

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 : 13.01.2023 & 10.02.2023

Order On : 14.03.2023

Appearance:

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

Mr. Khushru Zaiwala, Adv.
Mr. Rayomand Zaiwala, Adv.
... For the Intervener

ORDER

The petitioners being the trustees of a trust known as "Calcutta Zoroastrian Community's Religious and Charity Fund" have filed the instant application praying for leave to sell the Premises No. 84, Lenin Sarani, Kolkata-

700013 and to utilize the proceeds or the interest therefrom for the beneficiaries of the Trust to fulfill the objectives of the Trust in terms of the resolution dated 4th August, 2019.

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.”

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.”

Mr. Mainak Bose, Learned Senior Counsel representing the petitioners submits that the total number of Parsi Zoroastrians in the city of Calcutta in 2017 was 433, which presently in the year 2022 has been reduced to 366. He submits that the principal duties of the trust and trustees are to look after the welfare of the community which includes accommodations, medical requirements, education of the beneficiaries of the trust who are in need. He submitted that the expenses towards charity relates to the beneficiaries has increased substantially and the income, which primarily consists of rental income has not increased commensurately.

Mr. Bose submits that the primary source of income of the Trust is generated from rent received by the Trust from the premises No. 52, Chowringhee Road, Kolkata. He submits that for the last about 3 to 4 years, the requirement of large commercial space in central part of Kolkata reduced considerably and the corporate requiring large commercial space are preferring Newtown and Rajarhat area in comparison to Central Kolkata as equivalent to space with better amenities are available at lesser rate.

Mr. Bose submits that in spite of best efforts of the Trust to let out the portion of the said property, the Trust is unable to let out the same and as on

today about 16,000 sq. ft. is lying vacant. He further submits that letting out rate has been substantially reduced from Rs. 110-115 per square feet in the year 2018 to an average of Rs. 80 per sq. ft. in the year 2022. As the income of the Trust was inadequate and thus the Trust had issued a circular in the month of August, 2022, all the members for reducing welfare and medical reimbursement about 10%. The Trust has also informed that the salaries and benefits of the employees will be reduced. In the meeting held on 4th August, 2019, all 125 members who attended the meeting have unanimously decided for sale of the subject property for the interest of the beneficiaries of the Trust.

One Mr. Khushru Zaiwala had filed an intervening application to object the application filed by the petitioners for selling of the property in question by the Trust.

Mr. Rayomand Zaiwala, the Learned Advocate representing the Intervener submits that the application filed by the petitioners is not maintainable under the law as the petitioners have not issued notice of the instant application to the Advocate General of the State of West Bengal. As per Clause 20 of the Scheme of the Trust, notice is required to be served upon the Advocate General but in the instant application, no notice was served upon the Advocate General.

Mr. Zaiwala submitted that as per the scheme, the Intervener has got the right to intervene in the instant application and to object to sale of the property

at Kolkata. He submits that the grounds as urged by the petitioner are only for the purpose of illegal attempt to sell the property.

Mr. Zaiwala submits that it is common practice to sale the properties anywhere in India by hiding the profits. He submits that the trustees ought to have shown honesty by offering the vacant flats by public advertisement on the lease or license. He submitted that if, the trustees would have taken the step by public advertisement on lease or license, there would be no dearth of occupants to occupy the said flats.

Mr. Zaiwala submits that the petitioners have not submitted an audited account to prove the contentions. He submits that as per the account submitted by the petitioner, it reveals that the trustees have invested Rs. 34 lakhs for celebration of sesquicentenary expenses in the year 2018 for 200 parsis. He submits that as per record, the Trust is getting sufficient income from Chowrangee properties.

Mr. Zaiwala submits that on earlier occasion also the trust has sold properties at 10 Bow Street and 26 Sooterkin Street on the plea that the proceeds to be used for the housing needs of the beneficiaries but had not used for the housing needs of the beneficiaries.

Mr. Zaiwala submits that as per the document, the Trust has invested Rs. 48 lakhs for legal expenses and consultancy. He submits that the petitioners have filed this application for sale of the property on the ground of not having sufficient income but on the other hand as per the documents, it

reveals that the petitioners were having sufficient income but only to dispose of the property in question have filed the instant application to mislead this Hon'ble Court and to get an order for sale of the property though on earlier occasion also the petitioners have obtain order for sale of one of the property.

Heard the learned Counsel for the respective parties, perused the documents available on record.

