



CRP.No.329 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.02.2022

Delivered On : 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

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M/s.MIOT Hospitals Medical and
Educational Trust
Being represented by its Trustee
Dr.Barry Joseph Micheal.D Rosario
Having Office at No.4/112,
Mount-Poonamallee Road,
Manapakkam, Chennai – 600 089. ... Petitioner/Petitioner

Vs.

Nil ... Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the Order passed by the learned District and Sessions Judge – II, Kancheepuram in Trust O.P.No.13 of 2022 vide its Order dated 06.12.2022.

For Petitioner : Mr.S.P.Siva Pradosh

For Respondent : Nil

ORDER

This Petition has been filed against the Order passed by the learned District and Sessions Judge – II, Kancheepuram in Trust O.P.No.13 of 2022



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vide its order dated 06.12.2022.

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2. Mr.S.P.Siva Pradosh, learned Counsel for the Petitioner had submitted that M/s.MIOT Hospitals Medical and Educational Trust is the private Trust involved in the social work of treating people in the lower strata of society for various ailments and also for education. It had been catering to the ailing patients in and around Chennai through its Trust. The Trust owned property is in Irandam Kattalai Village, Sriperumbudur Taluk (now Kundrathur Taluk) in Kancheepuram District. The Petitioner/Trust had through its Trustee Dr.Barry Joseph Micheal. D Rosario had approached the learned District and Sessions Judge – II, Kancheepuram by filing Trust O.P.No.13 of 2022 seeking permission of the Court to sell the properties belonging to the Trust.

2.1. As per Order in Trust O.P.No.13 of 2022 dated 11.08.2022, the learned District and Sessions Judge – II, Kancheepuram had dismissed the Trust O.P.No.13 of 2022.

2.2. Aggrieved by the same, the Petitioner/Trust had approached this



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Court by filing CRP.No.2759 of 2022. In that CRP, this Court had passed the following Order:

“In view of the above, I am inclined to set aside the impugned Order and remand the matter back to the file of the Court below with the following directions. Accordingly, the impugned order is set aside and remand the matter back to the learned District and Sessions Judge – II, Kancheepuram to pass appropriate Orders after giving chance to the Petitioner to file a better affidavit mentioning the need for sale of the Trust Property, the benefit for the Trust by sale of property, the details with regard to the fact, how the sale proceeds will be applied to achieve the objectives of the Trust etc. The Petitioner is also at liberty to lead additional evidence. Thereafter, on consideration of the materials available on record, the Court below is directed to pass order within a period of four weeks from the date of receipt of a copy of this Order.”

2.3. Subsequently, the Petitioner approached the very same Court/learned District and Sessions Judge – II, Kancheepuram by filing a better affidavit as per the direction of this Court in CRP.No.2759 of 2022 dated 18.10.2022. After filing a better affidavit, the learned District and Sessions Judge – II, Kancheepuram as per Order dated 06.12.2022 had allowed the Petition and the Petitioner/Trust is permitted to sell the Petition mentioned property through public auction after due publication subject to



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the following conditions:

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“1. The Petitioner Trust is permitted to sell the Petition mentioned property through public auction by calling tender.

2.The Trustee Dr.Thiru Barry Joseph Micheal D.Rosario is appointed to assist the Court and to carry out the direction of the Court.

3.The Trustee is directed to publish the intended sale of the property in three number of Tamil Newspapers i.e., morning issues Dinathanthi, Dinamalar and evening issue at Malai Malar having circulations in the area.

4. The Trustee is directed to fix the date of tender and after receipt of the tender in sealed cover and the same is to be submitted before this Court.

5. The minimum bid upset price for the Property is fixed at Rs.3,27,00,000/- per Acre.

6.The auction sale is subject to the approval by this Court by selecting the highest bidder.

7.The Trustee is directed to sell the property to the highest bidder.

