
(2017) 06 UK CK 0051

Uttarakhand High Court

Case No: 21 of 2015

Om Prakash, S/o Late
Nechal Das

APPELLANT

Vs

Public At Large,
Haridwar, District
Haridwar

RESPONDENT

Date of Decision: June 28, 2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 92](#) - Public charities1#[Registration Act, 1908](#), [Section 25](#), [Section 17\(1\)\(b\)](#) - Provision where delay in presentation is unavoidable - Documents of which registration is compulsory#[Trusts Act, 1882](#), [Section 5](#) - Trust of immovable property

Citation: (2017) 06 UK CK 0051

Hon'ble Judges: Servesh Kumar Gupta

Bench: Single Bench

Advocate: Arvind Vashistha, Jitendra Chaudhary, Siddhartha Singh

Judgement

1. Both these appeals titled above challenge the judgment and order of learned District Judge dated 30.1.2015 rendered in Original Suit No.

6/2009, hence are being taken up together for adjudication by this single verdict.

2. Appeal No. 21/2015 assails the judgment in whole by the plaintiffs in the Original Suit, while Appeal No. 37/2015 challenges the operative part

of such judgment to the extent of issuing the directions to the District Collector, Haridwar constituting a Committee headed by himself as an ex

officio trustee and appointing five more members as trustees of such Committee to look after the property in question. This appeal has been

preferred not by any of the defendants in the lower court, but by other three persons, namely, Hari Om, Preetam Lal and Sanjay Gupta, who have

also sought permission of this Court to challenge such operative part of the judgment since they are the tenants in three shops out of many which

are part and parcel of whole property in dispute.

3. The property under litigation is a dharamshala popularly known as Sheetal Das Laxmi Bai Sindhi Dharamshala situated at Ram Ghaat, Haridwar

comprising 14 shops and several rooms, yard and a small appurtenant land. It is bounded and butted as under:

In the east - Pilibhit House.

In the west - Rasta Moti Bazar.

In the north - Street Ram Ghaat.

In the south - Alpana Hotel.

4. Whole property ad measures around 70 feet in the north-south and around 80 feet in the east-west, total area is 5600 sq. ft.

5. Before narrating the object of moving an application under Section 92 CPC, it would be worthwhile to set out a small description regarding the

background and the nature of this property. It was originally owned by Seth Bimal Kishor, resident of Moti Mahal, Muzzafarnagar, Uttar Pradesh

and was purchased under registered sale deed dated 5.11.1965 by Shri Sheetal Das (Sital Dass), resident of Sadar Bazar, Delhi. Shri Sheetal Das

was issueless. Even then he executed a Will dated 9.5.1969 bequeathing whole property in favour of his wife Smt. Laxmi Bai @ Sadori Devi. Shri

Sheetal Das died some time in 1972 and after his death, this Will was got registered by Smt. Laxmi Bai @ Sadori Devi in the concerned office on

1.8.1972. During her lifetime, Smt. Laxmi Bai executed an unregistered Will dated 2.9.1974, which was witnessed by two witnesses, both

residents of Nawab Ganj, Delhi. Through this Will, she transferred all the movable and immovable properties owned by her at Delhi (besides the

property, in question, which was also transferred through this instrument, but in a different manner because such transfer tantamount to creation of

a trust during her lifetime and came into effect as such). This way, this instrument was in the nature of testamentary as well as non-testamentary. It

was testamentary with regard to the properties of Smt. Laxmi Bai enumerated in paragraphs 5, 6 and 7 of such instrument wherefor she declared

that such properties will be succeeded by her youngest brother Nihchal Das, resident of Nawab Ganj, Delhi and her nephew i.e. her younger sister

Smt. Premi Bai's son Verho Mal, also a resident of Nawab Ganj, Delhi. So, certainly these two persons, viz. Nihchal Das and Verho Mal got

devolve all the movable and immovable properties owned by Smt. Laxmi Bai @ Sadori Devi as the absolute owner after her death. As regards the

property, in question, which was in the shape of a dharamshala and a piece of plot ad measuring 200 square yards situated in rear side of the said

dharamshala in Haridwar with three shops constructed thereon (as then were), it was divested by her by way of creating a trust, which was

charitable and religious in nature and this will abundantly reflect by reproducing the paragraphs no. 8 and 9 of such Will as below:

8. That I hereby create a Trust of my properties comprising of a Dharamshala and a piece of plot measuring 200 sq. yds. situated on

the rear of the said Dharamshala at Haridwar with three shops constructed thereon, for the use and welfare of the public at large and

other travellers and visitors coming on pilgrimage to Haridwar and staying in the Dharamshala irrespective of their any caste, creed or

religion.

