

Case :- WRIT - C No. - 13081 of 2021

Petitioner :- Smt. Ram Dulari (Now Dead) and Ors.

Respondent :- District Judge Lucknow And Ors.

Counsel for Petitioner :- Surya Bux Singh, Madhu Bala Srivastava, Maneesh Kumar Singh, Navita Sharma

Counsel for Respondent :- Prashant Singh Gaur, Vikrant Singh

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Maneesh Kumar Singh, learned Counsel for the petitioners as well as Sri J.N. Mathur assisted by Sri Vikrant Singh, Sri Aishvarya Mathur, Sri Prashant Singh Gaur and Sri Sankalp Agarwal, learned Counsel appearing on behalf of the opposite parties.
2. The writ petition has been filed challenging an order dated 19.03.2021 passed in Misc. Case No.82 of 2013 as well as the other order dated 19.03.2021, whereby the Application D-108 for adjournment of the matter was rejected.
3. The facts in brief as arising out of the order dated 19.03.2021 passed while disposing the application A-99 are that the petitioner no.1 alleged that her husband late O.P. Chaudhary, who was also the father of petitioners no.2 and 3, had formed a trust in the name of Dr. O.P. Chaudhary Educational Trust, in which, he was the Managing Trustee/Chairman. The said trust was registered on 17.08.2010. The founder/Chairman of the trust expired on 27.01.2011 and nobody was nominated as his successor and the petitioners no.2 and 3 had given the consent in favour of the petitioner no.1 for being appointed as the Chairman of the Trust and alleging that the trust was not being managed properly, a Civil Misc. Case No.82 of 2013 was filed under Section 49/74 of the Indian Trusts Act before the learned District Judge, in which, an interim relief was also granted directing the

maintenance of *status quo*. The opposite party filed an application for dismissing the entire proceedings merely on the ground the trust in question was a public charitable trust and no application could be filed under the Indian Trusts Act. The said application was heard and decided by means of the impugned order. While deciding the same, the trial court had considered the purpose of the trust and held that on the plain reading of the trust deed, it was clear that the trust in question was a public charitable trust and the petition filed under the Indian Trusts Act was not maintainable, as such, the Application No.C-34 filed by the defendants was allowed. During the pendency of the application before the trial court, the petitioner no.1 died and was substituted by the petitioners no.2 and 3 herein.

4. While challenging the said order, it was argued by the Counsel for the petitioner that on plain reading of the trust deed, the same would not amount to a public charitable trust and thus the trial court has erred in rejecting the application and the impugned order deserves to be set aside.
5. During the course of pendency of this petition, the Counsel for the respondent argued that the husband of the petitioner no.1 has in fact filed proceedings under Section 92 of the C.P.C. and thus it has been accepted by the petitioners that the trust in question is a public charitable trust and the present proceedings are being lingered only in view of the fact that an interim order was passed in favour of the petitioners. A copy of the order has been handed over across the Bar wherein in Misc. Case No.64 of 2024, an order dated 19.11.2024 was passed holding that the trust in question was a public charitable trust and the date was fixed for further hearing. It is thus proposed to be argued by the Counsel for the respondents that on the one hand, the petitioner no.1 claims that the trust in question is not a public charitable trust, and on the other hand her husband filed a Misc. Case

No.64 of 2024 wherein it was stated that the trust in question was a public charitable trust and thus the present writ petition is liable to be dismissed.

6. When the matter was heard, a categorical statement was made by the Counsel for the petitioners that they would withdraw the proceedings initiated by the husband of the petitioner no.1 being Misc. Case No.64 of 2024 by moving an appropriate application. In the light of the said, the matter was heard on the issue as to whether the trust is a public charitable trust or a private trust amenable to the jurisdiction of Indian Trusts Act.
7. The trust deed is on record. The said trust was created by virtue of a declaration by Dr. O.P. Chaudhary and Dr. Smt. Sneh Lata Chaudhary and was founded for furtherance of the Social Educational Dental and Medical Services across the Nation. It was specifically declared that the trustees intended to create a public charitable trust with the objects as mentioned in Clause 6 of the Trust Deed. It was specifically recorded that the purpose of the trust would be for the social benefits of people of all castes, communities and religions. In clause 4, it was specifically mentioned that the trust shall be public charitable trust and it shall be open for every person irrespective of his or her caste, creed or religion. Clause 4 of the trust deed as well as the intention of the trust as recorded is quoted below:

“And whereas the founder trustees amounts comprises of a very competent team including doctors, management consultants and the successful businessmen. Above have decided to create a public charitable trust with the objects as mentioned in the object clause (6) of this Trust Deed.

