

ED-2544

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PETITION: ED 2544/13

District: South 24 Parganas

In the Court of the District Judge at Alipore.

Misc. Case No. 35 of 2012

Present: Sri S. Ahluwalia District Judge

Sri Pronay Kumar Basak and 3 others.....petitioners.

Order No. 13 dated 10.5.2013

The shebait/petitioners file hazira. They file documents by a firisthi.

Heard the learned advocate for the Shebait/petitioners. This case has its origin in an application under section 34 of the Indian Trust Act, 1882 filed by the shebait/petitioners praying for permission to develop the debuttar properties mentioned in the schedules of the application and further permission to sell the newly constructed building(s) /flat(s) to the intending purchaser(s) and to create a fund for the maintenance and preservation of the existing building of the Deity Sri Sri Iswar Balaram Jiu Thakur situated at Kailash Dham of 7, Harish Chandra Paul Lane, Kolkata-700050.

The fact of the case is that the premises No.7, Harish Chandra paul lane, police station Sinthi, District South

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Application.....	5-12
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24 Parganas and 6/1, Harish Chandra Paul Lane as mentioned in the schedules 1 (A), 1 (B) and II of the application purchased by one Sarba Ranjan Basak, since deceased. He constructed a two storied building in the first portion of premises No. 7 Harish Chandra Paul Lane and established the deities at there ~~and~~ and named the building as "Kailash Dham". Then he performed the daily Seva Puja and other festivals of the deity as Shebayet. The property mentioned in the schedule II of the application is a vacant land having an area of 5 Bighas 4 cottahs and 13 Chittaks more ~~xx~~ or less.

He created a registered deed of trust on 20.2.1959 in respect of the said properties mentioned in schedule \*1 (A), 1 (B) and II including many others as mentioned in the paragraph No. 4 of the application and appointed himself as sole trustee of the deity. During his life time he was the sole shebait and sole trustees of the said trust properties. He died on 2.6.1960 leaving behind his last will and testament dated 21.2.1959 and whereof he appointed his only son Biswa Ranjan Basak as sole Shebayet of the Deities. After the death of the settler, his son Biswa Ranjan Basak



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became the sole Sebayet of the Deities and sole trustee of the said estate. He also performed the seva Puja of the DEities from the income of the said trust estate. He died on 20.8.1980 leaving behind a will dated 10.12.1970 in favour of his two nephews namely (1) Bijal Kumar Basak and (2) Badal Kumar Basak.

During the Shebaitships by Bijal Kumar Basak and Badal Kumar Basak, they executed a scheme of management of the Debut-tar trust estates on 12.1.1996 and framed certain rules and regulations so that the seva Puja and other performance of the trust estate can be performed by their legal heirs smoothly. In the said scheme they appointed (1) Sri Pronay Kumar Basak, (2) Sri Utpal Kumar Basak, (3) Sri Swapan Kumar Basak all sons of Bijal Kumar Basak and (4) Sri Subrata Basak S/o Badal Kumar Basak as the Shebaites of the Deities and trustees of the trust estate. Bijal Kumar Basak died on 1.6.1996 and Badal Kumar Basak died on 29.4.1998. Thus the petitioners have become the shebaites and trustees of the deities and trust estates.

The property mentioned in the schedule II of the application is completely vacant and having no income.





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at all. A portion of those property had already been occupied by a local club. For eviction of the said club a Title Suit being its No.T.S. 101 of 2003 was filed before the Civil Judge Jr. Divn. 2nd Sealdah. The said suit was disposed off on compromise. The said club had surrendered the remaining vacant portion of 6/1 and 7, Harish Chandra Paul Lane in lieu of 5 Cottahs 10 Chittacks land at premises No.6/1, Harish Chandra Paul Lane and a registered compromise lease deed for 99 years had also been executed to that effect. As such there is still vacant land of 5 Bighas 4 cottahs 13 chittack in the premises No. 6/1, Harish Chandra Paul Lane.

The total land in the schedules 1(A) and 1(B) is 25 Cotthas 9 chittaks, i.e. 18405 sq. ft. The temple of the Deities is situated in the front portion of the premises No.7, Harish Chandra Paul Lane which is known as Thakurbari, measuring about 8085.49 sq.ft. There are two blocks viz. Block A and Block B. The front portion is in the Block A. The back portion of the said premises is Block B. Both the portions are in dilapidated conditions. A huge amount is required for the renovation/reconstruction of the said buildings. But the Deities have no fund and also no income wherefrom such huge expenses shall



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be paid out. Moreover, the Kolkata Municipal Corporation has also declared the Thakurbari in the front portion of Block A of the said premises as a heritage building under Grade IIA. The C.M. C. also directed the shebait to engage the empanelled conservation architect to prepare conservation proposal for restoration of Thakur Dalan. The architect prepared restoration strategies and estimated a sum of Rs.80,50,826/- is required for a restoration, renovation and reconstruction of Thakurbari as on 12.12.2010. As the Deities has no fund for expenses of such huge amount, the she bairis proposed the K.M. C. for new development in the adjoining land i.e. in block B by demolishing the existing structures, constructions and to construct of new building (S)/flat(s) therein and also in the land of schedule II of the application with a view to sell out the same and to create a fund from the profit wherefrom the cost of renovation, repairing of Thakurbari could be done. The K.M. C. also accepted the said proposal and requested the shebait to prepare and to submit the same by their letter No. PMU/047/11-12 dated 4.7.2011.

