

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO (OS) No. 380 of 2008

% *Reserved on : December 16, 2008*
Pronounced on : February 20, 2009

Delhi Mahila Samaj Trust (Regd.) & Ors. . . . Appellants

through : Mr. Prashant Bhushan with
Mr. Rohit Kr. Singh and
Mr. Abhishek Sood, Advocates

VERSUS

Rumma S. Sunder & Ors. . . . Respondents

through : Mr. Navin Chawla, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Delhi Mahila Samaj Trust (hereinafter referred to as the 'Trust') is a public trust. There is a dispute with regard to the management and functioning of this Trust that has led to filing of CS (OS) No. 697/2006. In this suit filed under Section 92 of the Code of Civil Procedure, 1908 (for short, 'CPC'), the Trust is made plaintiff No.1 and on its behalf the suit is filed through its Managing Trustee Ms. Devyani Sircar. The plaintiff No.2 is another trustee Smt. Zakia Sultana who has since died, Mrs. Renu Talwani is the other plaintiff No.3 These plaintiffs arrayed two defendants, namely, Smt. Rumma

S. Sunder, who was the Chairperson of the Trust and as per the averments made in the plaint, she was allegedly removed from the said position on account of purported acts of mismanagement of the Trust and embezzlement of Trust money. The other defendant is ING Vysya Bank Ltd., where account of the Trust is maintained. The plaintiffs in the said suit prayed for declaration, permanent injunction and rendition of accounts. In nutshell, the plaintiffs want to restrain the defendant No.1 from holding herself out as the Chairperson of the Trust; interfering with the functioning of the Trust; and possession of the Trust property from her. They also want defendant No.1 to render true and proper accounts as well as realization of the Trust funds and property allegedly misappropriated by her. Specific prayer about the proper administration and management of the Trust is also made along with some other consequential reliefs.

2. To put it precisely but in brief, in the plaint the plaintiffs have alleged various acts of mismanagement and misappropriation *qua* defendant No.1 because of which defendant No.1 was removed from the position of Chairperson in the Meeting of Trustees convened on 25.10.2005 and Mrs. Zakia Sultana was appointed as Chairperson in her place. There are also allegations that the defendant No.1 had created a back-dated notice dated 4.11.2005, which was sent to the trustees, for holding a meeting on 28.11.2005 and fabricating the minutes of the said supposedly held meeting, inducting two new trustees, namely, Ms. Cynthia Masih and Dr. Raj Kumari Kubha and

removal of Mrs. Zakia Sultana and Mrs. Renu Talwani from their position of trustees. In this backdrop, one of the prayers is to declare the appointment of Ms. Cynthia Masih and Dr. Raj Kumari Kubha as unauthorized and illegal.

3. Since the Trust is a public charitable trust, as mentioned above, an application under Section 92 of the CPC was also filed. The plaintiffs also filed another application under Order XXXIX Rule 1 & 2 CPC for *ad interim* injunction against the defendant. Permission under Section 92 CPC has been granted by the learned Single Judge vide orders dated 23.7.2008. By the same orders, the plaintiffs' application under Order XXXIX Rule 1 & 2 has also been disposed of giving partial relief. The learned Single Judge has, *prima facie*, held that so far as removal of Ms. Zakia Sultana, Ms. Devyani Sircar and Ms. Renu Talwani is concerned, procedure prescribed under the Rules has not been followed and, therefore, it cannot be held that they ceased to be the trustees. They are, therefore, allowed to continue. Appointment of Ms. Cynthia Masih and Dr. Raj Kumari Kubha in their place is, thus, not found to be in order. To this extent, directions in the application are in favour of the plaintiffs.

However, at the same time, the learned Single Judge has also held that *prima facie* removal of defendant No.1 from the possession of Chairperson has not been established as there was no validly passed resolution to that effect and, therefore, she continues to be the Chairperson. Furthermore, prayer of the plaintiffs that she should not be allowed to act as Chairperson is not accepted. It is this

portion of the impugned judgment the holding to be not removed validly and is allowed to continue as Chairperson, with which the plaintiffs feel offended and present appeal is limited to this aspect. In view of the limited controversy which is raised in this appeal, we shall take note of those facts which are necessary to determine this controversy.