8.The Trustee shall submit a draft sale deed for approval within three months from the date of sale approval.

9.Within one month from the date of approval of draft sale deed the entire sale consideration amount shall be deposited into the Court.

10.On such deposit the Petitioner is permitted to execute the sale deed in favour of the highest bidder already permitted by the Court.

11.On such deposit the said sale consideration is ordered to be invested in any one of the Nationalized bank in the name of the Petitioner Trust.

12.The Petitioner/Trustee is permitted to withdraw the accrued interest



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once in a year for the maintenance and to perform the charity obligations of the Trust.

13. The Petitioner is directed to produce the accounts once in a year.”

2.4. Aggrieved by the conditions stipulated in the Order that permitting the Petitioner to sell the properties of the Trust, the Petitioner had approached this Court for modification and relaxation of the conditions by filing this Civil Revision Petition under Article 227 of Constitution of India.

The Revision Petition had sought to modify the following conditions:

“9. Within one month from the date of the approval of draft sale deed the entire sale consideration amount shall be deposited into the Court.

10. On such deposit the Petitioner is directed to execute the sale deed in favour of the highest bidder already permitted by this Court.

11. On such deposit the sale consideration is ordered to be invested in any one of the nationalized bank in the name of the Petitioner/Trust.

12. The Petitioner/Trustee is permitted to withdraw the accrued interest once in a year for the maintenance and to perform charity obligations of the Trust.”

3. It is to be noted that the learned District and Sessions Judge – II, Kancheepuram had at the first instance, dismissed the Petition as the Trust which approached the learned District and Sessions Judge – II, Kancheepuram had not followed the Provisions of the Trust Act. In CRP.No.2759 of 2022 filed against the dismissal Order of the Trust O.P, this



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Court had directed the Petitioner/Trust to file a better affidavit as per the requirements of the Trust Act. Therefore, based on that, the learned District and Sessions Judge – II, Kancheepuram had imposed the certain conditions in order to safeguard the Trust from carrying out its objectives.

4. At this juncture, it is apropos to advert to the judgment of this Court in **2010 (5) CTC 438 [K.Srinivasan -vs- G.Kuppusamy Naidu Memorial Sports Trust, Kovilpatti and another]**, the relevant portion of which is extracted below:-

“Code of Civil Procedure, 1908 (5 of 1908), Section 92 – Public Trust vis-a-vis Private Trust – Test to be applied to find out the nature of the Trust - Factors relevant - Primary object of Trust is sine qua non to ascertain nature of Trust – Section 92 contemplates “express or constructive trust created for public purpose of charitable or religious nature”

5. A perusal of the trust deed of the MIOT Hospitals, Medical and Educational Trust, it is stated as follows:

“This deed of Trust executed on this 15 day of September, 2000 by Mallika Mohandas, Wife of Prof.P.V.A.Mohandas, aged about 56 years, residing at I-47, Anna Nagar East, Chennai – 600 102, hereinafter referred to as the “Founder and Author of the Trust”.

(1) Name: *Name of the Trust shall be “MIOT Hospitals, Medical*



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and Educational Trust”. **(2) Registered office of the Trust shall, for the present, be situated at 4/112, Mount-Ponamallee Road, Manappakkam, Chennai – 600 089 and shall be shifted or changed to such other place or places as the Trustees may decide upon from time to time. (3) Duration of the Trust – It is hereby made it clear by the Founder and Author of the Trust that the Trust is irrevocable. (4) Objects:** The objects of the Trust are :- (a) To establish, construct and maintain medical colleges, colleges of nursing and physiotherapy, hospitals, nursing homes and physiotherapy centres and institutions for the relief of the sick and to aid or assist the other institutions and societies doing similar work; (b) To establish, support, acquire, run and/or grant aid and other financial assistance to schools, colleges, libraries, institutions of like nature at any place or places in the Indian Union for use of the students and the staff and also generally for the developments and/or advancement of education and diffusion of knowledge amongst the public. (c) To spread knowledge and education by teaching and by publishing books, classics and other literatures and distribute them freely or as prizes and/or by establishment of specific endowments of memorials for “public” charitable purposes, (d) To establish professorships, lectureships and to aid by giving scholarships and prizes or any other similar help or encouragement for the advancement of education, research and training; (e) To establish, maintain, support and assist by monetary gifts or otherwise charitable institutions such as charitable dispensary, hospitals, infirmary, convalescent home, maternity home, nursing home, homes for the blind, deaf and dumb, home for lepers and other charitable institutions having similar



