Reserved on : 09.09.2016

Delivered on : 16.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.3996 of 2014

1.T.Lakshmipriya
Managing Trustee,
S.Veerasamy Mudaliar Charities.
2.S.Ravichandran

3.S.M.Dass

4.K.B.S.Mani
Trustees, S.Veerasamy Mudaliar Charities,
Having Office at Old No.53, New No.64,
Mettu Street, Kanchipuram – 631 501. ... Petitioners

Vs.

NIL ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 05.03.2014 in Trust O.P.No.58 of 2013 on the file of the District Court II, Kanchipuram.

For Petitioners : Mr.V.Lakshminarayanan

O R D E R

The above Civil Revision Petition arises against the order passed in Trust O.P.No.58 of 2013, filed under Section 7 of the Charitable and Religious Trusts Act, 1920, on the file of the District Court II, Kanchipuram.

2.The petitioners filed the Original Petition under Section 7 of the Charitable and Religious Trusts Act, 1920 praying the Court to give its opinion, advice or direction to the petitioners, who are the Managing Trustee and Trustees of Veerasamy Mudaliar Charities, to pursue the resolution dated 04.04.2012 to demolish the existing rear portion of the Marriage Hall and construct a commercial complex in terms of the sanctioned plan obtained by the Trust and for this purpose, to procure bank loan of Rs.2 crores from South Indian Bank, Kanchipuram or any other bank which offers better interest rate for their repayment on the strength of the immovable property for carrying out the proposed construction of the commercial complex and thereafter, rent the same and utilise the income to carry out the objects of the Trust, after defraying all the expenses connected with maintaining the Trust Property.

3.The District Court II, Kanchipuram dismissed the Original Petition, against which the petitioners have filed the above Civil Revision Petition.

4.Heard Mr.V.Lakshminarayanan, learned counsel appearing for the petitioners.

5.The brief case of the petitioners are as follows:

(i)The 1st petitioner is the Managing Trustee and the petitioners 2 to 4 are the Trustees of S.Veerasamy Mudaliar Charities. The Trust was formed by its Erstwhile Turstee Late S.Veerasamy Mudaliar and others under a registered Deed of Trust dated 04.03.1972. According to the petitioners, the Trust was created solely for the purpose of carrying charitable and philanthropic activities for the welfare of the poor and the downtrodden. The object of the Trust was to make all efforts for uplifting the downtrodden people, irrespective of their caste, creed or religion on a non-profit basis and to promote the welfare of the poor students of economically weaker sections among other charitable purposes described in the Trust Deed.

(ii)According to the petitioners, the Trust owns the property mentioned in the petition, measuring an extent of 27 cents along with the Marriage Hall constructed thereon. The petition property originally belonged to Late S.Veerasamy Mudaliar and was subsequently vested in the

Trust by the said S.Veerasamy Mudaliar under the Trust Deed dated 04.03.1972. The petition property is the only immovable property owned by the Trust and it is the only source of income to the Trust for carrying out its charitable activities. As per the Trust Deed, the Trust property and the income derived out of the said property shall be used in the manner which is most beneficial to the interest of the Trust and for the realisation of the charitable objects of the Trust. In pursuance of its objects, the Trust has been renting the Marriage Hall at highly subsidised rates as compared to the rentals quoted by other Marriage Halls in and around that area. The income earned out of the Marriage Hall, after defraying the expenditure towards maintenance, salaries and other heads, are utilized to carry out philanthropic and charitable activities, including funding of tuition fees, expenses for education of poor students and has been functioning in a noteworthy manner for more than 40 years.