“4. Type of Trust:

That the Trust shall be a public charitable Trust. It shall be open for every person irrespective of his/ her caste, creed or religion.”

6. Objects:

That the main object of the Trust will be to provide Primary, Secondary Higher Education, Dental Medical, Paramedical and Nursing School including Technical and Management Education. The activities shall be carried out for charitable purposes. The aims and objects of the Trust shall be as follows:

- i) To establish, develop, maintain the medical college, dental college paramedical, nursing institutions, hospitals, dispensaries, maternity homes, child welfare centers, and/or such other similar charitable institutions for the benefit and use of the general public.*
- ii) To establish, fund, support to school, colleges, libraries, reading rooms, universities laboratories, research and other institution of like nature in India for use of the public in general.*
- iii) To establish, run, support the primary secondary, higher secondary college, graduate and post graduate colleges, engineering/technical and management colleges.*
- iv) To establish, maintain and run studentship, scholarship and render other kind of aid to students including supply of books, stipends, medal and other incentives to study, without any distinction as to caste, colour, face, or sex etc.*
- v) To run, maintain support to national disease control programs, medical and dental programs.*
- vi) To promote, establish, support, maintain or grant aid to institutions for the promotion of science, educational & cultural activities in India having similar objects for the benefit of public in general.*
- vii) To take over the management of and administration of the dental, medical, and paramedical colleges,*

including other educational/ hospital having similar objects for the benefit of public in general.”

8. In the light of the said, the first submission of the Counsel for the petitioners is that merely because the trust is for the benefit of all, the same cannot be termed as public charitable trust, his argument is premised on the judgment of the Hon'ble Supreme Court in the case of ***Kuldip Chandra and another vs Advocate General; AIR 2003 SC 1685***, wherein according him, the Hon'ble Supreme Court has laid down law as under:

“This Court held that the charitable trust might either be created by a grant for an express purpose or a grant having been made in favour of an individual or a class of individuals, that individual or that class of individuals might, after obtaining the grant, create a charitable trust but here there is no evidence as regards such grant.

Yet again in Sri Radhakanta Deb and Another vs. Commissioner of Hindu Religious Endowments, Orissa (supra), upon taking into consideration a large number of decisions of the Privy Council as also of this Court, it was observed:

"It may thus be noticed that this Court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some

cases conclusively establish that the endowment was of a public nature."

This Court laid down the following tests as sufficient guidelines to determine on the facts of each case whether an endowment is of a public or private nature:

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management.

Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature."

9. He next relies upon the judgment of this Court in the case of ***Kishore Joo vs Guman Behari Joo Deo; AIR 1998*** and places reliance on paras 11 and 11-A, which reads as under:

"11. The Court is aware that in view of the provisions of Section 1 of the Indian Trusts Act the Act will not apply to a public or private or religious endowments. However, the principles of the English law of Trusts which have been incorporated in the Indian Trusts Act will apply to such Trusts. Section 48 of the Indian Trusts Act provides that where there are more trustees than one, all must join in the execution of the Trust except where the Instrument of Trust otherwise provides.

Section 47 of the Trusts Act provides for the special circumstances in which a trustee may delegate his duties. Such delegation is only permissible where (a) the instrument of Trust so provides or (b) the delegation is in the regular course of business or (c) the delegation is necessary, or (d) the beneficiary being competent to contract consents to the delegation. None of these conditions are asserted to have existed when Shri K. Arora, District Magistrate, Hamirpur in his capacity as President, Rainpur Temple Trust filed the execution application; hence the decree could not be executed on the basis of the application as all the trustees had not joined in the application.

