

Decree dated 12th June, 1967

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SCHEME  
KOLKATA  
IMAMBARA

Suit No.2137 of 1965  
In the High Court at Calcutta  
Ordinary Original Civil Jurisdiction

President of the Union of India

1. Mirza Ahmed Isphanani residing at No.5, Camac Street, Calcutta, within the said jurisdiction and
2. Aga Mohammed Karim Khaleeli residing at No.217, Lower Circular Road, Calcutta, within the said jurisdiction all being members of the Asna Ashari Sect of Shia Mohamedans having an interest in the Trust Estate and Imambara of Aga Karbalai Mohammed and Trustee of the said Trust Estate and Imambara. ....Plaintiffs.

-Versus-

1. Aga Mohamed Shirazee, 2. Aga Abdur Rahim Shirazee both residing at No.10, Portuguese Church Street, Calcutta within the said jurisdiction and 3. Dr. Mahdi Hossain residing at No.14, Circus Row, Calcutta outside the aforesaid jurisdiction all Mutwallies of the said Trust Estate and Imambara, 4. Ali Abdur Shirazee residing at No.10, Portuguese Church Street, Calcutta, within the said jurisdiction. ....Defendants.

Suit for a declaration that the defendants Aga Mohammed Shirazee and Aga Abdur Rahim Shirazee are not fit to act as Mutwallis of the Trust Estate created by and Imambara of Aga Karbalai Mohammed deceased for removal of the said defendants Aga Mohammed Shirazee and Aga Abdur Rahim Shirazee as Mutwallies of the said Trust Estate and Imambara, for a perpetual injunction restraining the defendants Aga Mohammed Shirazee and Aga Abdur Rahim Shirazee and both of them their servants and agents from dealing with and/or interfering with the administration and management of the said trust estate and Imambara in any way, for modification of the existing scheme of the administration of the said trust estate and Imambara for proper management and administration thereof in such a manner as the court may deem fit and proper, for appointment as Mutwallies

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and 7. Abdur Rahim Shirazee for the proper administration and management of the said trust estate and Imambara in terms of the said scheme, for costs etc. This case being treated as appearing on this day's list for final disposal before the Honourable Ramendra Mohan Dutta, one of the Judges, of this Court, in the presence of the Advocates for the parties, And the Plaintiffs hereby withdrawing all, charges and allegations made against the defendants and similarly the defendants hereby withdrawing all charges and allegations made against the plaintiffs. It is ordered and decreed that the allegations made against the plaintiffs. It is ordered and decreed that the original scheme for administration and management of the trust estate and Imambara of Aga Karbalai Mohammed, deceased, mentioned in the plaint in the suit (hereinafter referred to as the said trust estate) be and the same is hereby modified and/or altered in terms of the proposed modifications in the final scheme (copy whereof is set out in the schedule hereunder written and hereinafter referred to as the said final modifications) and that the future administration and management of the said trust estate be carried on in accordance with the said original scheme with its modifications already made and with the said final modification. And it is further ordered and decreed that the four persons namely; (1) Aga Mohammed Shriazee (2) Abdur Rahim Shrazee (3) Dr. Mehdi Hossain and (4) Ali Akbar Shirazee be and they are hereby appointed Mutallies of the said trust estate created by the Will of the said Aga Karbalai Mo., deceased and they do so henceforth not as Mutwallies of the said Trust Estate and hold the office of the Managing Mutwallie by turn one after the other in Serial order. And it is further ordered and decreed that Mr. M. K. Khaleeli, the Trustee to the Board of Trust of the said Trust Estate do in terms of the said Original Scheme nominate a person as a trustee the said Board of Trust in place of the vacancy created by the resignation of Mr. Aga Khalil Adkhalah the third trustee to the said Board of trust. And it is further ordered and decreed that in case of the said Mr. M. K. Khaleeli choosing to retire from the said Board of Trust due to his old age and ailing health, he shall be at liberty to recommend a person, if he so desires in terms of the said original scheme and to appoint him to fill up such vacancy. And it appearing that the statement of accounts of the said trust estate prepared and submitted for the period from the

