



[2019] UKFTT 0378 (PC)

REF/2018/0042

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

**SYED ASHGAR ALI SHAH
MANZOOR HUSSEIN
JEVADE SADIQ**

APPLICANTS

and

**MAHMOUD ALI
NIAZ ALI
MOHAMMED ASLAM**

RESPONDENTS

**Property Address: Land and Buildings on the south-east side of
Apsley Street, Eastville**

Title Number: BL9887

Before: Judge Owen Rhys

Sitting at: Bristol Civil Justice Centre

On: 23rd April 2019

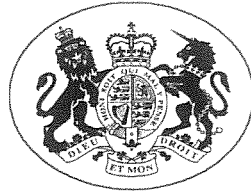
O R D E R

IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicants' application in Form AP1 dated 11th April 2017.

Dated this 14th day of May 2019

Owen Rhys

BY ORDER OF THE TRIBUNAL



[2019] UKFTT 0378 (PC)

REF/2018/0042

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

**SYED ASHGAR ALI SHAH
MANZOOR HUSSEIN
JEVADE SADIQ**

APPLICANTS

and

**MAHMOUD ALI
NIAZ ALI
MOHAMMED ASLAM**

RESPONDENTS

**Property Address: Land and Buildings on the south-east side of
Apsley Street, Eastville**

Title Number: BL9887

Before: Judge Owen Rhys

Sitting at: Bristol Civil Justice Centre

On: 23rd April 2019

Applicant representation: In person
Respondent representation: In person

DECISION

1. These consolidated references from the Land Registry arise out of a bitter internal dispute within a charitable organisation known as the Hosseinieh Foundation for Islamic Education and Welfare (“the Foundation”), registered at the Charity

Commission (“the Commission”) with registration number 1087427. The Foundation is not a corporate body. The precise details and history of the schism are not directly relevant to the issues in this case, and have not been explored to any great extent in the evidence. Mr Mahmoud Ali, the first Respondent (Mr Ali”), was at one stage the General Secretary of the Foundation. However, there was a falling-out between him and his supporters, and another faction within the charity, of which the Applicants were part. This occurred in 2013 and 2014. It appears that Mr Ali’s faction took control of the Foundation for a period of time. The event that gave rise to this dispute occurred in August 2015.

2. Prior to this time, the Foundation’s premises, at Apsley Street, Eastville, Bristol (“the Premises”) were registered in the names of the Applicants and Syed Nazim Ali Rizvi, “*as trustees for the Hosseinieh Foundation Durul-Iman.*” These same individuals had been registered proprietors since 17th January 2000, but there had been no reference to their status as trustees, nor was there any appropriate Charities Act restriction on the register. The entries were altered in May 2010, when the proprietors’ status as charitable trustees was noted on the register. At the same time a Charities Act 1993 restriction was entered. Article 7 of the constitution of the Foundation, revised in May 2001 (“the Original Constitution”), provides that the “*building of the [Foundation] and its contents are the properties of the Hosseinieh Foundation for Islamic Education and Welfare and the Shia community in general. However, the deeds of the properties relating to [the Foundation] will be held in the name of the Trustees.*” Article 7A(b) provides that “*Trustees shall remain as members of the Board of Trustees until retirement, resignation or death, whichever is the earlier. In the case of a vacancy arising a member will be selected as in (a) above*”.
3. On 12th August 2015 a firm of solicitors, Roger James Clements, made an application to the Land Registry in Form AP1 purportedly on behalf of the Foundation, to register the Premises in the name of the Foundation itself, in place of the individual trustees. The application was accompanied by a copy of an amended Constitution (“the Amended Constitution”), said to date from 15th December 2013. Article 7 provides that “*The deeds of the property relating to [the Foundation] will be held in the name of the Hosseinieh Foundation for*

Islamic Education and Welfare.” The AP1 application was to change the name of the registered proprietor of the Premises from the individual Trustees to “*the Hosseinieh Foundation for Islamic Education and Welfare*”. The alteration was made by the Land Registry, and from that time the Foundation has been the registered proprietor.

4. A further application, in Form RX1, was made by the same solicitors, on 19th August 2015. This was stated to be made in the name of the Foundation, and sought a restriction in the following form:

“No disposition or change of name of the proprietor of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by Mr Mahmoud Ali of 33 Belle View Road, Easton, Bristol BS5 6DR or his personal representative or his conveyancer.”

No document or other explanation was given for this entry, which was made on the register from the date of the application. The Amended Constitution was submitted to the Commission and noted on its portal in substitution for the Original Constitution.