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objects for medical relief, (f) To provide medical relief by giving free medicines, injections, tonic, food and the like by giving help for medical treatment including payment of expenses for such medical treatment; (g) To establish, maintain, support and assist by giving monetary, gifts or otherwise and to aid and promote homes and model institutions for the crippled, incapacitated, unemployed and illiterate men, women and children and to teach them handicrafts and cottage industries so as to enable them to become useful to the society; (h) To erect or help in erecting building or otherwise provide housing accommodation for the poor and to establish and maintain sanatorium, public halls, community halls and the like in any part of the country and to provide convenience to the persons visiting such places, (i) To propagate effectively the advantage of family planning, polio immunization and control measures against AIDS among the public; (j) To establish or help in the establishment or support and maintenance by donation or otherwise of any technical institutions and research in the field of medicines for the benefit of the public; (k) To promote, establish and maintain or help by monetary gifts or otherwise social, culture, health and welfare centres; (l) To aid for the general improvement and promotion of agriculture, medical sciences, bio-technology, horticulture and the like and for research in those subjects; (m) To take steps to disseminate scientific, technical and cultural knowledge and to raise the standard of life and health among the backward sections of the people; (n) To conduct lectures, seminars, symposium on all subjects and to award scholarships, prizes or trophies for the advancement of the above subjects; (o) To construct new wells and maintain and repair existing



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wells, tanks and other sources of water for the benefit of the public and to give monetary help for the same; (p) To give monetary aid or other help for relief from natural calamities like floods, cyclones, tempest or otherwise; (q) To give aid for the general improvement and promotion of agriculture, horticulture and the like and for research in agriculture, horticulture and allied subjects; (r) To assist renovation of places of historic, archaeological or artistic importance, (s) To educate the public on Indian Philosophy and to promote the spirit of brotherhood by giving oral tuition and practical training; (t) To collect and maintain a fund for the objects and purposes of the trust and in particular to accept donations and gifts of properties – movable and immovable – assignments of life insurance policies; (u) To do all such things as may be necessary or conducive for the advancement of any other objects of general public utility not involving any activity for profit; (v) The funds of the Trust shall be applied for the aforesaid objects only in India. 5.Trust Fund: (a) The FOUNDER AND AUTHOR OF THE TRUST declares that a sum of Rs. 1,000/-(Rupees one thousand only) has been dedicated by him for public charitable purposes and objects of general public utility described as above and the Trustee shall and will stand possessed of the said sum of Rs.1,000/-(Rupees One thousand only) upon trust and also any other properties, whether movable or immovable, which the Trustees may, from time to time, receive for augmenting the funds of the Trust or for special purposes connected with the objects of the trust, not calculated to impede the due working of the trust arising from donations, request or from any other sources whatsoever and also of any investments for the time



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being representing the same (hereinafter referred to as “Trust Fund”) and also of the net income from the Trust Fund into trust, and apply both the income and the capital of the Trust Fund for the purposes of the Trusts.”

6. In the light of the above, it is found that the contention of the Petitioner that it is a private Trust and therefore, it had approached the Court seeking permission to sell the Trust property in which the learned District and Sessions Judge – II, Kancheepuram had issued the following directions:-

“1. The Petitioner Trust is permitted to sell the Petition mentioned property through public auction by calling tender.