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first day of January one thousand nine hundred and sixty seven and accepted by the parties as true and correct it is further ordered and decreed that the parties shall not be entitled to demand for any other statement of accounts. And it is further ordered and decreed that out of the accounts. And it is further ordered and decreed that out of the accumulated arrears of salary of the defendant Aqa Mohammad Shirazee a sum of Rupees three thousand shall be deducted in the first instance and that the same shall be retained as security for realisations of a sum of Rupees two thousand nine hundred and fifty from Mohammed Khallil Shirazee, the son of the said defendant Aqa Mohammad Shirazee after demanding from him on account of his outstanding loan from the said trust estate. And it is further ordered and decreed that the said sum of Rupees three thousand shall be refunded to the said trust estate by the said Mohammed Khallil Shirazee within a period of one year from the date hereof. And it is further ordered and decreed that a further sum of Rupees one thousand shall be deducted from the said arrears of salary of the said defendant Aqa Mohammed Shirazee as a token contribution by him to the said Trust Estate to meet any deficit that might have been caused to the assets of the said trust estate and that the balance shall be forthwith paid to him. And it is further ordered and decreed that a full and complete inventory about the moveable and the immoveable properties of the said trust estate shall be prepared and in the presence of the attorneys for the respective parties in order to avoid all future dispute about the same and that the same shall be filed in this court within six months from the date hereof. And it is further ordered and decreed that the costs of all parties to this suits including that of the said added defendant Ali Akbar Shirazee be paid out of the said Trust Estate irrespective of any order as to the costs. And the court doth certify that this is a fit case for engaging two advocates. And it is further ordered and decreed that the attorneys for all the parties do immediately prepare their respective bills of costs of this suits as well as of the previous proceedings made in Suit no.457 of 1910 and 1725 of 1934 as between parties

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attorney and client in which the fees actually paid to their respective advocates including consultations shall be allowed and that the said attorneys for the parties may instead of getting their respective bills of costs taxed have their said respective bills certified by two attorneys of this court. And it is further ordered and decreed that the Receiver appointed in this suit do out of the funds lying in his hands pay to the respective attorneys for the parties the amounts of their respective bills of costs; and that the said Receiver do set apart sufficient funds for payment of the amount of the aforesaid Bills of all attorneys for the par parties at the time of making over the possession of the said Trust Estate hereinafter mentioned. And it is further ordered and decreed that the said Receiver do stand discharged from further acting as such Receiver on and as from the thirtieth day of June One thousand nine hundred and sixty seven and that he do make over possession of the said trust estate to Dr. Aga Mohammed Shirazee, the first Mutwalli; on or before the first day of July one thousand nine hundred sixty seven. And it is further ordered and decreed that the said Receiver do in terms of this decree make over possession of the said trust estate and Imambara to the said defendant Aga Mohammed Shirazee after completing the said inventory. And it is further ordered and decreed that the said Receiver do continue to act as Receiver of the following sums belonging to the said trust estate upto the thirtieth day of September one thousand nine hundred and sixty seven.

- i. Monies lying in the current account of the State Bank of India in his name as a Receiver.
- ii. Cash in hand
- iii. Cheque in the name of Mr. A. Salam, the said Receiver received from the Rent Controller but sent for re-validation.
- vi. Fresh Cheque to be received by the said Receiver from the Rent Controller on or before the thirtieth day of September one thousand nine hundred and sixty seven.
- v. Monies now lying with the Rent Controller in the name of the Defendant Aga Mohammed Shirazee.