4. **Re: Removal of the defendant No. 1 as Chairperson:**

The first question which would need consideration, in the aforesaid backdrop, is as to whether defendant No.1 was validly removed as Chairperson and thereafter as trustee, as contended by the plaintiffs/appellants. Before defendant No.1 was appointed as Chairperson, Mrs. Nirmala Malhotra was the Chairperson of the Trust. She, however, died in December 2004. At that time, Ms. Devyani Sircar, Ms. Zakia Sultana (plaintiff No.2) and Ms. Renu Talwani (plaintiff No.3), Dr. S.V. Saluja and Ms. Rumma S. Sunder (defendant No.1) were the five trustees of the Trust. It is not in dispute that defendant No.1 was appointed as Chairperson of the Trust on 1.3.2005 because of the vacancy caused due to the death of erstwhile Chairperson Mrs. Nirmala Malhotra.

5. According to the plaintiffs, however, when they discovered the illegalities committed by the defendant No.1, she was removed as Chairperson in the meeting held on 25.10.2005. It is however an admitted position that on 24.10.2005 the defendant No.1 circulated the agenda of the meeting to be held on 25.10.2005. This meeting

was, thus, convened at the instance of the defendant No.1. Obviously, in the agenda there was no item regarding the removal of the defendant No.1 from the post of Chairperson. The dispute is about the business which was transacted in the meeting held on 25.10.2005. The defendant No.1 had placed on record the extracts of Minute Book recording the minutes of meeting dated 25.10.2005. In this meeting Begum Zakia Sultana, Ms. Devyani Sircar, Ms. Renu Talwani and Dr. S.V. Saluja are shown as present. The minutes show certain decisions, including the decision that the staff be given a month's salary as a token of respect to deceased trustees; conduct of a function to distribute certificates to students who had completed the secretarial course and the computer course on 12th November, 2005; a decision to extend the building premises; payment of administration expenses and scrutiny of applications for scholarships to be conducted by Ms. Renu Talwani and Ms. Devayani Sircar and certain other decisions.

6. There is no dispute with regard to the persons present during the meeting. However, the plaintiffs, on the other hand, have disputed recording any such minutes. According to the plaintiffs, when the issue of mismanagement and misuse of the Trust fund was discussed in the meeting, the defendant No.1 got agitated and walked out of the meeting. Thereafter, remaining four trustees, who were present, convened a special meeting and unanimously passed a resolution appointing Mrs. Zakia Sultana as the Chairperson of the Trust. In support, the plaintiffs also produced copy of minutes dated

25.10.2005. On these minutes produced by the plaintiffs, following

remarks have been made by the learned Single Judge :-

“23. It is noteworthy that while the copy of the resolution of the Special Meeting bears the signatures of Mrs. Devyani Sircar; Dr. S.V. Saluja; Mrs. Renu Talwani as well as Ms. Zakia Sultana, the minutes of the meeting dated 25th September, 2005 contain only the signatures of Ms. Zakia Sultana; Ms. Renu Talwani and Ms. Devyani Sircar.

24. By a notice dated 10th November, 2005 circulated by Ms. Devyani Sircar, the trustees were notified with regard to a meeting to be held on 11th November, 2005. So far as this meeting is concerned, the plaintiffs have placed a copy of the minutes on record which show that the defendant No.1 – Ms. Rumma S. Sunder was in the chair. The minutes however bear the signatures of only Begum Zakia Sultana and Ms. Devyani Sircar. The plaintiffs have contended that in this meeting the appointment of Ms. Zakia Sultana as chairperson of the board was confirmed. The defendant no. 1 has disputed that any such meeting of the board of directors was held by the plaintiffs on 11th November, 2005.”

7. Further discussion on this aspect is found in paras 44 & 45, which are to the following effect :-

“44. The plaintiffs have objected that the defendant no.1 has appointed herself as a chair-person of the trust. The defendant no.1 has placed a copy of the resolution dated 26th June, 2004 passed in a meeting held at B-19, Sujan Singh Park, New Delhi which was the residence of Ms. Nirmala Malhotra. In this meeting, Mrs. Nirmala Malhotra, the erstwhile chairperson of the Trust handed over the keys of the almshouses of Delhi Mahila Samaj Trust along with all important documents of the trust to Ms. Rumma S. Sunder, defendant no.1 herein and also nominated her to be the acting chair-person to take full charge and responsibility of the trust, which was accepted by her. Ms. Nirmala Malhotra had so appointed the defendant no.1 as an acting chair-person keeping in view her failing health.