9. That I hereby appoint S/Shri Nihchal Das and Verho Mal as the trustee to make a formal trust of the same and entrust the

Management of the same to a Board of Trustees constituting of 5 members, of which the two would be the aforesaid persons

throughout their life. The income from my property constructed on plot on the rear of Dharamshala on which there are only three

shops in existence at present and are yielding rent, would form part of the Trust ... and shall be spent on the maintenance of

Dharamshala and for providing facilities to the travellers and other visitors to Haridwar and staying in the Dharamshala. The legal

formalities for the Trust shall be completed by the aforesaid two persons jointly and till such formalities are completed they shall act as

trustees for the same.

6. Thereafter Smt. Laxmi Bai died on 3.5.1975 and thus Nihchal Das and Verho Mal became the absolute owners of all the movable and

immovable properties left by her, besides the property in question. It transpires that by the money/assets which were succeeded by them from

Laxmi Bai @ Sadori Devi, they constructed more shops on the adjoining 200 sq. yds. plot of dharamshala in order to augment the income of the

trust and thus, these shops became 14-15 in number. Shops were rented out at the rate prevalent in those olden times. So, with the passage of

time, the value of such rent became negligible or very meagre and the trustees found themselves unable to maintain the rooms and other parts of

dharamshala and as a consequence of such poor maintenance on account of the dearth of money, the entire structure became dizzy, ruined, spoiled

and damaged. Humidity, dampness and moisture pervaded in the rooms. So due to these features, inter alia, the dharamshala became worthless,

non-usable and uncomfortable to the ordinary standard of dwelling even of pilgrims because it had become almost a half century old from the time

of its construction which was raised some time after the registered sale deed of 5.11.1965 and before the Will of Shri Sheetal Das dated 9.5.1969

because in the sale deed dated 5.11.1965, the word "dharamshala" is not there, while after the purchase of such property, Shri Sheetal Das has

used the word "dharamshala" in his Will dated 9.5.1969.

7. Since Nihchal Das and Verho Mal as well as three more trustees, who were appointed, all were from Delhi, so they appointed a Manager, a

Sweeper and a Chowkidar to take care of that dharamshala, while of and on, pre-dominantly, Nihchal Das and Verho Mal used to look after and

to recover the rents from the shopkeepers.

8. Taking advantage of the physical absence of all the trustees in Haridwar city, the evil eyes of many persons fell on this property and in such

course, even the chowkidar of that dharamshala, namely, Sukhdev having connivance with the locals forged a Will dated 13.11.1971 in his favour

and declared himself the original trustee and thus managed some Smt. Santosh and Trilok Chand to move in the Court of City Magistrate

succeeding to get the declaration of vacancy in one of the shops by the order of the City Magistrate dated 20.4.2005. When these facts came in

the notice of Nihchal Das, he filed a Rent Control Revision No. 1/2006, which was allowed and the order of the City Magistrate was quashed by

the judgment and order dated 5.8.2006 of the District Judge.

9. Apart from the above, Nihchal Das moved to the police narrating the whole facts that attempt is being made by the locals as well as the

chowkidar to grab this property. S.P. (City) directed the S.H.O. concerned to make intense enquiry and lodge the report if some substance is

found. The S.H.O. found truthfulness in the allegations and the report was lodged on 12.10.2006 against Sukhdev and three other persons,

namely, Sachin (S/o Sukhdev), Ramcharan and Smt. Santosh Kapoor. The Court is not aware as to what happened further on this score.