5. As is apparent from the Commission’s summary document, on 30th September 2015 there was a meeting at the Premises between representatives of the Commission and various officers of the Foundation, as well as two of the Applicants, Manzoor Hussein and Jevade Sadiq. The meeting had been set up by the Commission as a routine monitoring visit. Further, the Commission was concerned to ensure that the Foundation was being managed in accordance with the recommendations that had been made following the Commission’s inspection in November 2012. During the course of this meeting, it emerged that the title to the Premises had been altered in August 2015 in the manner indicated above. Mr Hussein and Mr Sadiq professed themselves unaware of the change and were advised to contact the Land Registry. There was also extensive discussion of Mr Ali’s position. He had been in contact with the Commission, but had apparently accepted that he had had no dealings with the Foundation for several years.
6. Shortly thereafter, the Applicants, together with Syed Nazim Ali Rizvi, applied to the Land Registry in Form AP1, to change the name on the proprietorship

register from the Foundation back into the names of the individual trustees, and to remove the restriction in favour of Mr Ali. Objections were received from all three Respondents. The second and third Respondents were also beneficiaries of a restriction against the title to the Premises, although the application did not seek to remove their restrictions. The dispute was referred to the Tribunal, but ultimately the Applicants withdrew the application because it emerged that Mr Rizvi had ceased to be a trustee of the Premises, having resigned by letter dated 30th November 2012. The Tribunal Judge had taken the view that the application made by the Applicants and Mr Rizvi could not be granted, and the Applicants were advised to withdraw and make a fresh AP1 application in their names only.

7. Accordingly, a new application in Form AP1 was made on 11th April 2017, seeking the same alterations as on the previous occasion. Objections were once again received from the Respondents, and the dispute was referred to the Tribunal on 8th January 2018. Statements of Case were filed by all parties, although the Respondents' Statement of Case is supported by a statement of truth by Mr Ali alone. No further witness statements have been relied on. The matter came on for hearing at Bristol Civil Justice Centre, Mr Hussein representing the Applicants and Mr Ali the Respondents. All three Respondents were present. Mr Niaz Ali had requested an interpreter, but unfortunately one had not been provided. However, it was accepted that his case was identical to that of his son, Mr Ali, and he would not be prejudiced by allowing the hearing to proceed despite the absence of an interpreter. As I have said, neither Mr Niaz Ali nor Mr Aslam had made a witness statement or statement of truth, and were not therefore entitled to give evidence.
8. In the course of the previous Tribunal proceedings, information had been requested from the Commission with regard to the status of the Foundation and its constitution. On 1st December 2016 Mr Alex Young of the Commission gave a lengthy response, having first set out the factual background. In the course of this letter, Mr Young indicated that there had been an attempt made in April 2014 to register the Foundation as a "Charitable Incorporated Organisation" or CIO. This had not been pursued, with the consequence that the Foundation has remained as an unincorporated organisation. Furthermore, the constitution of the Foundation

as registered with the Foundation was the Original Constitution, so the unamended Article 7 was the relevant provision regarding the holding of the Premises. The Charity Commission portal had been amended in November 2015 to delete reference to the Amended Constitution and reinstate the Original Constitution. This followed the meeting referred to above, when it became apparent that Mr Ali had no continuing status within the Foundation.

9. The Applicants' case is simple. First, they say that they were appointed as the trustees of the Premises, and that they are entitled to remain the trustees thereof in accordance with Article 7 of the Original Constitution, since they are alive, and have never retired or resigned from their office. Accordingly, their names should never have been removed from the proprietorship register. The alteration made to the register in August 2015 was therefore a mistake. Further, since the Foundation is an unincorporated body, it has no legal capacity to hold property in its own name. It has no legal personality for these purposes. Therefore entry of the Foundation as proprietor is also a mistake. Secondly, they allege that Mr Ali has no interest in the Premises nor is there any other basis for the restriction entered on the register in his favour.
10. Mr Ali's case is equally simple. He submits that the Original Constitution had been amended, so that the Amended Constitution came into force. This provided that the Foundation would hold the Premises on its own behalf. This, he argues, divested title from the Applicants as trustees, thus permitting the Foundation to be substituted as the registered proprietor. As to the restriction, he claims that, as General Secretary of the Foundation, he is entitled to maintain the restriction so as to protect the Foundation from any unauthorised dealings with its property.
11. Although, for reasons which I shall explain, the amendment of the Original Constitution is not directly relevant to the issues in this case, I shall consider the evidence with regard to Mr Ali's claim that the amendment took place. He said that a meeting had been convened in accordance with the terms of Article 9 of the Original Constitution. In support of this claim, he produced two documents. First, a letter dated 9th December 2013, signed by him, stating that the Special General Meeting to be held on 15th December 2013 would not be held at the Premises because the "Holding Trustees" refused to permit it. Instead it would

beheld at a named Church Hall. The other document is a notice headed “REF:HF/CHANGES TO HOSSEINIEH FOUNDATION’S CONSTITUTION 15TH DECEMBER 2013”. This sets out the text of a new Article 7, to replace Articles 7A and 7B of the Original Constitution. The new 7A includes this sentence: *“The deeds of the property relating to the H.F will be held in the name of the Hosseinieh Foundation for Islamic Education and Welfare registered as Charitable Incorporated Association with The Charity Commission.”* The document is signed by nine of the twelve names listed, said to be *“Executive Council Members present”*.

