

In Re: Ganendra Mallick and ors.

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Court : Kolkata

Decided On : Jan-18-1921

Reported in : AIR1921Cal536,67Ind.Cas.18

Judge : N.R. Chatterjea and ;Newbould, JJ.

Appellant : In Re: Ganendra Mallick and ors.

Judgement :

1. The petitioners in this case are the Trustees of a debutter estate. Some lands belonging to the estate have been acquired for the Calcutta Improvement Trust and a sum of Rs. 2,24,000 and odd is in deposit with the President of the Tribunal. The petitioners applied to the President for payment to them of the amount so deposited in order that they might erect buildings on the exempted portion of the land. The President refused to pay the money and this Rule was obtained to set aside that order.

2. It appears that only a portion of premises Nos. 79 and 80 Collotollah Street has been acquired and the remaining portion is in the occupation of certain lessees. The term of the lease has not yet expired, It is stated that the lessees have entered into an agreement with the petitioners under which they would pay net profits to the extent of 7 and 7 1/2 per cent. in addition to the existing rents provided buildings are erected on the exempted land by the petitioners, and that plans of such buildings have been approved by the Corporation. It is also stated that, if advances are made to the contractors who would erect the buildings, it will

be advantageous to the Trust estate as the costs in that case would be less. As stated above, the petitioners applied to the President of the Improvement Tribunal for payment to them of the money. That, however, was refused by the learned President on the ground that it was not a suitable mode of investment.

3. Now, Section 32 of the Land Acquisition Act as amended by the Calcutta Improvement Trust Act provides that the Tribunal shall order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held. Here, there can be no question as to the land being under the like title and conditions of ownership, because the proposal is to erect buildings on the land belonging to the Trust estate. The only question for consideration, therefore, is whether the erection of buildings would come within the words 'invested in the purchase of other lands' in Section 32 of the Act. Having regard to the definition of the expression 'land,' we think that the words of Section 32 quoted above would include the erections of buildings upon the land, and if the President is satisfied, that the money would be invested in the erection of buildings as proposed by the petitioners, we are of opinion that he is bound to pay the money over to the petitioners.

4. We are informed that there is no question as to the petitioners being the sole trustees. The President may, however, easily satisfy himself as to the correctness of this statement.

5. The learned President in showing cause states that the order of the 14th August was made upon a request made verbally by the Vakil for the petitioners and, subsequently, on the 19th August, the petitioners submitted an unverified application for re-consideration of the order of the 14th August. Evidently, he is under a mistake because the record shows that there was a written petition filed on the 14th August, though it was not verified.

6. We think under these circumstances that the case should go back to the learned President of the Improvement Tribunal in order that he may satisfy himself as to whether the petitioners are the sole trustees of the Trust estate and, if so, whether the money would be invested in erection of buildings on the land and

whether there is an agreement between them and their lessees for the erection of buildings on the portion of the land not acquired as mentioned in their petition and, if he is satisfied upon those points, we think that he should pay out the money to the petitioners.

7. We assess the hearing fee in this Rule at two gold mohurs.

8. Let the record be sent down at once.

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