repeated requests to the Learned Official Trustee to apportion the rental income in a better manner taking into consideration the huge sum proposed to be invested by me towards construction were not fruitful. If the said proposal of the Learned Official Trustee is accepted, I would be able to offset the construction cost of more than Rs. 1.50 crores in 750 months, that is, spread over a period of over 60 years, not taking into construction the interest on the said sum.

10. I state that the very premise on which the calculation was so made by the Learned Official Trustee is erroneous. The market value of the land would not be of relevance while *apportioning the rental income derived. The property was vested in the Learned Official Trustee in the year 1964 and the Learned Official Trustee is attempting to bring in the concept of Joint Development Agreement and on the said premise, seek for apportionment of the rental income derived. The correct procedure to be applied would be to ensure that the cost of construction of the building is recovered first by me when I am investing more than Rs. 1.50 crores for the building. The issue to be addressed is only in relation to offset the cost of construction and I am not a developer or a Joint Venture Partner. The portion of the rent paid to me will only be against the expenses incurred by me for effecting construction and I will not be deriving any income by lease of the commercial portions. I will not also be entitled to any share in the development but will only be entitled to a right of residence. The Official Trustee was collecting around Rs. 15,000/- as rent from the tenants who have since vacated and on reconstruction, even 25% of the rental income will exceed the said sum and the Trust will derive the benefit without spending one rupee from the Trust fund, with all the efforts for construction being put in by me. Therefore, the very premise on which calculation was done by the Learned Official Trustee is fallacious and the concept of apportioning the rental income on the basis of the* *value of the land and the cost of construction is neither fair nor justified.*

11. I state that I have vacated the portion under my occupation in the property and shifted to a rented premise to facilitate demolition and reconstruction. My application for reimbursement of the rent paid for the tenanted premise under my occupation is pending for more than one year and only now the Learned Respondent has filed his report. There has been absolutely no progress in the demolition and reconstruction of the building in the property and the Learned Official Trustee has not taken any step in this regard. It is in these circumstances that I am constrained to file the present application praying for appropriate directions. I state that it is only by reason of the inaction on the part of the Learned Respondent who took no steps to ensure that the building, which was 130 years old and in a dangerous and hazardous condition, was demolished and reconstructed, firstly, to ensure safety and secondly to ensure that the property fetches optimum income for the Trust that we were constrained to initiate action. The action taken by us h also been scuttled by reason of the unreasonable proposal of the Learned Respondent. The Learned Respondent during the course of discussing the *proposal would also state that if I do not accept his unreasonable proposal and effect demolition and reconstruction at my cost, it will be reimbursed in a period of over 60 years, he would take his own time in preparing a proposal for demolition and reconstruction in the property. It is relevant to point out that a sum of more than Rs.2.50 crores is available in the Trust, which is lying idle and if the property is effectively developed and rented, it would derive substantial income to the Trust. The Learned Respondent could have taken steps to give a proposal to do the demolition and reconstruction out of the funds available and lying idle so as to enhance the value of the property for rental income, which he has failed to do. On the other hand, the effort taken by the beneficiary is also being blocked by reason of the unreasonable proposal of the Learned Respondent. In such circumstances, it is for the Learned Respondent to explain as to how he expects a prudent and sensible person to come forward to develop the properties on the terms set out by him."*

(15)Beyond all that, the respondent has stated in paragraph No.12 that he will not claim any right over the building that is being constructed in the property other than apportionment of the rent derived to offset the cost of construction expended by him. Therefore, the earlier order dated 01.07.2022 in

A.No.283/2021 and the order dated 22.02.2023 in A.No.3211/2022 in OP.No.88/1960 cannot be interpreted as it has now been attempted by the respondent. The respondent, first of all, is estopped from pleading something different from what which he has stated in his application while getting permission from this Court for demolition and reconstruction of the building at his cost.

(16)During the course of hearing the applicant submitted that the respondent has also now put up an additional construction in the 2nd floor. Even though this contention is denied by the learned Senior counsel appearing for the respondent, this Court for the present is not dealing with this issue.

(17)However, having regard to the attitude and conduct of the respondent in his counter, this Court has no hesitation to record that any such construction is indulged without the permission of this Court, it is illegal.

(18)Learned AG&OT is permitted to file appropriate application before this Court at a later point of time and this Court will pass appropriate orders later. As far as present application is concerned, this Court has noticed the attitude of the respondent and hence, it is not advisable to share the income by way of rent. Since it is stated that the Trust has sufficient funds to pay the entire amount that was spent by the respondent towards cost of construction, this Court permits the learned AG&OT to pay the entire cost of construction and other expenditures in one instalment from the funds of the Trust Estate of Jamuna Bai.

(19)The further question arises for consideration is the actual cost of construction. Even though the respondent has filed an independent application claiming a sum of Rs.1,70 Crores, learned AG&OT has some objections and according to the learned AG&OT, the cost of construction may not be more than Rs.1.42 Crores. There is a difference in assessment. This may be due to difficulties of the respondent in producing all the recent vouchers for the entire construction. The construction is not confined to the ground floor, but also to the first floor consisting of the residential units.

(20)This Court, without going into the actual cost of construction, directs learned AG&OT to pay a sum of Rs.1.70 Crores along with interest at the rate of 12% per annum as interest from the actual date of expenditure as may be submitted by the respondent, without prejudice to the rights of Trust to recover any difference in a separate application to fix the actual cost.

(21)The respondent is permitted to submit a tentative work done statement showing the date of such expenses so that interest at 12% per annum can also be calculated. However, since the dispute as regards the actual cost of construction is not decided, this order is without prejudice to the rights of the Trust estate to fix the actual cost of construction. In other words, learned AG&OT is permitted to file an application to fix the actual cost of construction. When this Court decides the actual cost of construction in the application that is to be filed by learned AG&OT, the respondent herein will be directed to refund the amount that has now been paid to him in excess by virtue of this order along with interest.

(22)With the above direction, the application stands **disposed of.**

29-04-2025

AP
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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S.S.SUNDAR J.

AP

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