The first question raised by the Intervener with regard to maintainability of the application filed by the petitioner as the petitioners have not issued any notice to the Advocate General of the State. The Intervener has relied upon Clause 20 of the scheme which reads as follows :

“20. *It shall be competent to a majority of the Trustees at any time to apply to a Judge of the High Court in Chambers for sanction of alteration in or additions to the provisions of this Scheme provided that the Trustees shall have given to the Advocate General seven clear days’ notice in writing of their intention to make such application, setting forth in full the proposals for which sanction of the Court is sought, and the Advocate General shall be entitled to appear and be heard on any such application.”*

Clause 20 of the scheme relates to sanction of alteration or additions to the provisions of the scheme. If the trustees intend to alter or add any of the provisions of the scheme in that case notice to Advocate General is required but in the instant case, the petitioners have not prayed for any addition or alteration of the scheme. The petitioners have filed the instant application for grant of permission to sale of the property which cannot be said that the prayer

as made by the petitioners are addition or alteration of the scheme and thus this Court finds that the preliminary objection raised by the Intervener is not sustainable.

The main contention of the petitioners that the expenses towards charity, relates to the beneficiaries have increased substantially and the income which the petitioners are receiving from rental income has been substantially reduced from Rs. 110-115 to Rs. 80 per sq. mtr. To establish the said contention, the petitioner has relied upon the details of the monthly rent received from the property situated 52 Chowringhee which are as follows :

RENTAL DETAILS AT 52 CHOWRINGHEE							
2017-2022							
		RS. PER SQ. FT.					
LESSEE	SQ. FT.	2017	2018	2019	2020	2021	2022
LIVING MEDIA	7065	111	111	111	80	80	80
LIVING MEDIA	1560	-	-	-	-	-	80
TATA STEEL - KSO	7065	115	115	115	115	115	-
TATA STEEL - TUBE	2210	106	106	133	133	133	-
TATA STEEL - SOUTH EAST	3330	126	151	151	151	151	-
RAJIV THAPAR	1560	115	115	137	137	137	-
ASSAM CO.	16500	IN COURT	IN COURT	40	-	-	-
OTTO BOCK	5500	-	-	-	75	75	75
*IMRB	11000	-	-	-	*85	-	-
*CROMPTON GREAVES	5250	-	-	-	-	*90	*90
*BHARATI AXA	5500	-	-	-	-	-	*85
JM FINANCIAL	2210	-	-	-	-	-	80

The petitioners have not shown any document to establish that the rental income has been reduced as shown in the above table.

The income and expenditure account for the year ended 31st March, 2018 shown Rs. 2,20,88,272/- and for the year ended 31st March, 2017 shown as Rs. 1,66,14,073/- out of which rent received from the property situated at 54 Chowringhee Calcutta is Rs. 2,10,37,627/- as on 31.03.2018 and Rs. 1,53,07,567/- as on 31st March, 2017. Similarly from the property 84 Lenin Sarani Kolkata was Rs. 1,04,640 /- as on 31st March, 2018. As per the accounts detail as on 31st March, 2022, the rental of the property of 52 Chowringhee Kolkata is Rs. 3,61,60,085/- and Rs. 3,33,92,015/- as on 31st March, 2021. As regard the property of 84 Lenin Sarani Kolkata rent received as on 31st March, 2020 was Rs. 4,32,865/- and as on 31st March, 2021 was Rs. 4,55,880/-.

The petitioners have also enclosed the extract of summary income and expenditure account to show that the income of the Trust property is reducing day by day but the said summary is not in consonance with accounts detail submitted by the petitioners.

The main contentions of the petitioner is that the corporate requiring large commercial space are preferring New Town and Rajarhat in comparison to Central Kolkata. The contention of the petitioners is that 20000 square feet of space vacant for many months with respect of 52, Chowringhee Road Property, Kolkata due to which there has been loss of substantial income and 84, Lenin

Sarani Property also does not generate any income to meet its expenses, as it is vacant.

Though the petitioners have relied upon the resolution wherein the trustees have taken decision to sell the 84, Lenin Sarani Property but the petitioners have not filed any documents that the petitioners have taken steps for letting out or lease out the properties.

After going through the contentions of the respective parties, this Court is of the view that before passing any order with regard to the prayer made by the petitioners, a Special Officer is required to be appointed 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. 54, Chowringhee property and 84, Lenin Sarani Property.”*

Mr. Puranjoy Konar (B/20/1 Nandankanan, 3rd Floor Santoshpur Kolkata-700075, Contact-8820294987), is appointed as Special Officer to ascertain the above facts. The Special Officer on completion of report shall raise bill to the petitioner and on receipt of the bill, the petitioner shall pay the same within a week.

The Special Officer shall submit a report before this Court within four weeks.

The petitioner is directed to communicate this order to the Special Officer.

Let the matter will appear on 17.04.2023.

(KRISHNA RAO, J.)