12. Under Article 9 of the Original Constitution, any amendment to it can only be effected in accordance with the requirements set out therein. These include, at (b) and (c), requirements as to the periods for service of a written notice, which must include a *“statement outlining the reasons as to what need there is and what purpose any proposed alteration or amendment would serve.”* Mr Ali did not produce any evidence that these requirements had been complied with. In any event, it is clear on the face of the documents that the amendment purportedly authorised by the Executive Council was not incorporated in that precise form into the Amended Constitution. Crucially, the words *“... .. registered as Charitable Incorporated Association with The Charity Commission”* have been omitted. In my judgment, the documents produced by Mr Ali do not demonstrate that the Original Constitution had been validly amended. The Commission, in its letter dated 1st December 2016, referred to the fact that in April 2014 the Foundation had applied to become a CIO, but the application had not proceeded. This seems to tie in with the proposal to amend the Original Constitution. However, at the date of the purported amendment the Foundation was an unincorporated body (as it remained) and not capable of holding property. Therefore, the actual amendment to Article 7 as it appears in the Amended Constitution – omitting reference to the CIO – could not properly have been made. Formally, since the Executive Council authorised a different amendment, the Original Constitution had not validly been amended.
13. However, it is not actually relevant to the issue before the Tribunal whether or not the Original Constitution had been amended. The fact is that the Applicants, as at

August 2015, were the trustees of the Premises, as the Land Registry title recorded. They were appointed at a time when, on any footing, Article 7 of the Original Constitution governed their appointment. Under Article 7 they would only cease to be trustees on death, resignation or retirement. It was not open to the Foundation, or the Executive Council, to remove them. There was no power to do so. If the Original Constitution had been validly amended to permit the Foundation to hold the Premises in its own name (as to which see the preceding paragraph), and if the trustees had refused to retire and transfer the Premises to the Foundation, an application to the Court under section 41 of the Trustee Act 1925 would have been the appropriate way forward. Even a valid amendment of the Original Constitution would not, without more, have effected the removal of the existing trustees. It follows, therefore, that the removal of the Applicants from the proprietorship register was a mistake.

14. There is another reason why the registration of the Foundation as proprietor was a mistake. As the Commission has pointed out, the Foundation does not have a legal personality. It is an unincorporated charitable association and is not capable of holding the title to the Premises other than through trustees. This is a point noted in the Land Registry's Case Summary.
15. Where a mistake has been made, there is a presumption that the register will be altered to correct the mistake – see Sch.4 para. 6(3) of the Land Registration Act 2002. In the circumstances of this case, it is very doubtful that the Foundation can be regarded as a proprietor in possession for the purposes of para.6(2). Even if it is, I am no doubt that one or both of para.6(2)(a) or (b) would be engaged. If the actions of Mr Ali are to be treated as the actions of the Foundation, clearly there has been, at the very least, lack of proper care in procuring the 2015 registration. If not, it would undoubtedly be unjust for the alteration (in the Applicants' favour) not to be made, since they are the lawful trustees.
16. With regard to the application to remove Mr Ali's restriction, I can see no possible justification for the restriction. No justification was provided in the RX1. Mr Ali's explanation was that it was done in his capacity as General Secretary to protect the Foundation against possible misfeasance or breach of trust. That explanation is untenable for at least two reasons. First, there is a

Charities Act 1993 restriction on the register which provides adequate protection. Secondly, Mr Ali is not, and at the date of the entry of the restriction was not, the General Secretary. In cross-examination he accepted quite candidly that he has not been in control of the Foundation for many years, and has had no access to its property or bank accounts since approximately 2013. In any event, there is no justification in either the Original or Amended Constitution for the entry of a restriction of this nature, which in terms survives his death, since it refers to his personal representative. It is perhaps ironic that his stated purpose for the restriction is to prevent the very misconduct in relation to the Foundation's property of which he himself has been guilty.

17. I shall therefore direct the Chief Land Registrar to give effect to the Applicants' application in Form AP1 dated 11th April 2017. Mr Ali is liable to pay the Applicants' costs. If they wish to claim costs (limited to their status as litigants in person) they must file serve, no later than 31st May 2019, a statement of costs incurred since the reference. Mr Ali may object to any item, giving reasons, no later than 14 days thereafter.

Dated this 14th day of May 2019

Owen Rhys

BY ORDER OF THE TRIBUNAL