

**Raj Singh Nahar and Ors. Vs. Keshari Singh Nahar and Ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/62416](http://sooperkanoon.com/62416)

**Court :** Kolkata

**Decided On :** Aug-05-2015

**Judge :** Soumen Sen

**Appellant :** Raj Singh Nahar and Ors.

**Respondent :** Keshari Singh Nahar and Ors.

**Judgement :**

ORDER

SHEET G.A.No.118 of 2015 With C.S.No.1377 of 1940 IN THE HIGH COURT AT CALCUTTA ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE RAJ SINGH NAHAR & ORS.Versus KESHARI SINGH NAHAR & ORS.BEFORE: The Honble JUSTICE SOUMEN SEN Date: 5th August, 2015.

Appearance: Mr.Bhaskar Ghose, Sr.Adv.MRS.Rituparna De (Ghosh) for the defendant no.16/applicant Mr.Jishnu Chowdhury, Adv.Mr.Rajesh Upadhyay, Adv. for the defendants The Court: Mr.Ranjan Nahar and Mr.Manish Nahar are represented by Mr.Jishnu Chowdhury.

The petitioner is a member of the Nahar family.

The petitioner claims to be the senior most trustee of the Nahar family trust.

This application is filed in a very old suit of 1940.

The decree passed on 23rd April, 1942 permits the parties to apply to the Court from time to time as they may have occasion.

The subject matter of this application concerns the Nahar family and more particularly the Deed of Trust dated 19th January, 1918 executed by Sree Rai Setab Chand Nahar Bahadur.

Amongst other things the deed of trust provided that the eldest male lineal descendant of the settlor would be the trustee.

The decree dated 23rd April, 1942 appointing Keshari Singh Nahar as a trustee, inter alia, provides that the functions as regards management and administration of Nahar family trust as mentioned in the trust would be carried out in order to tide over the disputes and differences then existing in between the descendant of the settlor.

A temporary mechanism was provided in the decree and Board of Control was formed consisting of Keshari Singh Nahar, Raj Singh Nahar and Joy Singh Nahar.

It was further provided that in case of death, retirement, resignation, refusal or incapacity of anyone or more of the members of the Board of Control, the eldest or next eldest in age male member or members of the

branch or branches to which the member or members of the said Board belong shall be the member or members of the Board in his or their place or stead.

The petitioner contends that the Board of Control was formed for a limited period and only for temporary purpose.

The trustee was invested with full authority to realize the rents, issues and profits belonging to the Nahar Family Trust.

Upon the death of Keshari Singh Nahar, the eldest male descendant of the settlor, namely, Bijoy Singh Nahar, was appointed as a trustee in terms of the stipulation made in the deed of trust and after his demise again disputes and differences cropped up with regard to the trusteeship of the Nahar Family Trust.

This has resulted in filing an application being GA No.2063 of 1998.

The said application was disposed of by an order dated 19th June, 1998 appointing the then senior most male descendant of the settlor, namely, Nirmal Singh Nahar, as a sole trustee of Nahar Family Trust.

It is alleged that despite the said appointment, Ratan Singh Nahar, the son of the earlier trustee Bijoy Singh Nahar, forcibly and unlawfully remained in possession of the trust properties without any authority and under such circumstances another application was filed being GA No.2032 of 2005.

The said application was disposed of on 19th June, 2006 whereby an order was passed restraining Ratan Singh Nahar to create any obstruction in respect of the outhouse, where the family functions of Nahar family were to be held in terms of the deed of trust.

The said Ratan Singh Nahar was further directed to makeover the keys to Nirmal Singh Nahar, the newly appointed trustee.

It is alleged that Ratan Singh Nahar in spite of the said direction has failed and neglected to act in terms thereof.

Nirmal Singh Nahar died on 3rd September, 2012 and after his demise, the remaining two living senior most male members of Nahar family, namely, Indrajit Singh Nahar and Naren Singh Nahar declined to act as trustee.

In a meeting held on 3rd March, 2013 no consensus was reached and Ratan Singh Nahar attempted to project himself as a trustee of the Nahar Family Trust.

It is submitted that in fact no meeting is required to be called for appointment of a trustee inasmuch as the mode of appointment of the sole trustee of the Nahar Family Trust had clearly been spelt out in the deed of trust itself.

It is submitted that Ratan Singh Nahar realizing that his claim to such trusteeship is illegal, had relinquished his trusteeship in a meeting held on 28th April, 2013.

