

(2004) 05 CAL CK 0022
In the Calcutta High Court
Case No : A.T.A. No. 12 of 2003

Balaidas Dutt and Others

APPELLANT

Vs

The Administrator General of West Bengal and Another

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Administrator Generals Act, 1963 — Section 25
Trusts Act, 1882 — Section 49

Citation : AIR 2005 Cal 69

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : A. Law and N.K. Nandi, for the Appellant; Indranil Nandi, for Respondent 1 and B. Nandi, for Respondent 2, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—This is an application u/s 49 of the Indian Trusts Act, 1882 read with Section 25 of the Administrators General Act, 1963. It has been filed by the shebait and beneficiaries of the trust created by one Sagore Dutt by his last will and testament dated June 24th, 1886.

2. The prayers made in the application are the following :

"a) Leave be granted to Administrator General of West Bengal to lease out the property being premises Nos. 18. Elliot Road and 45, Roud Street, both in Calcutta to respondent No. 2 on the terms as mentioned in Paragraphs 2 and 3 or at such terms at this Hon"ble Court may deem fit and proper.

b) Ad-interim order in terms of prayer (a):

c) Costs of an incidental to this application of the petitioners and also the Administrator General of West Bengal be come out of the Estate;

d) Such further and/or other order or orders be made as this Hon"ble Court may deem fit and proper."

3. One Sagore Dutt by his last will dated June 24th, 1886 appointed the

Administrator General of Bengal the executor and trustee of his such will. On November 29th, 1886 the will was proved, and probate was granted to the Administrator General. The properties owned by the testator at 10, Royd Street (subsequently renumbered as 45, Royd Street), and 18, Elliot Road were also to be administered by the Administrator General. The area of the land at the two premises is 9.93 cottabs (approximately), and there is a one storied building on it. The building is used for both commercial and residential purposes. From the year 1947 one Shri S. K. Nandy was enjoying the property by paying a monthly rent of Rs. 500/-(rupees five hundred only). In the year 1986 Shri Nandy requested the Administrator General to transfer the tenancy in the name of his nephew, Shri Dilip Kumar Burman (the second respondent in the present application).

4. In the circumstances stated above, on January 21st, 1987 the second respondent made the following application to the Administrator General :--

"To

The Administrator General of West Bengal,

1, Kiran Sankar Roy Road

Calcutta -700001.

Estate : Sagore Dutta

Re :-- Premises No. 45 Royd Street and 18 Elliot Road, Calcutta 16.

Dear Sir,

I agree to apply for the tenancy of the above premises on the following terms and conditions :--

1. I shall pay rent at the rate of Rs. 500/-(Rupees five hundred only) per month payable according to the English Calendar month which is considered to be fair and reasonable having regard to the situation, locality and condition of the premises and amenities provided there.

2. I "shall pay entire owner"s and occupier"s share of taxed water taxes and all other taxes, impositions, Surcharges as would be increased and/or imposed in future by the Calcutta Municipal Corporation and other competent authority or authorities.

3. I shall deposit one month"s rent as Security Deposit which shall be refunded without interest at the time of termination of tenancy.

4. This monthly tenancy will be according to English Calendar months.

5. The tenancy shall be deemed to have commenced from the month of December, 1986.

6. I shall be entitled to sublet the tenancy.

7. I shall effect at my own costs all necessary repairs required to the premises during the subsistence of tenancy to the satisfaction of the landlord i.e. the Administrator General of West Bengal and shall keep the tenancy premises wind and water tight at my own cost. In case of violation of this the landlord shall be entitled to terminate the tenancy.

8. Apart from the monthly rent I shall bear all charges for electricity, Gas and any other amenities whatsoever that may be required and in case of new installation of electric meter and other meters, if any, I shall bear all costs for the same and the landlord will give a letter for the supply of electricity of electricity to me at the above premises.

9. I shall pay rent regularly on or before the 7th. of every month subsequent to the month for which the rent falls due during the hours of cash transaction at your office.

10. I shall not make any structural addition or alteration to the premises. In case of violation, the landlord will be entitled to terminate the tenancy.

11. I agree to increase in the rent at an interval of every 5 (five) years at the rate of 10% on the monthly rent then payable.

12. In case of any breach of any of the terms and conditions of the tenancy as aforesaid the tenancy shall forthwith be determined and the landlord will be entitled to re-enter and take possession of the tenancy premises.

13. I am giving below the other necessary particulars about my name, description and identification.

Yours faithfully,

(Dilip Kumar Burman)

1. Name Dilip Kumar Burman

2. Father's name : Sri J.C. Burman (Jogesh Chandra Burman)

3. Occupation : Business

4. Permanent Address : 14, Dr. Sundari Mohan Avenue, Calcutta 700014."

5. In the manner stated above the second respondent started enjoying the property. With the passage of time he inducted several sub-tenants, and he has been appropriating the rent collected from them.

6. According to the terms of the will the earning from the above properties are to be utilized by the Administrator General for carrying on the Seva Puja of the deities Sree Radha Cantjee Thacoor and Moha Obhoya Thakooranee at Chinsura. and also for arranging periodical festivals, including Durga Puja.