11A. The law in regard to the application of the English law of Trusts to public trusts in India was explained by the Bombay High Court in Phulchand v. Hukumchand, (AIR 1960 Bom 438), in the following words : (at p. 441) "It is true that by Section 1 the provisions of the Indian Trusts Act are not made applicable to public trusts. Even so, the provisions of the Trusts Act are founded on general principles, and Rules of English Law. In matters which are not provided for, the Courts in India apply the principles and Rules of English Law on the subject unless they are inconsistent with the Rules and practice of this Court. (See Shivramdas v. B.V. Nerukar, 39 Bom LR 633 at p. 644 : AIR 1937 Bom 374 at p. 380), Rambabu v. Committee of Rameshwar, (1899) 1 Bom LR 667 and Nathiri Menon v. Gopalan Nair, 39 Mad 597:(AIR 1916 Mad 692). The principle of above stated, therefore apply to the present case."

10. On the foundation of these two judgments, it is proposed to be argued that the trust in question is not a public charitable trust.
11. The Counsel for the respondent argues that on the plain reading of the trust deed as well as specific provisions in the trust deed itself, it is clear that the trust is a public charitable trust. He further argues that the distinction between the private trust and the public charitable trust has been dealt with in catena of judgments. He relies upon the judgment the Hon'ble Supreme Court in the case of **Deoki Nandan vs Murlidhar and others: AIR 1957 SC 133** and in para 5, the Hon'ble Supreme Court has observed as under:

“5. It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. The position is thus stated in Lewin on Trust, 15th End., pp.15-16

"By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained "

Vide also the observations of Mitter J. in Nabi Shirazi v. Province of Bengal (I.L.R. (1942) 1 Cal. 211, 227, 228.). Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof."

12. To further argues that the petition filed by the petitioners before the District Judge under the Indian Trusts Act was not maintainable. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of ***Thayarammal vs Kanakammal; 2005 (1) SCC 457*** and in the case of ***Mohammad Sadiq Ali Khan Nawab Mirza vs Kazim Ali Khan and others: 1934 SCC Online Oudh CC 64*** and reliance is placed at pages 329 and 330, which reads as under:

“In these circumstances it seems to me that, having regard to the contents of section 1 of the Indian Trusts Act, nothing contained in that Act applies to the "Radd-i-mazalim" fund. It was contended on behalf of Nawab Mirza Mohmmad Sadiq Ali Khan that even if the Indian Trusts Act does not apply, this Court is entitled to appoint a trustee of the fund, having regard to the ordinary principles of Mahomedan law. Reference was made to rulings reported in-In the matter of Wootatunnessa Bibee; Habibar Rahman v. Saidannessa Bibi; and Abdul Alim Abed v. Abir Jan Bibi. I do not see that anything contained in the first two of these decisions substantially assists the contention raised on behalf of Nawab Mirza Mohammad Sadiq Ali Khan in this present matter. The third ruling certainly contains certain observations which support the contention now raised, but even in that case it was held that on the allegations made the matter was one coming only under section 92 of the Code of Civil Procedure. Similarly in the present case it seems to me that the allegations made bring the reliefs sought within the purview of section 92(1) of the Code of Civil Procedure, and that the proper remedy of the applicants in both these present applications lies in a suit properly instituted under that section.

What I have said in deciding the third issue disposes also of the fourth and fifth issues. With regard to the fourth issue, even if I had held that section 34 of the Indian Trusts Act can be applied to the present circumstances, I should have taken the view that the application of Nawab Mirza Mohammad Sadiq Ali Khan involves questions of detail, difficulty and importance, which are not proper for summary disposal. My finding on issue No. 4 therefore is that the questions raised in Miscellaneous Case No.1 of 1932 ought to be decided in a regular suit, and are not proper on any view of the matter for summary disposal under section 34 of the Indian Trusts Act. My finding on issue No. 5 is that this Court has no jurisdiction to appoint a trustee or trustees under section 74 of the Indian Trusts Act, and that the matter must be decided in a regular suit.”