10. Although an attempt was made to get this trust registered on 4.10.1976 by moving an appropriate application with all the details in Form No. 5

to the District Magistrate, Saharanpur (as the area of Haridwar then was under the territorial jurisdiction of District Saharanpur) and such attempt

was made as contemplated under The Uttar Pradesh Public Charitable and Hindu Religious Institutions and Endowments Ordinance, 1976 (U.P.

Ordinance No. 16 of 1976). That time also, the name of the trust was shown as Sheetal Das Laxmi Bai Trust, Sadar Bazar, Delhi. But somehow

such ordinance could not take the shape of Act. So, the things could not be finalised at that time and thus, the trust continued to run.

11. In the course of time, Verho Mal also died on 11.3.2003. Thereafter Nihchal Das, the founder trustee and managing trustee, along with four

others got this trust registered on 23.4.2003 at Delhi and again, the head office of the trust was shown in Nawab Ganj, Delhi, while the local office

of the trust was displayed at Sheetal Das Laxmi Bai Sindhi Dharamshala, Ram Ghaat, Haridwar. In this trust, five trustees were shown. They were

Nihchal Das, Om Prakash S/o Nihchal Das, Trilok Chand, Jairam Das and Vijay Sajnani S/o Verho Mal, all residents of Delhi.

12. Again, since all these trustees were mainly residing at Delhi, so except Nihchal Das and Om Prakash, rest of them hardly took any active

interest in taking care and maintenance of such property. So, it appears that Nihchal Das appointed Arun Kumar Sharma, S/o Jai Narayan

Sharma, Ashok Keshwani and Smt. Rajrani Sharma W/o Sanat Kumar Sharma, all residents of Haridwar, who were showing their active interest

in pursuing the objects and purposes of the trust and looking after its property. In the same fashion, it appears that Bhushan Nankani was also

appointed trustee by Nihchal Das. This appointment has been deposed by Nihchal Das in his affidavit dated 25.9.2009, which is available on the

record.

13. As has been set forth above that all the miscreants and the property/land grabbers had the evil eye on this dharamshala and its tenants too were

not the exceptions because with the inflation, the rent which they were paying, or not paying at all, became very meagre, so they also started to use

their respective demised premises as the ostensible owners, while the whole estate including the shops was the property of a trust or endowment

created by Smt. Laxmi Bai @ Sadori Devi for the public and charitable purposes.

14. Due to these constraints and in the above backdrop, in order to carry out the purposes and object of the trust effectively, a resolution was

passed in the meeting of the trust dated 2.6.2009 (a notarised copy is on the record) to move an application under Section 92 CPC for selling the

whole estate and construct a new modern dharamshala in the name of same Sheetal Das Laxmi Bai Sindhi Dharamsala either in Haridwar or in any

other city of India or in the alternate, to construct an inn or hostel for the poor and helpless students. Therefore, they moved an application

accordingly bearing Miscellaneous Case No. 27/2009 on dated 7.8.2009. The District Judge allowed such application on 4.9.2009 and thus it

was converted into Original Suit No. 6/2009. It was brought against the public at large with the prayer that in the circumstances as highlighted in

the application/plaint, the Court be pleased to formulate a scheme paving the way for the trustees to sell this dilapidated dharamshala and its

appurtenant estate on the market value and they be permitted to construct another modern dharamshala in the name of same trust in Haridwar or in

any other city of India or to construct an inn or hostel for the needy and poor helpless students. So, a publication in the daily newspaper was made

calling the objections of whosoever interested.

15. Initially, the written statement was presented by none, but only by five tenants of the dharamshala, namely, Suresh Kumar Gupta, Smt. Dhallo

Devi, Satish Nagrani, Ram and Smt. Anita. In the written statement, the nature of the trust being public and charitable was denied and averment

was made that it was a private property of Sheetal Das.

16. Following issues were framed on 19.11.2012:

(1) Whether Sheetal Das Laxmi Bai Sindhi Dharamshala is a public trust or not?

(2) Whether the plaintiffs no. 2, 3 and 4 are its trustees or not?

(3) Whether there is any bona fide necessity to sell the property in question?

(4) Relief.

