

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **C.M.(M) NO.96/2006**

Date of Decision : September 10, 2009

LAXMI NARAIN KHEMKA Petitioner
Through: Mr. Manish Kabli with Mr. Manjit
Pathak, Advocate.

versus

TULSIAN DHARAMSHALA TRUST KHETR Respondent
Through: NEMO.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

% **JUDGMENT (Oral)**

VIPIN SANGHI, J.

1. In challenge in this petition under Article 227 of the Constitution of India is the order dated 14.09.2005 passed by Sh. Shiv Narayan Dhingra, District Judge, Delhi (as he was then) in Trust Act Case No. 2/93 titled as "*Sh. Laxmi Narain Khema Vs. Tulsian Dharamsala Trust (Khetri) and Others*" whereby the aforesaid petition filed by the petitioner under Section 3 of the Charitable & Religious Trust Act, 1920 has been dismissed.

2. The petitioner had instituted the aforesaid petition praying for the following substantive reliefs:

1. To hold regular and periodical meeting of the managing trustees of the trust in question;
2. To get audit the account of the trust since they are not get audited;
3. To supply a copy of the trust deed of the trust in question to the petitioner and a copy of the list of tenants of the property of the trust be also supplied.

3. The said petition has been dismissed on the ground that the reliefs prayed for in the petition did not fall within the scope of Section 3 of Charitable & Religious Trust Act 1920, and that the petitioner had not sought the leave of the Court to file the suit under Section 92 CPC.

4. Learned counsel for the petitioner submits that since the Trust Act case was preferred by invoking Section 3 of the aforesaid Act and not Section 92 CPC it was not incumbent for the petitioner to have sought the leave of the Court under Section 92 CPC. The Charitable and Religious Trust Act 1920 is a special Act which provides the procedure to be followed by those who prefer a petition under the said Act. The said Act does not require the obtainment of the leave of the Court before, or simultaneously for the filing of the petition under the said Act, unlike Section 92 CPC. Consequently, he submits that the trial court was misdirected in its approach in invoking Section 92 CPC and assuming the existence of an obligation to obtain leave of the court to be able to maintain the petition under Section 3 of the aforesaid Act. He further submits that the reliefs sought in the petition were also squarely falling within the scope of Section 3 of the Trust Act.

5. Having heard learned counsel for the petitioner, perused the impugned order and the record, I am of the view that there is merit in

the submissions of the petitioner. Section 3 of the Charitable & Religious Trusts Act entitles any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature to apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, to obtain an order embodying all, or any of the following directions, namely :

“1.directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

2. directing that the accounts of the trust shall be examined and audited.”

6. Section 7 of the Act entitles the trustee of a public Trust for a charitable or religious nature to petition the court to obtain its opinion, advice or direction on any question effecting the management and administration of the Trust’s property.

7. Section 2 defines the expression “the Court” to mean the Court of District Judge or any other Court empowered in that behalf by the State Government and includes the High Court in the exercise of its ordinary original civil jurisdiction. Section 5 prescribes the procedure to be adopted for the filing and disposal of a petition under the said Act. The said provision reads as follows:

“(1) If the court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion of that the trust to which the petition

relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the court, shall at the time of the first hearing or within such time as the court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908(5 of 1908), for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the court shall itself decide the question.

(5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit;

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3),

no order shall be passed by the court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.”

8. On a perusal of the provisions of the above Act, particularly Sections 3, 7 and 5 thereof, it is seen that there is no requirement prescribed for the petitioner (who may otherwise be entitled to invoke the provisions of the said Act) to obtain leave of the court to prefer a petition under the Act. The Charitable and Religious Trust Act, 1920 is a special Act and the scope of the reliefs that can be granted by the court under the said Act is very limited. The directions which can be issued under Clause (1) of Section 3 are really to enable the petitioner to obtain information regarding nature and objects of the Trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto. Clause (2) of Section 3, on the other hand, permits issuance of direction by the court that the accounts of the Trust should be examined and audited. Such direction can be issued in respect of accounts relating to period up to three years prior to the date of the petition. The power conferred by Section 7 is circumscribed by the limitation that the petition under this provision can be filed to seek the opinion, advice or a direction from the court in relation to Trust property, as distinct from the management of the Trust itself.

9. On the other hand Section 92 C.P.C. is a general provision which gives much wider powers to the Court to deal with public charities. Apart from the specific reliefs enumerated in clauses (a) to (g) of Section 92(1) C.P.C., the Court has the power to grant *“such further or other relief as the nature of the case may require”*. Under Section 92 (3) C.P.C. also very wide powers have been conferred upon the Court.

10. The procedure prescribed in the general law, which provides much wider scope of jurisdiction to the Court cannot be made applicable for availing a remedy under the special law, which is designed to grant only a limited remedy, particularly when the special law lays down its own procedure for availing the remedy.

11. For seeking the reliefs prayed for under Section 3 or under Section 7 of the said Act, the petitioner, in my opinion, is not obliged to obtain the leave of the court as is provided for under Section 92 of the CPC.

12. Now coming to the second aspect of the matter, I find that the trial court was not correct in concluding that none of the reliefs prayed for in the petition fell within the scope and ambit of Section 3 of the Charitable and Religious Trust Act 1920. I have already extracted hereinabove the reliefs that the petitioner has prayed for in the petition. The first relief sought was to seek a direction to the respondents to hold a regular and periodical meeting of the Trust in question. This direction is neither relatable to Section 3 (1) nor 3 (2) nor Section 7 of the said Act. Therefore, the said relief could not have been prayed for by the petitioner by invoking the provisions of the Charitable and Religious Trust Act. However, the second and the third

reliefs sought by the petitioner squarely fell within the scope of Section 3 of the said Act. The second relief prayed for by the petitioner is to seek a direction that the respondents should get the accounts audited as they are not allegedly audited. The petitioner also sought the supply of the Trust deed of the Trustees in question and a copy of the list of tenants of the property of the Trust.

13. Learned counsel for the petitioner submits that the trial court was wrong in recording that the balance sheet and audited accounts had been filed by the respondents. He submits that there was nothing placed on record for the trial court to conclude that auditors have given their report from time to time and that meetings of the trustees are being held. He submits that the list of trust properties and tenants has also not been filed. He refers to the order dated 12.04.05 passed by the trial court wherein it was recorded that the respondent's had not filed audited accounts even once, nor filed the list of tenants. In fact, a direction was given to them to comply with the earlier directions before the next date. He submits that the matter was thereafter disposed off on 14.09.2005 and even by this date the said information was not supplied by the respondents.

14. The respondents have filed their reply contraverting the aforesaid position. However, no document has been filed on record to substantiate the stand that audited accounts or list of tenants have been filed. Moreover, none has appeared for the respondent when the matter has been heard. Consequently, I set aside the impugned order as it appears to have been founded upon erroneous premise that the petitioner was obliged to obtain the relief of the court under Section 92

CPC and on the wrong premise that none of the reliefs sought for by the petitioner fell within the ambit of Section 3 of the said Act. The petition filed by the petitioner is restored in respect of the second and third relief prayed for in the petition. Let the matter be listed before the trial court on 25.09.2009. Since the respondents have not appeared before this court, before proceeding further the respondents shall be put to notice by the trial court.

VIPIN SANGHI, J.

SEPTEMBER 10, 2009
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