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And it is further ordered and decreed that the defendant Aga Mohd. Shirazee, the first Managing Mutwallie, do collect the rent from the first day of July one thousand nine hundred and sixty seven. And it is further ordered and decreed that the said Receiver shall be entitled to the usual remuneration for all sums to be collected by him and now lying with the Rent Controller and that the said Receiver do apply the said sums for payment of the advance made by him to the said Trust estate his remuneration upto the thirtieth day of September one thousand nine hundred and sixty seven and other payments as provided in this decree. And it is further ordered and decreed that the said Receiver do file his accounts in the office of the Registrar of this Court within the thirtieth day of September one thousand nine hundred and sixty seven and that the same when filed be passed before any one of the judges of this Court. And it is further ordered and decreed that in the meantime the Receiver do discharge all amounts due for costs as herein before mentioned. And it is further ordered and decreed that all books of accounts, records and properties of the said trust estate shall remain at the office of the said Imambara and that the same shall be in the possession of the Managing Mutwallies. And the parties shall be at liberty to apply to this court from time to time as they may have occasion. And it is further ordered and decreed that the said Receiver and all parties do act on a copy of the minutes duly countersigned by an officer of this Court being shown to him or them on the undertaking of the Plaintiff's attorney to have this decree drawn up, completed and filed.

Witness Shri Deep Narayan Sinha, Chief Justice at Calcutta aforesaid the twelfth day of June in the year one thousand nine hundred and sixty seven.

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D. N. Bhattacharje	Attorney	
J. Mitra	Attorney	R. Dutta.
Bimal Chandra Mitra	Attorney	
Ganga & Co.,	Attorneys	Monoj Ganguli 4.2.97
Bose & Dutt.	Attorneys	Master

SCHEDULE ABOVE REFERRED TO

Clause 3 : The reserve fund now belong to the trust estate shall in future be created as Reserve Fund under para 6 of the existing scheme and pending the disposal as therein provided be invested by opening Fixed Deposit Bank Account (12 months) and called the Reserve Fund Account, separate from the present current account with the State Bank of India, on similar terms and as provided in para 7 of the said scheme and transfer therein and annual reserve as provided by the budget each year, and be subject to the provision of para 6 of the scheme, or further order of the court.

4th Final Scheme

For the future administration of the Trust Estate Imambara of Aga Karbalai Mohammed deceased as modified by an order dated 28th March, 1916 and annexed to the Decree made in Suit no.1725 of 1934 dated 21st August 1944, and further modified in the Decree made in Suit no. 2137 of 1965 dated 12th June 1967.

1. There shall always be a Board of Trustees consisting of three persons without remuneration to supervise the management and to control the finance of the said Imambara Trust Estate.

2. The Trust Estate and the Imambara shall be managed by the managing Mutwallie for the time being hereinafter mentioned and he shall in all matters relating to the management and finance thereof act in accordance with such advice as may be given or resolution passed or budget or rules framed by the Board of Trustees touching the same.

3. The said Imambara & Trust Estate shall be deemed to be vested in the said Board of Trustees and the same shall sue and be sued in the names of the Trustees for the time being.

4. In case of death or retirement of any trustee or absence from Calcutta for a consecutive period of 12 months the surviving member or members of the Board of Trustees must within one month appoint an Asna Ashari Shia Mohammedan of good character in the place of such dead retired or absent Trustee and in default thereof such appointment shall be made by the Court on an application being made to it on that behalf and the Trust Estate shall be deemed to have vested on the trustees as such immediately on their appointment.

5. No person shall be eligible for the post of a trustee who may be the recipient of any pecuniary help or remuneration from the Imambara.

6. The Trustees shall see that the Mutwallies set apart one-tenth of the gross annual income of the trust estate as reserve fund to meet contingencies provided that when the amount to the credit of the said reserve fund shall be found to exceed Rs.10,000/- then and in that case the trustees shall be at liberty to invest such excess in profitable landed property in Calcutta in consultation with the Mutwallies.