Thereafter on 13.2.2013, following two issues were framed:

(5) Whether Smt. Laxmi Bai @ Sadori Devi executed a valid Will dated 2.9.1974 pertaining to the property in question?

(6) Whether the Board of Trustees was constituted by Nihchal Das and Verho Mal pursuant to the Will dated 2.9.1974?

Thereafter further on 14.11.2014, two more issues were framed, which are as under:

(7) Whether the description of the property, in question, has not been given correctly, as averred in the written statement? If yes, its effect?

(8) Whether the trust document dated 23.4.2003 is barred by Section 25 of the Registration Act or not?

17. For the plaintiffs, PW1 Bhushan Nankani filed his affidavit dated 19.11.2012 in the form of chief examination, who has been extensively cross-

examined. That apart, the affidavit of Nihchal Das dated 25.9.2009, which was moved by him just after according the permission to institute the

suit by the learned District Judge, was filed in the form of chief-examination. However, since the first set of issues could be framed on 19.11.2012

and the date for evidence was fixed only thereafter, but he died perhaps some time in the first week of October 2010, therefore, there arose no

occasion for him to appear in the witness box to face the cross-examination. In these circumstances, I feel that this deposition of founder managing

trustee Nihchal Das must have some evidentiary value because he was one of the trustees besides Verho Mal, to whom the settler of the trust Smt.

Sadori Devi placed the greatest reliance. It is only on account of the constraints of the changed circumstances and due to his death that he could

not be brought in the witness box. However, coupled with other evidence, the deposition of Nihchal Das in the form of affidavit should also be

taken into consideration.

18. For defendants, DW1 Satish Nagrani (one of the tenants/objectors), DW2 Preetam Lal (tenant, but not an objector) and DW3 Ram

(tenant/objector) filed their affidavits in the form of chief examination and they have been cross-examined in the Court below.

19. Learned Court below has taken the issues no. 1, 5 and 6 together for the adjudication and it has been found proved at the end of the

adjudication of these issues that the questioned property along with the plot is a public religious trust property, which gained renounce in the name

of Sheetal Das Laxmi Bai Sindhi Dharamshala, Ram Ghaat since its very inception. Such finding of learned District Judge regarding the nature of

trust has not been challenged by any of the tenants in F.A. No. 37/2015. Even further publication by this Court in widely circulates Hindi

Newspapers - Amar Ujala & Dainik Jagaran could not attract any person from the public to come forward and agitate the suit and the prayer

made there under.

20. As regards the execution of the valid Will dated 2.9.1974, I have already indicated hereinabove that this instrument is of dual character. It is

testamentary as well as non-testamentary in nature. It is testamentary with regard to the vesting of the other movable and immovable properties

including the TDRs, bank deposits, savings deposits, movable and immovable properties situated in Delhi bequeathing all of them to her youngest

brother Nihchal Das and her nephew Verho Mal, who was the son of her younger sister Smt. Premi Bai. These properties had to be succeeded by

these two persons after the death of the testator Smt. Laxmi Bai because the Will comes into effect only after the death of the testator. But as

regards the creation of the trust and divesting herself wholly from the property of the dharamshala as well as the appurtenant land of 200 sq. yds.

situated in the rear side of such dharamshala with three shops constructed thereon, it had taken effect during the lifetime of Smt. Laxmi Bai herself

and thus, two persons started managing the properties of the trust even during her lifetime. Otherwise also, for the creation of a religious charitable

trust, there was no need of executing an instrument or a Will, much less its registration under the Registration Act of 1908.

21. Much stress has been laid by the learned Counsel of the tenants that as per Section 17(1)(b) of the Registration Act, non-testamentary

instruments which purport or operate to create any right in present or in future or any title or interest in the immovable property is compulsorily

registrable. But this requirement of law is not at all necessary, much less compulsory where the property is divested for the religious and charitable

purposes and a trust is created for the same. This is evident from the opening language of Section 92 CPC itself, which ponders and is applicable

to any express or constructive trust. It contemplates in so many words that a trust created for public purposes of a charitable or religious nature

may even be constructive. It is not necessary to be express even. Then where remains the need to get such trust registered?