45. It is noteworthy that apart from defendant no.1, Begum Zakia Sultana, Ms. Devyani Sircar and Dr. S.V. Saluja were present in this meeting on 26th of June, 2004. Ms. Renu Talwani was a special invitee and was inducted on the board of trustees in this very meeting. On 1st march, 2005 this appointment of defendant no.1 as Chairperson by Ms. Nirmala Malhotra was confirmed in the meeting of the board of trustees.

So far as removal of the defendant no.1 is concerned, the plaintiffs have not placed anything which would show that a

special meeting had been called for on 25th October, 2005. No notice setting out allegations against her was admittedly issued or sent to her. There are serious procedural defects in the conduct and minutes of the special meeting purportedly held on 25th October, 2005. The plaintiffs have not placed a single communication to support any protest made against any action or omission of the defendant no.1.”

There is no reason to come to a contrary conclusion when a *prima facie* view is to be taken, at this stage, in the absence of any evidence recorded, as the suit is at the preliminary stage.

8. Learned counsel for the appellant contended that according to Rule 12, the trustees shall transact their business in meetings which shall be convened from time to time as and when necessary and as decided by majority of the trustees and the vote of majority shall prevail at their meeting or on a voting by circulation as aforesaid. No specific procedure in the rules and regulations of the trust for removal of chairperson is prescribed and there is no requirement of calling any special meeting for the aforesaid purpose or giving any prior notice to the defendant No.1. All the remaining four trustees unanimously passed a resolution on 25.10.2005 that Mrs. Zakia Sultana, as the senior most trustee, shall be the Chairperson of the Trust. However, the learned Single Judge nowhere gave any adverse finding whatsoever regarding the genuineness of the minutes produced by the plaintiffs.

The aforesaid argument is of no avail. In the first instance, there was no agenda item regarding removal of defendant No.1 from the post of Chairperson. Such a business could not have been transacted in the absence of specific agenda. Removal of a person as

Chairperson is a serious matter for which there has to be specific agenda and notice thereof to all the trustees. Law laying down this principle is well settled.

9. Even if it is preserved that the defendant No.1 got agitated and walked out of the meeting, the minutes produced by the plaintiff record that thereafter the trustees convened a special meeting and passed resolution appointing Mrs. Zakia Sultana as Chairperson being the senior most trustee. How such a special meeting could be convened there and then, is baffling. Merely by walking out of the meeting, the defendant No.1 did not cease to be the trustee or, for that matter, the Chairperson. If any such special meeting was to be convened, notice thereof was required to be given to her as well. Not only there was no such notice at all, convening of such a special meeting immediately and, and too, there and then would be improper. Even if there is no procedure prescribed under the Rules, notice of a meeting is required, that too a reasonable notice. Further, though the minutes recorded that Mrs. Zakia Sultana would be the Chairperson, as per the resolution produced, there is no decision taken to remove the defendant No.1 in the first instance and then appoint Mrs. Zakia Sultana. Therefore, the learned Single Judge is right in making *prima facie* observations to the effect that defendant No.1 was not removed by any valid resolution from the post of Chairperson.

10. Re: Removal of defendant No.1 as trustee

It is the submission of learned counsel for the appellant that according to Rule 9 if a trustee is working against the interest of the Trust, the remaining trustees, by majority of two-third, may, by a resolution, remove her after giving her notice of intention of the trustees in writing and after taking into consideration representation from that trustee if received in writing before the start of meeting of the Board in which it is proposed to remove her. The defendant No.1 was not acting in the interest of the Trust and the same is apparent from the judgment of the learned Single Judge itself. Meeting was held on 13.12.2005 which is attended by all the trustees. As no representation or reply was received from the defendant No.1 with respect to the show-cause notices issued on 3.12.2005 & 5.12.2005 respectively, decision was deferred for next meeting and finally in the meeting held on 16.12.2005 a resolution with three-fourth majority was passed expelling her from the Trust and the learned Single Judge has referred to the steps taken by the plaintiffs in this regard in the judgment.

11. However, the learned Single Judge has held that having regard to rules and regulations of the Trust and the fact that she has been functioning as Chairperson and is in the known of its affairs, it may not be proper to oust the defendant No.1 from the affairs of the Trust by an interim order. The learned counsel for the plaintiff argued that keeping in view the irregularities and malpractices, the Court should have restrained him from acting as a trustee.

