

OD-3

ACR/4/2019
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IN THE MATTER OF :
NUMAZAR DORAB MEHTA & ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Heard On : 20.06.2023

Order On : 14.07.2023

Appearance:

Mr. Mainak Bose, Adv.
Mr. Debargha Basu, Adv.
Mr. Rishav Karnani, Adv.
... For the petitioners.

Mr. Khushru Zaiwala, Adv.
... In person as Intervenor

ORDER

1. In compliance of the order passed by this Court dated 14th March, 2023, the Special Officer had submitted two separate reports dated 17th April, 2023 after circulating the same to the Learned Counsel for the petitioner

and to the intervenor. On receipt of the report, the intervenor has filed exception to the report of the Special Officer.

2. This Court appointed Special Officer to ascertain the following :

“(i) To ascertain the present market rent of nearby area of 52, Chowringhee Property and 84, Lenin Sarani Property.

(ii) To ascertain what would be present monthly rent of the properties i.e. 52, Chowringhee property and 84, Lenin Sarani Property.”

As regard Premises No. 84, Lenin Sarani, the Special Officer has submitted report which reads as follows :

“Conclusion:

Based upon the actual observations, local enquiry, discuss with local real estate agent, scrutiny of the documents provided to me and after giving careful consideration to the various important factors like present condition, potential for marketability etc., I am of the opinion that for the purpose of market rent of residential space & commercial space only, I have come to learn the prevailing rate of rent in the surrounding area is Rs. 10/- to 20/- per Sft of Super Built-up area (Residential space) & Rs. 50/- to 55/- per Sft of Super Built-up area (Commercial space). Finally for the reason stated earlier in the report the rate of rent at said premises is Rs. 5/- to 7/- per Sft of Super Built-up area (Residential Space) & Rs. 25/- to 30/- per Sft of Super Built-up area (Commercial space).”

As regard the entire property of 52 Chowringhee Road, the Special Officer has submitted report which reads as follows :

“Conclusion :

Based upon the actual observations, local enquiry, discuss with local real estate agent, scrutiny of the documents provided to me and after giving careful consideration to the various important factors like present condition, potential for marketability etc., I am of the opinion that for the purpose of market rent only, I have come to learn the prevailing rate of rent in the surrounding area is Rs. 85/- to 90/- per Sft of Super Built-up area. Hence the rate of rent at said premises is Rs. 85/- to 90/- per Sft of Super Built-up area.”

3. Mr. Khushru Zaiwala, Learned Advocate, in person as Intervenor submitted that the report submitted by the Special Officer is contradictory as the Special Officer has mentioned in the report that regarding 84, Lenin Sarani, the Commercial rent shown as Rs. 55 to Rs. 80/- but in the conclusion, he has mentioned the monthly rent as Rs. 25/- to Rs. 30/- and with respect of the residential space Rs. 10/- to Rs. 20/- but in conclusion, the Commissioner has shown as Rs. 5/- to Rs. 7/-.
4. Mr. Mainak Bose, Learned Senior Advocate representing the petitioner submits that in page no. 5, the Special Officer has categorically mentioned that on inspection *“I find that the building is maintained in unfair state of repairs and age of building is more than 100 years”*. He further submits that in page no. 2 of the report, the Special Officer has also mentioned that *“one portion comprises of three blocks of four storied building and one block of two storied building containing 27 flats and one shop space. These are rented out to needy members of the community at very subsidized rates in*

terms of the Trust Deed of Khoshed Madan Mansion and the other portion is a vacant land.

5. Mr. Bose submitted that the monthly rent of Rs. 55/- to Rs. 80/- is mentioned on enquiry in the locality and market site visit but the Special Officer had assured the market rate as per the condition and amenities of the building in question.
6. After considering the report submitted by the Special Officer, this Court finds that the building in question is of 100 years old and has not been properly maintained. The rent as calculated by the Special Officer after taking into consideration the fair market rent value of the surrounding area of the premises of 84 Lenin Sarani, and the present condition of the building of the Trust, the monthly rent for super built-up area for residential space would be only Rs. 5/- to Rs. 7/- per sq. ft and for the super built-up area for commercial purpose would be Rs. 25/- to Rs. 30/- per sq. ft. It is also fact that in the said premises there is no lift facilities are available.
7. The Intervenor has raised objection that the party has kept vacant the premises and has not let out to the tenants for which the Trust could not earn benefits and sufficient funds already available with the Trust. This Court considered the objection of the Intervenor and found that there is no allegation for misappropriation of fund but the premises have not been let out. The report of the Special Officer supports the contentions of the

petitioners that the rental income has come down to 30% to 40% and the building is 100 years old without any lift facilities. The portion which the petitioners are intending to sell is lying vacant and the same is of no use to the Trust.