22. Before expressing disquisitions on the Hindu law of religious and charitable trusts, as have been enumerated in the Tagore Law Lectures and

that is the epitome of Justice B.K. Mukherjee, the then Chief Justice of India, it would be worthwhile to take a note that this First Appeal No.

21/2015 has been contested by respondents no. 2, 4 and 6 through their Advocate Mr. Siddhartha Singh, while the Vakalatnama of Mr. Singh is

also available on behalf of respondent no. 3 and he has not been permitted to withdraw his Power by any order of the Court. Otherwise also, the

interest of all these respondents is identical. In such appeal, it transpires that respondent no. 5 Pradeep Kumar (not a tenant), a youth of 22 years,

got himself impleaded in the trial court after producing his affidavit on 25.4.2012 through his Advocate Mr. R.S. Rajawat, who never pursued the

litigation and his cause. That apart, an exhaustive attempt was made to render service on Pradeep Kumar at his given address, but the Process

Server reported that no such person resides at the spot. This Court made the publication two times, once in Amar Ujala and second time in Dainik

Jagaran, which are well accepted and widely circulated paper in Haridwar and whole of Uttar Pradesh and such publication was made in

vernacular language so that the public at large may conspicuously notice the ongoing litigation in this regard, but none has turned up before this

Court except the tenants Hari Om, Preetam Lal and Sanjay Gupta by way of filing the First Appeal No. 37/2015. These tenants/appellants have

also challenged only a certain portion of the operative part of the judgment, which has already been indicated by the Court at the very outset of this

judgment.

23. Now I am inclined to reproduce the principles of Hindu Law pertaining to the subject. Justice Mukherjea in his said book at point no. 2.34 has

defined the word "Dharmasala" as an institution which is a popular form of Hindu charitable trust. The expression Dharmasala primarily signifies a

rest house and it corresponds to what is known as choultry in Southern India, the object of which is to provide rest and sometimes food to

travellers and itinerant ascetics. It is the same thing as Propatha of the Vedas and Pratisrayagriha of the later Brahminical writers.

24. Describing the essentials of a valid religious trust under the Hindu Law, Justice Mukherjea in his book at point no. 2.1 has laid down four

characteristics of such trust, which are as under:

(a) In the first place, the object or purpose of the trust must be a valid religious or charitable purpose according to the rules of law by

which the Hindus are governed at the present day.

(b) In the second place, the founder or the settlor should be capable, under Hindu law, of creating a trust in respect of the particular

property which is the subject matter of trust.

(c) The third requirement is that the settlor should indicate with sufficient precision the purpose of the trust and the property in respect

of which it is made, and the trust must comply with the requirements of law as regards the form in which it is to be made.

(d) The last element is that the trust must not be opposed to the provisions of any law for the time being in force, an infringement of

which makes it void or voidable in law.

25. As regards the work of the trustees, Justice Mukherjea in his book at point no. 1.54 has laid down that for the purpose of carrying out the

intentions of the donor, somebody should be entrusted with the management or administration thereof. As was observed by Justice Mukherji, in

ancient times, except in cases of property dedicated to a brotherhood of ascetics, all endowments were administered ordinarily by the founder

himself and after his death by his heirs. This was the case not only with regard to the temples but also in respect of non-religious charitable

institutions like Choultries, Sadabrats, etc.whether or not such person is the heir of the original founder, he must be deemed to be in the

position of a trustee with regard to the endowed property.

26. Now, I come to the issues no. 1, 5 and 6, as have been dealt with by the learned Trial Court. It has been abundantly clear and even accepted

by the learned Trial Court that Sheetal Das Laxmi Bai Sindhi Dharamshala is a public religious trust because the very purpose of such dharamshala

is to give shelter and a short stay to the pilgrims in this holy city of Haridwar where the sacred river Ganges coming down from the hills, passes

and flows through to the plain areas.