Thereafter, the shebait/petitioners with the help of the architect proposed and estimated that



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- a) The existing heritage building in Block A having 8085.49 sq.ft. may be renovated/repaired. The restoration cost of which would be Rs.80.50 lakhs (approx).
- b) In the Block B there are 32,303 sq.ft. space as per present K. M.C. Building Rules and the total newly construction cost of building(s)/flat(s) thereon would be Rs.460.90 lakhs, As such total construction costs of Heritage Building, in Block A and new constructions in Block B would be Rs.541.40 lakhs (approx). The total sale price of the new construction building(s)/flat(s) would be Rs.888.34 lakhs (approx) As such there would be a profit of Rs.346.94 lakhs (approx) and that would be invested in the debutter estate of the Deities.
- c) Similarly, the measurement of the property as mentioned in schedule II of the application is 75465 sq.ft. As per K.M.C. Building Rules total 1,66,480 sq.ft. would be the sanction area and the total construction cost would be Rs.2212.25 lakhs (approx). The total sale price of the said premises would be Rs.4578.20 lakhs (approx). As such there would be a profit of Rs.23,65.95 lakhs (approx.) and that would be invested in the debutter estate of the Deities.

As such the total profit from both the schemes would be





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Rs.2712.89 lakhs (approx.) and the shebait/petitioners are agreed to deposit the said profit in the Debutter savings Bank Account No. 31504994136 with S.B.I., South Sinthi Branch for the purpose of preservation maintenance and daily seva Puja and festivals of the Deities and also to maintain the Debutter estates. The Shebait are ready and willing to construct the building(s)/flat(s) after obtaining the necessary permission from the K.M. C. Hence, the application.

To avoid complication, the shebait took steps for publication of a notice on 28.1.2013 in the "Bartaman" Patrika a daily Bengali newspaper, expressing their intention and inviting objection if any, from any corner. But no body has come forward challenging ~~the~~ such prayer of the shebait/petitioners.

The present application is supported by an affidavit, Moreover, on 23.4.2013 the Shebait/petitioners filed their evidence under order 18 Rule 4 of the Code of Civil Procedure and documents viz. (1) Certified copy of purchase deed dated 8.3.1929 in the name of Sarba Ranjan Basak, (2) Original deed of trust dated 20.2.1959 executed by Sarba Ranjan Basak (3) Two tax bills of K.M.C. (4) Death certificates of Sarba





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Ranjan Basak, Viswa Ranjan Basak, Bijal and Badal Kumar Basak (5) probated wills of Sarba Ranjan Basak, Biswa Ranjan Basak, (6) Deed of management of Trust executed by Bijal and Badal Kumar Basak, (7) Letter issued by the K.M. C. declaring the Thakurbari as Heritage building (8) Strategic report of the architect, (9) Letter of acceptance dated 6.6.2011 by K.M..C. and (10) Savings Bank Pass Book in the name of Deities of S.B.I.

Having perused the application, evidence and other documents mentioned above, this court is of view that the prayer of the shebait/petitioners for permission to develop the debuttar properties mentioned in the schedules of the application and further permission to sell the newly constructed building /flat(s) to the intending purchaser(s) and to create a fund for the maintenance and preservation of the existing building of the Deities should be required to be allowed for the benefit and welfare of the Deities.

Hence it is,

ORDERED

That the Misc. Case No. 35 of 2012 is allowed. The Shebait/petitioners, are permitted to get the property mentioned in the schedules of the application developed by themselves,







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excepting the area of Thakurbari measuring of 8085.49 sq.ft which has already been declared as Heritage Building by the K.M.C.

They are also permitted to sell out the building(s) /flat(s) after construction as per Rules of the K.M. C. to the intending purchaser(s) on condition that prior to execution of proposed sale deed(s) to the intending purchaser(s) 20% of the profits of each flat after adjustment of the proportionate costs of construction and renovation cost of the Heritage building shall have to be ~~deposited~~ deposited in the name of the Deities interm deposit scheme with the S.B.I. south ~~h~~ Sinthi Branch as reserve fund.

The draft Kobala(s) shall have to be approved by this court and the said receipt shall have to be shown at the time of approval of the draft Kobala(s). A statement of account shall have to be shown as and when it will be directed.

Liberty is also given to the shebait(s) to collect the interest from the said Reserve Fund on half-yearly basis but in no circumstances the principal amount of reserve fund shall be withdrawn without permission of this court.

D/C by me.  
Sd/S. Ahluwalia D.J.

Sd/S. Ahluwalia  
District Judge . South 24 Pgs.

T ped by  
Rajesh Poddar  
24. 11. 13



*A. S. M.*  
*27/5/13*

Compared by  
*Puranjoy Majumdar*  
Comp. Clerk  
District Judge's Court  
Alipore, 24-Pargans (S)