7. The managing Mutawallies shall forthwith open a current account with the Imperial Bank of India or the National Bank of India or the Hongkong Banking Corporation

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or any other Bank to be approved by the Majority of the trustees and Mutawallies, for the time being in the name of the Trust Estate i.e. Imambara and Trust Estate of Aga Karbalai Mohammed deceased to be operated by the Managing Mutwallie and one of the trustees and deposit to the credit of such account the income of the Trust Estate as soon as it is received the same and except a sum of Rs.50/- Rupees fifty) at a time which shall be kept by the managing Mutwallie in hand for meeting current expenses of the Imambara. Before the expiration of his term of office the managing Mutwallie shall make over charge to his successor in office. The pass Book and cheque book shall be kept at the Imambara and shall be available for inspection by the trustees at their periodical visits to the Imambara.

8. The reserve fund now belonging to the trust Estate shall in future be treated as reserve fund under para 6 of the existing scheme and pending the disposal thereof as therein provided be invested by opening a Fixed Deposit account (for 12 months) and called the Reserve Fund Account, separate from the present current account with the State bank of India on similar terms as provided in para 7 of the said scheme and transfer therein the Annual reserve as provided by the budget each year, and be subject to the provisions on para 6 of the scheme or further order of this Court.

9. Should any portion of the Trust Estate be acquired by the Government or any other public body for any public purpose the compensation money to be paid for the same shall be drawn and received by the said Trustees who shall deposit the same in the said Banking account standing in the name of the Trust Estate and be held by them subject to the further order of this Court.

10. The Managing Mutwallie shall be responsible for the proper management of the suits and proceedings in which the trust estate and the Imambara may be interested and



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the same shall be conducted according to the such instructions if any, as the Board of Trustees may give, regarding the same and the costs thereof shall be paid by the Managing Mutwallie out of the current account to be opened at a Bank as aforesaid in accordance with such instructions as may be given by the Trustees in that behalf.

11. The trustees shall meet at least once a year to discuss and decide upon matters concerning the said Imambara and Trust Estate and to frame rules for the better administration and management thereof provided that such rules shall not be inconsistent with any provision contained in this scheme. Such rules shall be communicated in writing to the Mutwallies for their information.

The minutes of the proceedings of all meetings shall be recorded in a book to be kept for the purpose and shall be signed by the trustees.

Should any Mutwallie be present at such meeting either of his own accord or by invitation he too shall sign the minutes in order to place the fact that he was present at such meeting.

12. The trustees shall in the month of December in each and every year and in consultation with the Mutwallies prepare a budget of expenses for the next year.

A draft budget shall be prepared by the managing Mutwallie and submitted to the trustees and the other Mutwallies before the 1st day of December in each year and such draft shall be considered in the presence of the Mutwallies when the Trustees prepare the budget as aforesaid.

13. The trustees shall see that proper accounts are kept of all transactions of and concerning the said Imambara and Trust Estate and that at the end of each year a

correct inventory of all properties moveable and immoveable belonging thereto is prepared and compared with the one to be prepared in the presence of the Solicitors as provided in Clause 9 above and deposited in this court, be signed by all the Mutwallies and Trustees and kept in the office of the Mutwallies.

14. No lease shall be granted of any property belonging to the said Imambara and Trust Estate and no terms as to rent shall be arranged with tenant without the previous sanction of the Trustees but such sanction shall not be unreasonably withheld or unduly delayed.

#### MUTWALLIES

15. There shall not be more than four Mutwallies at a time to be selected and appointed by the Trustees from among the male members of the direct lineal descendants of the said testator Aga Karbalai Mohammed deceased but in the absence of any such competent lineal male descendants the Trustees shall be at liberty to appoint any competent person from among the members of the Asna Ashari Shia Mohammedans of Calcutta as and Mutwalli.

16. One of the Mutwallies shall be the Managing Mutwallie for the term of one year from the 1st January to 31st December, the first Managing Mutwallie shall be Aga Mohammed Shirazee who shall hold the office from the date of discharge of the Receiver to 31st December, 1968. After him Abdur Rahim Shirazee and thereafter Mehdi Hossain and thereafter Ali Akbar Shirazee shall be the Managing Mutwallie and so on by turn.