27. Besides the language of the Will, as has been used by Smt. Laxmi Bai @ Sadori Devi in paragraphs 8 and 9 of such Will, it is also amply clear

that she intended to create a trust or endowment in the property which is the subject matter of this litigation and such endowment was created for

the benefit of the pilgrims who visit the holy city of Haridwar. Even the respondent no. 2 Mr. Satish Nagrani, who has been examined as DW1,

has virtually admitted the case of the plaintiffs appellants as a whole. In paragraph 6 of his affidavit dated 10.7.2013, which is in the form of chief

examination, he has deposed that Sheetal Das Laxmi Bai Sindhi Dharamshala trust is being looked after and taken care of by its trustees Om

Prakash S/o late Nihchal Das, Arun Kumar Sharma S/o late Jai Narayan Sharma, Bhushan Nankani S/o late Achu Ram, and Smt. Rajrani Sharma

W/o late Sanat Kumar Sharma, and these trustees are, in fact, managing and controlling the Dharamshala and its affairs. In paragraph 7, he has

deposed that this Sheetal Das Laxmi Bai Sindhi Dharamshala Trust was opened and set by Smt. Laxmi Bai @ Sadori Devi through her Will dated

2.9.1974, wherein Nihchal Das and Verho Mal were appointed as founder trustees conferring powers to them to further appoint the trustees.

28. DW2 Preetam Lal has also been produced before the Court and in his affidavit dated 26.7.2013 in the form of chief examination, in

paragraphs 7 and 8, he has accepted the existence of the trust and its creation and its management by the present trustees/plaintiffs in the same

manner as has been accepted by Satish Nagrani. This Preetam Lal during his cross-examination on 26.7.2013 has deposed that initially he applied

for impleadment, but on coming to know the reality, he withdrew the application for impleadment.

29. DW3 Ram, who is the opposite party no. 3, has disclosed his age to be 68 years in his affidavit dated 12.5.2014. So, this way his date of birth

would be nearing 1946. However, in his cross-examination done on that day itself, he has stated that he is continuing as tenant since 1935 and he

took this shop under tenancy from Shri Sheetal Das. So, this way his statement is quite confusing and contradictory in itself.

30. Regarding the constitution of Board of Trustees by Nihchal Das, the resolution of the Board of Trustees on dated 13.4.2009 is significant

wherein the name of the trustees have been shown as Nihchal Das, Arun Kumar Sharma, Ashok Keshwani and Smt. Rajrani Sharma. It is

important to mention that Verho Mal died on 11.3.2003, which has also been indicated hereinabove. This resolution, passed in the meetings of all

the trustees under their signatures, sufficiently shows that the property, in question, on account of the nuisance of these tenants had lost its utility. All

the tenants were not paying the rent, which was as meagre as quite insufficient to keep the proper maintenance of the rooms of dharamshala.

Besides, the tenants were threatening to drag all the trustees in the Court. So the pilgrims, finding the bad conditions of the rooms of dharamshala,

which were pervading with dampness, moisture and humidity, besides the ill-maintenance, were not liking to stay there. So, the consensus was

arrived at to put the whole property to sell. In order to achieve the objectives of the founder of the trust as well as her husband Shri Sheetal Das, it

was proposed to construct another modern dharamshala.

31. It appears that sometime Ashok Keshwani was also introduced as a trustee of such property and after his death during the pendency of the

litigation, Bhushan Nanakani was also appointed under the approval of principal managing trustee Om Prakash, who was none other but the son of

Nihchal Das, the main founder member of said trust. As has been highlighted while discussing the principles of Hindu law, Justice Mukherjea has

elaborately highlighted that the heirs of the original founder must be deemed to be in the position of the trustees. While in the present case, after the

death of Nihchal Das, a resolution was passed on 18.10.2010 by the remaining trustees to appoint Om Prakash as the main principal managing

trustee. So, there remains no room for the doubt that the plaintiffs appellants are the trustees of the property in subject.

32. This way, I decide the issues no. 1, 5 and 6 in favour of the plaintiffs and against the defendants/opposite parties, who are the tenants.

Issue No. 2.