However, while making the aforesaid submission, what is lost sight of is that appointment of Mrs. Zakia Sultana as Chairperson itself was not valid. Once we proceed on this premise, naturally, issuance of show-cause notice to defendant No.1 by Mrs. Zakia Sultana and issuing the notices of meeting in that capacity would also be invalid. A validly appointed trustee can be removed only after following the procedure as laid down. Therefore, the *prima facie* opinion of the learned Single Judge even on this aspect would not call for any interference.

11. Whether the defendant be restrained from acting as Chairperson in view of the allegations made by the plaintiffs against her?

The important question that arises for consideration is as to whether the learned Single Judge should have injuncted the defendant No.1 from functioning as Chairperson. It was the submission of learned counsel for the appellant that the learned trial court itself commented adversely on the functioning of defendant No.1 at various places in the judgment. He also highlighted the following alleged illegalities committed by the defendant No.1 :-

- (a) Despite her removal as Chairperson and later on as trustee, defendant No.1 continued to act as the Chairperson of the Trust as well as trustee.
- (b) Defendant No.1, along with one more trustee, illegally removed three plaintiffs/trustees on 28.11.2005 and inducted two new trustees on the same day.
- (c) Both the aforementioned decisions have been found invalid by the learned Single Judge.

- (d) She closed the old bank accounts of the trust. Learned Single Judge has, however, directed to defreeze the said accounts.
- (e) She opened a new bank account and the learned Single Judge has ordered to close the said account.
- (f) Defendant No.1 opened two new bank accounts in 2005 & 2006 itself with two new inductees, but this fact was never brought to the notice of the court.
- (g) The aforesaid two inductees, during the pendency of the case, wrote against the misdeeds of respondent No.1.
- (h) She replaced them with three new inductees in February-March 2008, during the pendency of the case, but did not inform the court.
- (i) Defendant No.1 opened another bank account in Syndicate Bank but again did not inform the court.
- (j) The learned Single Judge passed the impugned judgment with a view that three plaintiff trustees, with one of them as an observer and the Managing Trustee, will provide check and balance over the misdeeds of defendant No.1.
- (k) Defendant No.1 completely frustrated the said mechanism evolved by the learned Single Judge by surreptitiously inducting three new ladies in the trust.
- (l) She was charge sheeted under Sections 420, 468 & 471 IPC for cheating, forgery and using forged document as genuine document.

- (m) The learned Single Judge appointed Ms. Devyani Sircar as an Observer who shall have the authority and perform all functions as are assigned to the Managing Trustee under the trust deed and the rules and regulations of the trust. Rule 6 of the rules and regulations of the Trust says ordinarily the Managing Trustee shall subject to the overall superintendence of the Board of Trustees have the power to manage and administer the day to day working of the Trust and to look after its activities. In the meeting dated 19.8.2008 it was specifically recorded that it was pointed out that the Board of Trustees has not assigned any functions to Ms. Devyani Sircar.
- (n) Tried to pass a resolution to increase the maximum number of trustees with the support of three new inductees to validate their induction in excess of maximum number of five trustees.
- (o) Minutes book are being written by defendant No.1 herself and they are not being shown to the plaintiff trustees. Sometimes, merely rapidly read out in the meetings.
- (p) She has adopted a practice of presenting cheques before the plaintiff trustees for their signatures without giving any supporting documents such as vouchers, salary sheets, no record of the trust whatsoever thus making very difficult for the plaintiff trustees to scrutinize the payments being made vide those cheques.
- (q) Not a single paise has been deposited in the accounts which were de-frozen pursuant to the directions of this Court in the

last two months. The Trust has over Rs.1,00,000/- cash collection per month which is supposed to be deposited in the bank accounts of the Trust.

- (r) Till the end of September 2008, the funds deposited in ING Vysya Bank, ordered to be closed by this Court, have not been transferred to the aforementioned de-frozen accounts.
- (s) As per the statement of account of Syndicate Bank, R.K. Puram, a total sum of Rs.2,05,799.57 has been withdrawn in favour of defendant No.1 between 8.5.2008 and 14.8.2008.

Accordingly, the submission of learned counsel for the appellants is that such a person should not be allowed to continue.

