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DISTRICT : SOUTH 24- PARGANAS.

IN THE COURT OF THE DISTRICT JUDGE AT ALIPORE.

MISC. CASE NO. 144 of 2012

1. Sri Sunil Kr. Bhore, 2. Sri Ajoy Kr. Bhore, 3. Sri Asit Kr. Bhore and 4. Sri Sandip Kr. Bhore.....Petitioner/shebait

Present: Sri S.P.Chowdhury, District Judge.

Order No. 17 dated 02.12.2014

The petitioners/ sebaits file a petition for put up the record and for taking up its hearing. They also file their evidence under Order 18, Rule 4 of the Code of civil Procedure and documents by a firisthi.

The prayer fo the petitioners/ sebaits is allowed. The case record is placed and taking up for hearing.

Heard the learned Advocate for the petitioners.

This case has arisen out of an application under section 36 of the Indian Trust Act filed by the petitioners/ sebaits for permission to develop the property as noted in the schedule of the application with the intending developer in terms of agreement of development dated 11.07.2008 and dated 03.05.2013.

The petitioners have filed documents viz. (1) original deed of trust, (2) counter part of rent receipts issued

Applicant	522
Proposed by	14.00
Approved by	14.00
Specifying	1.00
Working	43.00
Other	



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to the tenants (3) original death certificate of Chandra Sekhar Bhore, (4) original development agreement dated 11.7.2008 with Gaya Prosad, (5) supplementary development agreement dated 03.05.2013 and (6) Municipal tax receipts of the property of the deities.

The fact of the case, in short, is that the petitioners are the present shabaitis of the deities, Sri Sri Laxmi Mata Thakur and Sri Sri Mongal Chandi Mata Thakur. The said deities have a property mentioned in the schedule "A" of the application. One Chandra Sekhar Bhore, the predecessor-in-interest of the present petitioners/ shabaitis was the sole shabaitis of the aforesaid deities.

The deities property is ~~an~~ one storied building on a land measuring about 7 cottahs 7 chitaks 0 sq. ft. land and that has been recorded as 93 & 94, Manicktala Main Road, Kolkata 700054 in the records of the Kolkata Municipal Corporation. There are 14 tented shop rooms on the said premises. The deities building is now in dilapidated condition. Out of 14 tenants 8 tenants are paying monthly rent aggregating to Rs. 1400/- p.m. Remaining 6 tenants do not pay the monthly rents. At present it has become a burden to them because of

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rapid rise of price index and rise of Municipal taxes as the income from the property is very meager. Moreover, the building is in dilapidated condition and it requires immediate repairing. But the deity has no fund to meet up the expenditures for repairing works. As such the predecessor-in-interest, namely Chandra Sekhar Bore decided to get the property developed by developers (1) Gaya Prasad Shaw and (2) Bimal Ch. Dey and an agreement was made in between themselves on 19.07.2004. Subsequently, Bimal Ch. Dey did not incline to develop the said land and he relinquished all his right and interest in the said development agreement. Thereafter, Chandra Sekhar Bore died on 21.05.2008 and due to his demise and owing to relinquishment of right of Bimal Ch. Dey, it was necessitated for execution of a fresh development agreement amongst the present petitioners/ sebaits and Gaya Prasad Shaw. Accordingly, another fresh development agreement had been executed in between the present sebaits and said Gaya Prasad Shaw on 11.07.2008. Thereafter, said Gaya Prasad Shaw died intestate on 04.02.2013 leaving behind him his son namely Sri Varun Jaiswal who had stepped into the shoes of his father and had taken over the business of his father for con-

On

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struction and development of building. Accordingly another supplementary agreement had also been executed in between the petitioners/ sebaits and said Varun Jaiswan on 03.05.2013 in the same terms and conditions of the earlier development agreement.

As per terms and conditions of the said development agreements the petitioners/ shebaits shall get 50% of the total construction area of the entire 3rd floor and 4th floor fo the proposed building and 50% of the rest construction area except the 1st floor and 2nd floor of the said building. The 1st floor and 2nd floor of the proposed building shall get the developer. It was further agreed that the developer shall make deposit a sum of Rs. 8,10,000/- with the sebaits towards the amount of adjustable security amount and that shall be paid before starting the construction after obtaining sanctioned building plan from the K.M.C. The said security deposit shall be refunded by the petitioners/ sebaits to the developer at the time of making over the 50% of the deities allocation of the constructed portion. In case of failure and neglect of refund money, the developer shall get further 500 Sq. ft. floor area from the allotted portion of the sabaits. The petitioners/ sebaits have also expressed their



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desire that court may impose any other conditions as would be best and proper to protect the interest of the deities. Hence, the application.

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To avoid complication, the petitioners/ Sebaitis took steps for publication of a notice on 14.01.2013 in the "sam-bad Pratidin", a daily Bengali newspaper, expressing their intention to develop the said property and inviting objection if any, from any corner. But no body has come forward challenging such prayer of the petitioners/sebaitis.

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Having perused the application, evidence under Order 18, Rule 4 of the Code of the Civil Procedure and documents mentioned above, I am of the view that the prayer of the petitioners / sebaitis for permission to develop the property mentioned in the schedule of the application with the intending developer as per terms and conditions of the agreement of development mentioned above is required to be allowed for the benefit and welfare of the deities with another new condition for the interest of the deities.

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Hence, it is,

ORDERED

That the Misc. Case No. 144 of 2012 be and the same is allowed



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The petitioners / sebaits are permitted to get the property mentioned in the schedule of the application developed by the intending developer as per terms and conditions of the agreements dated 11.07.2008 and dated 03.05.2013.

This court thinks that for the purpose of regular seva Puja and festivals of the deities a fund should be created and certain conditions should be imposed for the protection of the interest of the deities. Accordingly, the developer shall make deposit a sum of Rs. 10,00,000/- in terms deposit scheme of any nationalized bank in the names of the deities through its managing sebaite at the first instance before starting the proposed construction works and the said term deposit certificate shall have to be deposited in court for court's custody. At the time of making over the possession of the deities 50% share in the proposed construction, the sebaits shall refund the said amount to the developer from other source, otherwise the developer shall get further 500 Sq- ft. floor area from the allotted portion of the deities. In no circumstances, permission be allowed to refund the said sum of Rs. 10,00,000/-.

Liberty is given to the petitioners/ sebaits to collect



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the interest accrued thereon on half-yearly basis for the seva puja of the deities.

The petitioners/ sebaits are permitted to execute and register deed of sale of flats which would fall at the developer's allocation of 50% in favour of developer and /or his nominee or nominees.

The petitioners / sebaits shall not sell, lease out and transfer any flat / flats which would fall at the deities allocation of 50% to any person in any manner without prior permission of this court.

Dictated & Corrected by me.

Sd/- S. P. Chowdhury
District Judge,
South 24. Parganas.

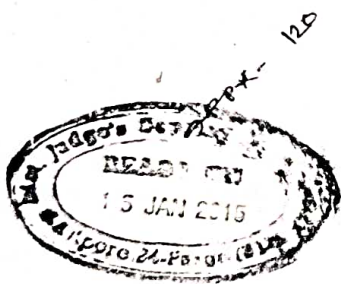
Sd/- S. P. Chowdhury
District Judge
South 24- Parganas.

Typed by

Sankar Kumar Biswas

Sankar Kumar Biswas

15/1/15



Examined and found to be a true
copy and correctly stamped.
Debjorasad Banman
Alipore Comparing Clerk
Date 15.1.15 Dist. Judge's Court

Ram Prasad Bhattacharya
15.01.2015