However, the senior most eligible male descendant of the settlor, namely, Tarun Singh Nahar, was purportedly appointed as the sole trustee in the event of refusal of Sajjan Singh Nahar to act as a trustee.

The contention of the petitioner is that the so called system and mode of appointment of trustee of Nahar Family Trust was illegal since the trust and/or trustees are required to be appointed in the manner prescribed in the deed of trust and not de hors such terms. It is submitted that a trustee of the Nahar Family Trust ought not to be appointed in any other manner other than the mode prescribed in the deed of trust for appointment of trustee.

It appears that Ratan Singh Nahar in 2014 took out an application being GA No.115 of 2014 in which an order was passed on 3rd June, 2014 observing, inter alia, that Ratan Singh Nahar had duly withdrawn his resignation.

The learned Single Judge, inter alia, observed that Ratan Singh Nahar had taken charge of the trust and the Board of Control had ceased to act from the date of assumption of such charge of said Ratan Singh Nahar.

It is submitted that the Honble Court was misled to proceed on the basis that till the assumption of charge by Ratan Singh Nahar the Board of Control was in existence.

The Honble Court was not aware of the fact that the concept of the Board of Control had been imported in 1942 only for the time being and not for an indefinite period of time.

The applicant appears to have filed an application seeking recalling of the order dated 3rd June, 2014 and the said application is pending.

This application has been filed on the ground that taking undue advantage of such direction on 21st July, 2014, a group of members of Nahar family including one Ranjan Nahar and one Manish Nahar have gained full control over the affairs of the trust and virtually incapacitated the trustee to take any decision.

The post of trustee of Nahar Family Trust has since been rendered ornamental.

The petitioner has annexed a letter dated 17th November, 2014 to show that Ratan Singh Nahar has also resigned with effect from 17th November, 2014.

The petitioner contends that neither Ranjan Nahar nor Manish Nahar can claim or project himself to be a member of the Board of Control, which has already ceased to exist.

The petitioner claims to be a senior most in age amongst the male descendants of the settlor who is eligible to act as a trustee.

In an application for recalling of the order dated 3rd June, 2014, an order was passed on 21st July, 2014 directing that the trustee should act in consultation with the Board of Control and the decision is to be taken by the majority.

Ratan Singh Nahar has resigned on 17th November, 2014.

Hence this issue is not required to be revisited.

The basis of the order dated 21st July, 2014 is that Ratan Singh Nahar is in-charge of the trust.

On a reading of the deed of trust, it prima facie, appears that the senior most trustee is entitled to act as a trustee.

Liberty to apply cannot be stretched to absurdity.

The wish of the settlor has to be given prominence and predominance over any other consideration.

The trust did not envisage any Board of Control.

It was an administrative measure devised by the Court in order to tide over certain difficulties.

The Act provides removal of the trustee in the event of his misconduct in relation to the affairs of the trust.

There is, however, no real challenge to the fact that the applicant is the senior most male descendant of the settlor.

The other parties who are espousing the cause of the trust are not the senior male descendants of the settlor.

Mr.Jishnu Chowdhury, learned counsel opposing the application, has fairly submitted that there cannot be any doubt that the Board of Control cannot continue in perpetuity.

However, liberty to apply cannot be used as a weapon to seek relief dehors the scheme.

Mr.Chowdhury has relied upon the decision of this Court in the case of Chameli Bibi versus Kanhaiyala; reported in AIR1973Calcutta 328, paragraph 20.

In my view, Mr.Chowdhury is correct in contending that matters not concerning or covered by the scheme cannot form the subject matter of the petition.

However, there cannot be any doubt that the petitioner, under the deed of trust and also under the scheme, is required to be appointed as a sole trustee.

Under such circumstances, there shall an order in terms of prayers (a) and (b).However, in the event, there is any death, retirement, resignation, refusal or incapacity of the trustee for the time being and so long as the incoming trustee does not accept office, the Board of Control would revive until the new trustee accepts his office as provided in the scheme.

The other prayers are not considered since it would be outside the scope of the suit.

This order shall not prevent the petitioner from taking appropriate steps in accordance with law and the petitioner may be entitled to claim the same and similar reliefs in appropriate proceedings before appropriate forum.

The Special Officer stands discharged upon receiving his remuneration till July 2015.

This application accordingly stands disposed of.

There shall be no order as to costs.

Urgent website certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SOUMEN SEN, J.) sg2

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