17. The collection of rent and the disbursements shall remain in the hands of the Managing Mutwallie for the time being and he shall be primarily responsible for the trust fund and account. The account to be kept by him shall be open to the inspection of the other Mutwallies.

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18. Should any Mutwallie be guilty of fraud, misappropriation or mis-application of trust funds or be guilty of conduct which cause or is likely to cause loss to the Imambara and trust estate he shall be liable under an order of this Court to be passed in this suit in that behalf to forfeit his Mutwallihip and cease to have any concern with the Imambara and Trust Estate and shall loose all benefits and advantages attached to the said office under this scheme.

19. Any Mutwallie may by notice in writing to the trustees renounce his right to become the managing mutwallie either for specific time or for all times. In such case or on the death of the Mutwallie during his period of management and also in a case of forfeiture under clause 18 of the amended scheme, the Mutwallie entitled to the term under the scheme would become the managing Mutwallie notwithstanding that his turn shall not then arrive and shall remain in office until the next turn begins as provided in the scheme.

20. The Mutwallies shall hold their office for life unless convicted at the instance of the Trustees by any Criminal Court of law for breach of trust in respect of the Imambara and Estate funds in which case convicted Mutwallie shall be dismissed by the Trustees. In case of such conviction as aforesaid all costs that may be incurred by the Trustees in connection with such conviction shall be payable out of the Trust Estate.

21. The Mutwallies shall have the custody and possession of all properties belonging to the Imambara and Trust Estate and hold and attend Religious Majlises and perform other religious ceremonies and do all acts and things that may be necessary for the proper management of the said Imambara and trust estate and shall each draw and receive by way of remuneration a sum of Rs.250/- per month and also be at liberty to live and reside with their respective families on the northern portion of the 2nd

floor of the said Imambara. The Managing Mutwallie for the time being shall collect the rent and grant receipts and discharges for the same for or on behalf of the Trustees whom the estate is vested.

22. The Mutwallies shall abide by or obey the budget so to be prepared and the rules so to be framed by the trustees as aforesaid and shall in default thereof be liable to suspension for any period not exceeding three months.

If the Managing Mutwallie without the previous sanction of trustees exceeds the budget or makes any unauthorized payment or neglects to collect the dues of the estate in time or otherwise mismanages the same the trustees shall have the right to suspend him and appoint another of the Mutwallies to be the Managing Mutwallie in his place for the rest of the year of his managing Mutwalliship.

23. The Mutwallies shall keep books of accounts and shall correctly enter therein the transaction of each day in respect of the said Imambara and the trust estate and the same shall be open to the inspection of the Trustees or any one of them at all reasonable times. The Mutwallies shall also prepare and submit to the trustees a monthly abstract of accounts together with vouchers for all payments in excess of Rs. 5/- and the said accounts if found correct and approved of by Trustees shall be verified by their signatures.

24. The Mutwallies shall as hereinbefore provided out of the gross annual income of the trust estate invest not less than one-tenth each and every year in the manner mentioned in paragraph 8 hereof;

25. The jewellery and other articles as well as papers documents and books relating or belonging to the said Imambara and trust estate shall remain in charge of the

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Mutwallies for the time being in safe and proper manner and place in the Imambara and shall be open to the inspection of the trustees at all reasonable times. The Mutwallies shall take such care of the same as a man of ordinary prudence would if they were his own property. The Trustees may, for the purposes of trust estate, remove from the Imambara any document kept there in on granting receipts for the same to the Mutwallies, if the document be lost the trustee shall be responsible for the same.

26. The Mutwallies shall appoint or dismiss such servants and officers as may be necessary for the proper management of the said Imambara.

27. The Mutwallies shall be at liberty to do and carry on private business on their own account.

28. In case of differences among the Mutwallies with regard to any matter the same shall be referred to the Trustees whose decision shall be final.

29. In case of any differences of opinion amongst the trustees the opinion of the majority shall prevail.

Monoj Ganguli  
Master,  
4.9.67.