13. Reliance is also placed by the Counsel for the respondent upon a judgment of the this Court in the case of ***Hari Sharan Singh and another vs State of U.P. and others***; decided on 13.02.2023 in Matters Under Article 227 No.5156 of 2022, wherein, this Court after following the judgment of Delhi High Court in the case of ***Smt. Shatni Devi and another vs State and others***; AIR 1982 Delhi 453, has held as under:

“6. The petitioners had moved an application under Section 73 of Indian Trusts Act, 1882 to appoint them as trustee on the ground that earlier application was filed by the trustee Indra Bahadur Singh to appoint the petitioners as trustee but on account of his death that application was dismissed and prayer was made to appoint them trustee as it was the wish of last alive trustee Indra Bahadur Singh and case was registered as Misc. Case No.02 of 2017.

9. Learned court below has also recorded the finding that from the perusal of deed executed in the year 1932, that it was not a private trust but it was created in respect of Dharmarth of temple as a public trust and any trustee of public trust can be appointed under Section 92 of C.P.C. and since the present case has been filed by the applicants without prior permission under Section 92 of C.P.C., the application is not maintainable.

20. The religious endowment created in the year 1932 did not restrict the public or villagers for worship in the temple and all the trustees appointed were strangers and as such it was an intention of the creators to create a public trust and the provisions of Act, 1882 does not apply to public trust and charitable trust and only procedure prescribed under Section 92 of C.P.C. for appointment of trustee, as held by Delhi High Court in Smt. Shatni Devi and another Vs. State and others, AIR 1982 Delhi 453, the relevant paragraphs 13 and 14 are reproduced herein below:-

"13. We would emphasis what has often been overlooked that the Indian Trusts Act of 1882 does not apply to public trusts and charitable trusts. As the preamble of the Act states it is "an act to define & amend the law relating to private trusts & trustee."Section 1 of the Act says that nothing herein contained "applies to public or private, religious or chanitable endowments". Therefore, all charitable trusts are excluded from the operation of the Act. Admittedly, Shri Gopal Singh founded "an express trust for public purposes of a charitable nature", to use the language of section 92, Civil Procedure Code The object of the trust clearly show that it is a charitable turst. All charitable trusts are public trusts. Public trusts and charitable trusts are synonymous expression. They are essentially different from private trusts in that the beneficiaries are uncertain. at charitable trusts are for the benefit of the public and they are enforceable by the Advocate General suing on behalf of the public or more persons having an interest in the trust with the leave of the court. Section 92 is the special remedy for "public charities". In the case of a breach of trustor where the direction of the court is necessary for the administration of a public charity a suit can be instituted in the court of the district judge for one or more of the reliefs mentioned in the section.

14 The Act applies to private trusts only. The most fundamental distinction between private & public trusts depends upon the character of the proson for whose benefit they are created. The essential difference between a private and public trust that in the former the beneficiaries are defined and ascertained individuals who within a definite time can be definitely ascertained but in the latter he beneficial interest must be vested in an uncertain and fluctuating body of persons either the public at large or some considerable portion of it answering particular description."

14. The Counsel for the respondent thus argues that in these grounds, the writ petition is liable to be dismissed.
15. Considering the submissions made at the Bar, the trial court after analyzing the provisions of the Trust Deed and the specific provisions of the Trust Deed as extracted above held that the trust in question is a public charitable trust even this Court on its plain reading found that the essential ingredients as indicated in the trust deed, expressed that the beneficiaries of the activities are for the general public. No provisions is prescribed that the beneficial activities of the trust would be for any family member or any specific person.
16. In view of the law as explained by the Hon'ble Supreme Court and the covenants of the trust deed, the inescapable conclusion is that the trust in question is a public charitable trust. In view thereof, this Court does not hesitate in holding that the order impugned passed by the trial court rejecting the application under the Indian Trusts Act was wholly justified and the same does not warrant any interference in exercise of powers under Article 226 of the Constitution of India, as such, the writ petition is *dismissed*.

Order Date:-27.11.2024
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(Pankaj Bhatia,J.)