33. As has been highlighted by me, while dealing with the issues no. 1, 5 and 6 that even Satish Nagarani and Preetam Lal in their evidence as

DW1 and DW2 respectively have accepted in so many words that the present plaintiffs are the trustees of Sheetal Das Laxmi Bai Sindhi

Dharamshala Public and Religious Trust. PW1 Bhushan Nankani has not specifically denied the trusteeship of these plaintiffs and he has not been

cross-examined sufficiently on the point of resolutions dated 13.4.2009 and 2.6.2009, wherein these plaintiffs have shown in the whole

proceedings of the trust to be the trustees and such resolutions were passed under their signatures. That apart, First Appeal No. 21/2015 has been

filed by all these appellants/plaintiffs by way of presenting the Vakalatnama of Advocate Mr. Jitendra Chaudhary on dated 4.12.2015. Appellants

no. 2, 3 and 4 have accepted that after the death of Nihchal Das, his son Om Prakash, who was already a member of the Board of Trustees, shall

work as the principal managing trustee and such resolution has not been questioned which has been placed on the record notarised.

34. This way, I decide the issue no. 2 in favour of the plaintiffs.

Issue No. 3

35. As regards the bona fide to sell the property, in question, is concerned, it has been proved by the evidence of PW1 Bhushan Nankani, who

has filed his affidavit dated 19.11.2012 in the form of chief examination and was cross-examined on 23.5.2013, that on account of the oldness of

this dharamshala which is almost half-century old and because of the ill or no maintenance since the last decades, the rooms have become dingy,

full of moisture and spoiled. No pilgrim wishes to stay in such rooms. Even a man of ordinary living standard does not like to stay there. This is due

to the reason that all these tenants, who are occupying 14-15 shops and other premises of the whole estate in question, are not paying any rent or

the rent is so meagre that it is altogether insufficient to upkeep the maintenance of this dharamshala and its rooms. Over and above, these tenants

have nurtured such dishonest intentions as they have begun to manifest themselves to be ostensible owners of the respective demised premises

under their occupation and they keep on threatening the trustees to drag them to the litigation in the Court.

36. Such state of affairs is also being reflected from the affidavit of DW1 Satish Nagrani, who in paragraph 9 of his affidavit dated 10.7.2013, has

accepted in so many words that the dharamshala and the part of the whole estate are in dilapidated condition. He in his cross-examination has

accepted that this dharamshala was got constructed in 1965 by Shri Sheetal Das. So in that way, it has become almost 50 years old. In the last

sentence of his cross- examination, he has stated that this dharamshala has become quite old and it is in dilapidated condition and on account of

such poor state, it is not being used by the pilgrims.

37. DW2 Preetam Lal, who is also one of the tenants, although he had not pressed his impleadment application in the suit but in the last sentence of

paragraph 8 of his affidavit dated 26.7.2013, he has accepted that this dharamshala is in dilapidated condition.

38. As has been highlighted above that PW3 Ram, S/o late Shri Prasad, who is the defendant no. 3, is a quite confused witness because he has

disclosed his age to be 68 years and has made the deposition on the legal advice, as stated by him in paragraph 4 of his affidavit. In his cross-

examination, he has deposed that this Sheetal Das Laxmi Bai Sindhi Dharamshala is running since last 150 years. It does not attract any pilgrims. In

the last three lines of his cross-examination, he has accepted that his impleadment in the litigation is just to save his tenancy and to maintain his

possession over the demised premises. That apart, he does not have any interest in this suit.

39. So, considering all these statements even of the defendant witnesses, leaving apart the proving of the case by PW1 Bhushan Nankani coupled

with the resolutions passed in the meetings of the Board of Trustees, I think that it can safely be held that this dharamshala has outlived its utility. It

is not accomplishing the aims and objectives of its founder on account of its dilapidated condition. Therefore, I hold that there is bona fide necessity

to sell the property, in question. This issue is decided accordingly.

Issue No. 7.

40. As appears from the impugned judgment, this issue regarding the description of the property has not been pressed by the defendants. So, the

learned District Judge has disposed it of accordingly and there is no need to manifest any adjudication on this issue.