2.The Trustee Dr.Thiru Barry Joseph Micheal D.Rosario is appointed to assist the Court and to carry out the direction of the Court.

3.The Trustee is directed to publish the intended sale of the property in three number of Tamil Newspapers i.e., morning issues Dinathanthi, Dinamalar and evening issue at Malai Malar having circulations in the area.

4. The Trustee is directed to fix the date of tender and after receipt of the tender in sealed cover and the same is to be submitted before this Court.

5. The minimum bid upset price for the Property is fixed at Rs.3,27,00,000/- per Acre.

6.The auction sale is subject to the approval by this Court by selecting the highest bidder.



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7.The Trustee is directed to sell the property to the highest bidder.

8.The Trustee shall submit a draft sale deed for approval within three months from the date of sale approval.

9.Within one month from the date of approval of draft sale deed the entire sale consideration amount shall be deposited into the Court.

10.On such deposit the Petitioner is permitted to execute the sale deed in favour of the highest bidder already permitted by the Court.

11.On such deposit the said sale consideration is ordered to be invested in any one of the Nationalized bank in the name of the Petitioner Trust.

12.The Petitioner/Trustee is permitted to withdraw the accrued interest once in a year for the maintenance and to perform the charity obligations of the Trust.

13.The Petitioner is directed to produce the accounts once in a year.”

Therefore, the petition filed under Article 227 of the Constitution of India seeking to modify the following conditions:

“9. Within one month from the date of the approval of draft sale deed the entire sale consideration amount shall be deposited into the Court.

10. On such deposit the Petitioner is directed to execute the sale deed in favour of the highest bidder already permitted by this Court.

11. On such deposit the sale consideration is ordered to be invested in any one of the nationalized bank in the name of the Petitioner/Trust.

12. The Petitioner/Trustee is permitted to withdraw the accrued interest once in a year for the maintenance and to perform charity obligations of the Trust.”

Therefore, the Petitioner Trust being a Public Trust, Section 92 of the Civil



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Procedure Code only is applicable and not Section 34 of the Trust Act, 1982.

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7. From the objectives of the Trusts, it is found that the beneficiaries are the General Public. Therefore, it is a Public Trust. In cases of Public Trust, Section 34 of the Trust Act will not apply. Also as observed by the Hon'ble Supreme Court in ***R.Venugopal Naidu -vs- Venkatarayulu Naidu Charities [AIR 1990 SC 444]*** the property belonging to religious and charitable endowments should not be sold in private negotiations and the same can be sold in public auction after giving wide publicity. As held by the Hon'ble Supreme Court in ***Shanthi Devi -vs- State and others*** reported in ***AIR 1982 Del. 453*** – Indian Trust Act, 1882 does not apply to Public Trust and it applies only Private Trusts. In this case, the objective of the Trust is for the public. Therefore, it is not a private trust and the Petitioner having approached the District Court, Kancheepuram under the Trust Act is not maintainable and public trust will not come to a close at the intention of the Trustees. It is a continuous process for the cause of the general public. The Petition filed in OP before the learned learned District and Sessions Judge – II, Kancheepuram, by the Petitioner herein seeking permission of the learned District and Sessions Judge – II, Kancheepuram, to sell the trust



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properties is found to be not maintainable since it is not a private Trust to invoke Sections 34 and 39 of the Indian Trust Act, 1882. It is not at all maintainable. The only alternative remedy for the Petitioner is to invoke Section 92 C.P.C.

In the light of the above, **this Civil Revision Petition is dismissed** with a direction to the Petitioner to file appropriate suit under Section 92 of the Civil Procedure Code. No costs.

06.04.2023

dh/srm
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

SATHI KUMAR SUKUMARA KURUP, J.

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To

1. The District and Sessions Judge – II,
Kancheepuram
2. Section Officer,
V.R.Section,
High Court, Madras.

Order made in
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