7. The case of the petitioners is this. Since the properties do not generate adequate fund for repair of the Thakurbari at Chinsura, it has become so

dilapidated that it is likely to come down on its own at any moment. So they entered into a negotiation with the second respondent for developing the properties. Consequently both the parties reached the following memorandum of understanding:--

"MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM UNDERSTANDING is made on the 3rd day of September, 2003 B.E. TWEEN BALAIDAS DUTT son of Late Nandalal Dutta, PRADEEP DUTTA son of Sri Dwarika Charan Dutta AND RAJ KUMAR DUTTA son of Late Harogobindo Dutta all of No. 14 Am Gopal Chandra Lane, P.S. Bowbazar, Kolkata-700073, hereinafter referred to as the party of the ONE PART AND DILIP KUMAR BARMAN son of Late Jogesh Chandra Barman, residing at No. 14, Sundari Mohan Avenue, P.S. Beniapukur, Kolkata - 700014, hereinafter referred to as the party of the OTHER PART :

The First parties as referred herein are the shebaites of Sree Radha Kanta Jew Thakur and Moha Abhoya Tbakurani located ,in the town of Chinsura, Dist. Hooghly. The said Deities are the owners of premises No. 18, Elliot Road, and 45 Royd street, Kolkata and the Administrator General of West Bengal is the Custodian of the said properties. The other party intends to take lease of the said properties on the undernoted terms and conditions.

IT IS HEREBY AGEED AS FOLLOWS :

- a) The lease will be for 99 years with option for renewal by mutual consent.
- b) The other party will keep in deposit a sum of Rs. 3,00,000/- (Rupees three lakhs) with the official trustee. West Bengal as Security Deposit and shall further pay a sum of Rs. 2,00,000/- (Rupees two lakhs) for repairing the renovation of Thakur Bati at Chinsurah).
- c) The other party will be entitled to demolish the existing structure and thereafter built up a multy storied building at his own costs.
- d) The lessee will have the right to lease out or let out the newly constructed building wholly or in part and to collect rent from the prospective leases/tenants and also realise rent from the existing sub-tenants who will be rehabilitated in the newly constructed building as per mutual settlement with them.
- e) The monthly rent will be Rs. 1,000/-(Rupees one thousand) only on and from the date of execution of the Deed of Lease and thereafter enhance to Rs. 4,000/- (Rupees four thousand) three years from the date of demolition of the existing building.
- f) All costs for the said construction will be borne by the Lessee.
- g) The monthly rent will be enhanced at the rate of 10% on the existing rent prevailing at the material time at every interval of 6 (six) years.
- h) The Lessee will pay all the outstanding Municipal taxes viz. to Kolkata

Municipal Corporation, Water Tax, Commercial charges etc. The other party will also pay in Municipal taxes.

i) The granting of the lease on the aforesaid terms shall absolutely depend upon the order as may be passed by the Hon''ble Court.

j) The First party upon signing of this agreement will file an application before this Hon''ble High Court for permission as per the Trust Act, 1982.

k) The other party shall pay and bear all costs of incidental expenses for obtaining permission from the Hon''ble High Court authorizing Administrator General of West Bengal for leasing out the premises on terms as hereinbefore mentioned.

l) The terms and conditions as proposed for granting of the sole and absolutely depend upon the Hon''ble Court for granting permission to lease out the property to the other party."

8. As already noted the present application has been made for granting permission by this Court to the proposal for development of the properties by the second respondent on the terms and conditions recorded in the memorandum of understanding.

9. After hearing the learned counsel for the parties and the third respondent in person, I am of the view that the proposal for development by the second respondent is not worth getting a sanction from this Court.

10. It appears that the office of the Administrator General did not take sufficient care of the properties with respect to which the testator had reposed confidence in him. The induction of the second respondent in the property was on utterly unreasonable terms and conditions. It shocks the conscience of the Court that valuable trust properties have been dealt with by the Administrator General in such an unreasonable manner as is evident from the terms and conditions mentioned in the second respondent's letter dated January 21st, 1987. What was the special reason for giving tenancy to the second respondent at a meagre monthly rental of Rs. 500/- (rupees five hundred only), when the previous tenant, who was enjoying the property from the year 1947, had also been paying rent at the rate of Rs. 500/- (rupees five hundred only) per month, has remained a mystery. The second respondent was given the permission to sublet; he has inducted many sub-tenants. As will appear from the affidavit filed by the Administrator General, the sub-tenants inducted by the second respondent are even not willing to co-operate with the inspectors of the office of the Administrator General. The authority who was supposed to act in a fiduciary capacity for the benefit of the trust, it is apparent, acted to the utter detriment of the trust. The property in question was virtually gifted away to the second respondent. The transaction through which the second respondent entered into the property and started enjoying it appears to be shrouded in mystery. The conscience of this Court dictates that the second respondent should at once be

stripped off the right to enjoy the property.

11. The terms and conditions now the second respondent seeks to impose for developing the property clearly indicate his intention to perpetuate his right to enjoy the property. The trust was not created for the benefit of the second respondent who has entered into the scene, as it were, through the backdoor. Granting permission by this Court to the proposal for development as given by the second respondent would be grossly unreasonable and utterly unconscionable. I am unable to countenance the steps taken by the petitioners, and which are tacitly supported by the Administrator General.

12. For the above reasons, I hereby refuse to grant permission to the parties to proceed with the proposal for development of the property as has been given by the second respondent.

13. On the facts, I, however, feel the necessity of making some observations and giving some directions to the Administrator General. Hence the following observations and directions :

14. The Administrator General must take all necessary steps for setting the wrong right. He shall take steps for freeing the property from the clutches of the second respondent. He shall explore all the possibilities for increasing the earning from the property. He may even consider the case of an outright sale of the property in public auction. In my view, on the facts as narrated above, an outright sale of the property would really benefit the trust. The sale proceeds if kept in securities with the Reserve Bank of India would probably give the maximum safe return to the deities. If a decision is taken to sell, then the sale will be subject to approval of and confirmation by this Court, on application by the Administrator General.

15. With the above order, observations and directions this application is hereby disposed of.

16. Costs of the proceeding, assessed according to rules, shall be paid by the second respondent.

17. Urgent certified xerox copy of this judgment and order may be supplied to the parties, if applied for.