41. This issue has been framed to the effect whether the trust document dated 23.4.2003 is barred by Section 25 of the Registration Act or not? I

would like to hold that any of the provisions of Registration Act, 1908 is not at all applicable in the present controversy or pertaining to any deed,

whether it was the Will dated 2.9.1974 executed by Smt. Laxmi Bai @ Sadori Devi wherein she created the trust or the attempt pertaining to its

registration dated 4.9.1976 or its virtual registration dated 23.4.2003 at Delhi because it appears that the provisions as have been postulated under

the heading ""Savings"" of Section 1 of the Indian Trusts Act, 1882 have escaped the attention of learned Counsel for the respondents. Section 5 of

the Indian Trusts Act, 1882 lays down the method of creating a trust of immovable property, but it is provided by the ""Savings"" as have been

postulated in Section 1 of the said Act that this Trust Act does not apply to public or private religious or charitable endowment. Therefore, the rule

laid down in Section 5 regarding execution of a registered agreement in writing does not govern a case where the public or private religious or

charitable endowment is settled. So, it does not matter whether the terms and conditions were expressed by Smt. Laxmi Bai @ Sadori Devi or the

same were reduced into writing in her Will dated 2.9.1974 or such trust was got registered at any later point of time or not.

42. Justice B.K. Mukherjea in his book, as has been indicated above, at point no. 3.5 has opined that for any settlor it is quite open to him to

create an endowment merely by renouncing his rights in specific property and indicating the particular religious or charitable purpose for which the

property is to be used. No deed is necessary, and no trustee need be appointed, for the law will impose the duties of trustee upon the founder or

his heir, or such other persons, as might have control over or possession of the endowed property.

43. It can well be pondered by any legal mind that a constructive trust may be deemed to have been created by the conduct of its settler, much less

from any express deed. It can be created even by a word of mouth. Then where remains any need to get the terms and conditions of the trust

reduced in writing which is much less than agitating on the point of registration at a particular place where the property is situated.

44. Therefore, I decide this issue no. 8 against the defendants.

Issue No. 4 (Relief)

As all the issues have been dealt elaborately by this Court and adjudicated in favour of the plaintiffs appellants and against the defendants, hence I

decree the Original Suit No. 6/2009 and grant the permission to the plaintiffs appellants to sell this whole property in question, the details whereof

have been mentioned in the earlier part of the judgment, either whole at one go or any part of such property including the shops, dharamshala,

garage, etc. whatsoever, as and when the proper value of such sale is available.

45. This Court has pondered the sale of this estate by way of a public auction, but if such condition is imposed then there is inevitable possibility

that all or group of the tenants will create every obstacle and will leave no stone unturned to frustrate the decree passed by this Court in order to

protract their tenancy on miniscule or a meagre rent or their occupancy in the demised premises for no rent at all. Thus, the whole object and aim

of the settlers of the trust will undoubtedly be in jeopardy which cannot be permitted to happen.

46. It has been fairly accepted during the course of arguments by the learned Counsel for the opposite parties that on account of oflate

demonetization, property in the market is not fetching the high value and even sometime the price is below the circle rates prescribed by the

Government. So, in that eventuality, the plaintiffs appellants shall take the precaution to raise the maximum value possible while selling such

property or any part thereof and after realising the sale proceeds/costs of the transaction, they will have the following options:

(a) A modern dharamshala with reasonable facilities/amenities shall be got constructed after purchasing a suitable plot of land within the municipal

limits of Haridwar city. Every attempt shall be made with all sincerity that such new dharamshala should be within the vicinity of the bank of Ganges

having regard to the legal and other technical constraints.

(b) Plaintiffs appellants will also have an alternative to raise the sufficient fund by selling all the shops or any one of them and to renovate the

present dharamshala so that the modern facilities may be made available to the pilgrims.

(c) Until and unless the money received out of the sale is utilised, it shall be invested in the form of TDR in some local bank under intimation to the

learned District Judge, Haridwar because the searching of the new suitable plot of land for the purpose may not immediately be available wherefor

the plaintiffs appellants will have to make the massive survey and thereafter also a number of obstacles/constraints they may likely to face while

implementing the scheme as formulated by this Court.

47. Since First Appeal No. 21/2015 has been allowed by this Court, hence the whole impugned judgment and order of the learned District Judge

dated 30.1.2015 stands set aside and in that way, First Appeal No. 37/2015 becomes redundant and is disposed of accordingly.

48. Let the LCR be sent back.