12. Mr. Navin Chawla, learned counsel appearing for the defendant/respondent No.1, countered the aforesaid allegations and submitted that all the illegalities attributed to the defendant No.1 were totally false. He also submitted that most of the allegations in the plaint attributed to the defendant No.1 were in the nature of personal grievance of the plaintiffs or, at best, attributing highhandedness on the part of the defendant No.1 in running the affairs of the Trust. There was no allegation regarding misuse or embezzlement of Trust funds or the Trust properties. There was no allegation that the defendant No.1 had committed any breach of any express or constructive trust. On these allegations, even the suit could not be filed under Section 92 of the CPC and the remedy was only to file an ordinary suit. He referred to the judgment of the Supreme Court in

Vidyodaya Trust v. Mohan Prasad & Ors., (2008) 4 SCC 115. He also submitted that even the learned Single Judge had not found anything against the defendant No.1, even *prima facie*, as per which there was any misuse of the Trust funds, etc. His further submission was that the order of the learned Single Judge was most appropriate in given circumstances when following factors are kept in mind :-

- (a) Though as per the plaintiffs defendant No.1 was allegedly removed as Chairperson on 25.10.2005 and then as trustee on 13.12.2005 as per the plaintiff's contention, fact remains that she continued to function as trustee and Chairperson even thereafter, which would demonstrate that such removal was only on paper. Suit was filed only on 24.4.2006 and during all this period it is the defendant No.1 which was running the affairs of the trust.
- (b) The defendant No.1, ever since her appointment as Chairperson, had acted in that capacity for almost four years and has done commendable work for the Trust and there is no reason to uproot her.
- (c) Keeping in view the allegations and counter allegations, the learned Single Judge at this stage had made an interim arrangement thereby balancing the interest of both the parties. This was, thus, the most equitable order under the given circumstances pending trial of the suit.
- (d) The order of the learned Single Judge was discretionary in nature and when it was a plausible order which could be made

in law, the Division Bench should not interfere with such an order, as held by the Supreme Court in *Wander Ltd. & Anr. v. Antox India P. Ltd.*, 1990 (Supp.) SCC 727.

- (e) According to the learned counsel, even the requirements of Section 92 CPC were not satisfied. It was because of the reason that though there were three plaintiffs in the suit, in a suit of this nature, the Trust itself could not be the plaintiff. Plaintiff Nos. 2 & 3 had filed the suit as trustees, but before leave of the Court could be granted under Section 92 CPC, the plaintiff No.3 passed away and, thus, only plaintiff No.2, the sole trustee, was prosecuting the suit, though as per the procedure, minimum two trustees were required.

However, we may point out at this stage itself that this argument has been negative by the learned Single Judge and leave under Section 92 CPC has been granted in IA No. 4688/2006, which order has not been challenged by the defendant No.1. Therefore, we would not deal with this aspect in this appeal, which is directed only against the order passed in IA No. 4690/2006.

13. As far as other submissions of Mr. Chawla are concerned, we find force therein. No doubt, the plaintiffs have attributed certain acts on the part of the defendant No.1, but the defendant No.1, in her reply, has explained those acts. The learned Single Judge has discussed each of such allegations and the explanation of the defendant No.1

thereto. It is not necessary to reproduce the discussion of the learned Single Judge in this behalf. Our purpose would be served in extracting the following observations of the learned Single Judge after discussing the various acts of irregularities attributed to the defendant No.1 by the plaintiffs :-

“90. In the light of the disputes noticed hereinabove and the conduct of the parties placed on record after August 2005, in my view, the present case would be a fit case for appointment of an observer or a local commissioner to facilitate the smooth running of the trust. From the documents placed by the parties on record, it would appear that the plaintiffs had passed a resolution appointing Ms. Devayani Sircar as a Managing Trustee. Undoubtedly, the trust deed and bye laws contained a provision for appointment of a Managing Trustee which the trust has failed to appoint till date.

It is further noteworthy that such appointment was made in a meeting in which three out of five trustees have signed the minutes. The two who have not signed are trustees stated to have been present but have refused to sign the minutes. The defendant No.1 was admittedly appointed as Chair-person from which position she, prima facie, appears not to have been dislodged.

91. Looked at from any angle, however, it is evident that the affairs of the public trust cannot be run in this manner. Unilateral decision making and control of finances, management and assets by a single person is totally opposed to the purpose and the interest of the Trust. There is a prima facie evidence of such a manner of functioning of the defendant No.1. Having regard to rules and regulations of the Trust and the fact that she has been functioning as Chairperson and is in the know of its affairs, it may not be proper to oust the defendant no.1 from the affairs of the trust by an interim order. However, it is essential to ensure a system of checks and balance in the management of the trust.