8. In view of the above, this Court finds that the report submitted by the Special Officer does not suffer any perversity and illegality, accordingly the same is accepted.
9. Now the question arises whether the leave can be granted to the Trust to sell the part of 84, Lenin Sarani property as reflected in Annexure-D of the application.
10. On 19th June, 2019, a meeting of the Board of Trustees was held and in the said meeting, the Board of Trustees authorized Shri N.S. Wadia, Chief Executive Officer to issue notice to the community for the annual General meeting and special community meeting. According to the said decision, a notice was issued to all Calcutta Parsees on 18th July, 2019 intimating about a Special General Meeting of the Community will be held on 4th August, 2019 at Olpadvala Memorial Trust Hall to resolve the following :

“RESOLVED that - subject to receipt of approval from the Hon’ble High Court at Calcutta, a portion of immovable property of Calcutta Zoroastrian Community’s Religious and Charity Fund, at the premises No. 84 Lenin Sarani, admeasuring about 5 Cottahas, 12 Chattaks more or less and as shown in the plan attached (hereinafter the “said property”) be sold and/or disposed of at the most competitive price received upon public advertisement for the sale of

said property and/or such process as may be directed by the Hon'ble High Court, and the sale proceeds, thereof be utilized as per the objects of the Trust."

- 11.** The said notice was also published in the "Times of India" as well "The Daily Telegraph". On receipt of the above notices, altogether 125 members attended the meeting on 4th August, 2019 and in the said meeting, it was decided that :

"In conclusion, he said that every member of the community could look for potential buyers or suggest brokers for the property and brokerage of 2% would be paid to the person introducing the highest and successful bidder. He reminded members that the sale would be concluded only under the supervision of the High Court in Kolkata in a totally transparent manner. There should be no doubts in the minds of the community members on the priority of the sale."

- 12.** It is the specific case of the petitioners the half portion of the space is lying vacant and it is difficult to generate funds to meet expenditure and provide facilities to the community. The report submitted by the Special Officer corroborates that proposed rent is lower by 30% to 40% in the decreased market scenario.

The petitioners have taken decision to sell the vacant portion of 84, Lenin Sarani property to aid senior citizens, education, medical aid and religious ceremonies.

- 13.** After considering the report of the Commissioner and the resolution taken by the trustees and the objection raised by the Intervenor, this Court finds that it would be proper for the benefit of the Trust to allow the petitioners to dispose of the part of 84, Lenin Sarani property being Annexure D of the application by way of sale.
- 14.** Mr. Debnath Ghosh (Bar Library Club, down stairs, High Court at Calcutta) is appointed as Special Officer to sell the property being the part of 84, Lenin Sarani being Annexure-D of the application. The remuneration of the Special Officer is fixed at Rs. 5,00,000/-.
- a. The sale should be conducted by the Special Officer appointed by this Court.
 - b. Before the sale is conducted, proper demarcation to be conducted through the authorized/ approved agency by the Special Officer to know the metes and bounds of the land.
 - c. The Special Officer shall obtain the present market value of the property from the competent authority.
 - d. The Special Officer shall made vide publication in the daily English, Bangla & Hindi News paper twice in a week to sale the property and in the publication, the Special Officer shall mention the basic price not less than the market value and, if any, proposed purchaser come forward, 10% of the fixed price is to be deposited with the Special Officer within a week from the proposal.

e. After getting the best price, the petitioners shall place the same in the meeting of the Trust for approval.

f. After approval of the sale price by the trustees in the meeting, the Special Officer shall proceed with registration of Conveyance Deed.

g. On completion of sale process, the Special Officer shall file report before this Court.

(KRISHNA RAO, J.)

Later :

The Intervenor has prayed for stay of the operation of the order. Counsel for the petitioner raised objection. Considered the submission made by the Counsel for the respective parties. Prayer is refused.

(KRISHNA RAO, J.)

p.d/-