Balance of convenience, equity and interests of justice mandate issuance of appropriate directions in this behalf. Prima facie, the closure of old bank accounts, removal of trustees of standing and even an experienced accountant as well as the complete loss of confidence in the style of functioning of the defendant no.1 even on the part of her newly inducted trustees clearly indicates that grave and irreparable loss shall ensue to the functioning of a public trust if relief is not appropriately moulded. This court is amply empowered under the various provisions of the Code of Civil Procedure in exercise of jurisdiction under Order 39 sections 94 and 151 to give directions to secure the ends of justice. It

would be more so in a matter involving a public trust when the overriding interests of the public require to be secured vis-à-vis private interest of the parties.

Having regard to the disputes afore-noticed, it is essential that nothing is so done as to disrupt the activities of the trust.

92. Accordingly, a direction is issued to the defendant no.1 to forthwith stop the operation of the current A/c No. 586011004769 in UNG Vysya Bank – the defendant no.2, Panchsheel Park Branch, New Delhi – arrayed as defendant no.2 herein.

A further direction is issued to the defendant no.1 to defreeze the accounts of the trust in a Saving Bank A/c No. 116483 in Oriental Bank of Commerce, Near Batra Hospital Branch, New Delhi and Saving Bank A/c No. 8928 in Bank of India, Saket Branch, New Delhi.

93. It is directed that the bank accounts shall be operated by the same person(s) who stood authorized to operate the same in October 2005, inasmuch as no decision to the contrary has been taken at any validly conducted meeting.

The defendant no. 1 shall forthwith inform the Oriental Bank of Commerce, near Batra Hospital branch, New Delhi and the Bank of India, Saket Branch, New Delhi of the directions made today and to permit the operation of the Saving Bank Account Nos. 116483 and 8928.

94. In view of the above discussion it is also directed that the defendant no.1 shall, for the time being, continue as chairperson of the trust while Ms. Devayani Sircar is appointed as an Observer who shall have the authority and perform all functions as are assigned to the Managing Trustee under the trust deed and the rules and regulations of the trust. This order shall continue till such time either or both these persons are substituted or removed in accordance with the stipulations of trust deed and the rules and regulations or by any further orders of this court, whichever is prior.

The observer appointed by this court shall file quarterly reports in the suit.

I.A. No. 4690/2006 is hereby disposed of in the above terms.”

14. We feel that under the given circumstances the learned Single Judge struck an appropriate balance by giving the aforesaid directions.

Having said so, we will be failing in our duty if we do not point out that counsel for both the parties were candid in admitting that it would be difficult for the two groups to function in tandem as the plaintiffs' group cannot stand the group of the defendant No.1 and vice versa and they don't see eye to eye. We are here concerned with the matter relating to functioning of a charitable public trust which is established to achieve noble objective to bring out social and economic reconstruction of the society viz. to provide greater opportunity to women, to improve economic status of women by giving them vocational training and creating avenues for their community, to create public opinion against all forms of oppression to which women are subjected to socially and evoking sympathy, etc. It was not disputed that until now the Trust has been doing commendable job in this direction. It is said that because of intense fight among the two factions of the trustees, there may be severe jolt and setback to the smooth functioning of the Trust. That should be avoided. One way of achieving this could be to oust the defendant No.1, particularly when there are allegations of mismanagement against her. However, that may cause injustice to her if ultimately these allegations are not proved. It is also to be kept in mind that she has been doing work uptill now as a Chairperson. Therefore, before such a drastic action is taken, it may be more appropriate to make an endeavour to ensure smooth functioning by appointing an independent and outside observer to oversee supervise the functioning of the Trust as well as the Trustees, including the

defendant No.1. It would be more appropriate to give a trial to this scheme and if it does not work, further orders can be passed on the basis of what transpires in the interregnum.

15. We, therefore, modify the order of the learned Single Judge only to the effect that Ms. Justice Usha Mehra, a retired Judge of this Court, is appointed to supervise the functioning of the appellant Trust. She shall be invited in all meetings and shall have also right to go into the affairs of the Trust as and when she desires. If there is any complaint by the parties inter se against the Chairperson of the Trust, she shall also look into the same.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

February 20, 2009
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