(iii)According to the petitioners, the Trust is law abiding and has been filing its Income Tax returns regularly. The Marriage Hall is being rented for wedding at the subsidised rate of Rs.12,000/- per wedding. The income derived from the Marriage Hall covers the cost of maintenance and leaves the Trust with paltry sums to carry out the remaining objects of the Trust. According to the petitioners, it has become increasingly difficult for the Trust to carry out its charitable functions with the meagre income generated from the Marriage Hall. Further, the petitioners have stated that the Marriage hall has dilapidated considerably, resulting in shortfall in the bookings. Presently, the Marriage Hall does not yield any significant income to further the objects of the Trust and the same is evident from the Income Tax returns. On consultation with expert Realtors and Structural Engineers, it was emerged that if the existing structure is pulled down and in its place a commercial complex comprising of ground plus two floors is put up, the rental yield will considerably increase. It was suggested by the Architect that the rear portion consisting of the old dining halls, kitchen and other worn out portions can be pulled down and in its place a commercial complex can be put up. In doing so, the front portion can be used as approach and parking space for the rear portion. The Trust passed a resolution on 04.04.2012, 05.04.2012 and 02.05.2012 to the effect that they would procure an estimate from a qualified Architect/Contractor and would then proceed to get a plan drawn up and apply for its sanction by paying the requisite fees. On consultation, a rough estimate for construction of commercial complex was given, estimating the cost of the construction between Rs.1.55 crores and Rs.2 crores. The petitioners have applied to the authorities for the sanction of the building plan for the commercial complex and the same has been granted by the Kanchipuram Municipality on

05.06.2013. The Trust has also obtained plan sanction from the Kanchipuram Local Planning Authority on 09.05.2013.

(iv)According to the petitioners, the proposed commercial complex would easily fetch not less than Rs.25 lakhs per annum. They have also stated that the Trust has never drawn an income that exceeded Rs.2,73,000/- in the year 2010-2011. If the Trust were to start earning an income of Rs.25 lakhs, the Trust would be able to pursue its charitable objects, thereby, fulfilling the wishes of Late S.Veerasamy Mudaliar, the propounder of the Trust. The petitioners have stated that if they have to put into action the resolutions passed by them in connection with the construction of the commercial complex, they would have to take a loan around Rs.2 crores on the strength of the land owned by the Trust. They have also approached the South Indian Bank, Kanchipuram and they appear to be in favour of granting loan to the Trust, provided, permission of the Court has been procured for availing such a facility. The move towards constructing a commercial complex and earning higher rentals out of it, is only for the benefit of the Trust and would not in any manner be detrimental to it. In these circumstances, the petitioners have filed the above Original Petition seeking for the reliefs stated above.

6.On a careful consideration of the materials available on record and the submissions made by the learned counsel for the petitioners, it could be seen that under Ex.P1 registered Trust Deed executed by Veerasamy Mudaliar, the petition property was vested in the Trust by the said Veerasamy Mudaliar. Ex.P7 is the copy of the registered Will executed by Veerasamy Mudaliar on 29.07.1991. Ex.P8 is the Death Certificate of Veerasamy Mudaliar. Ex.P9 is the minutes, appointing the 1st petitioner as the Managing Trustee as per the Will of Veerasamy Mudaliar. Exs.P10 to P13 are the ledger entries showing the salaries paid to the employees, bookings of the Marriage Hall, expenses towards the charity works done and the ledger entries showing the expenditure incurred by the Trust. Ex.P19 Minutes Book of the Trust dated 05.04.2013 wherein the Trust passed a resolution for obtaining permission for putting up new construction. Engineers valuation certificate was marked as Ex.P20. Ex.P21 is the abstract estimate. The plan approval order was marked as Ex.P22. The approved plan is marked as Ex.P23. The rent valuation certificate was marked as Ex.P24. Audit Report was marked as Ex.P25. The letter given by the South Indian Bank expressing their readiness to sanction loan on effecting permission from the Court was marked as Ex.P26.

7.It is not in dispute that the Trust was formed in the year 1972 and the founder of the Trust had died in the year 1993. It is also not in dispute that there is a Marriage Hall in the Trust property. According to the petitioners, the income derived from the Marriage Hall is paltry. The petitioners sought to demolish the Marriage Hall and put up a commercial complex in the property to increase the income of the Trust. They also sought the permission of the Court to avail loan from the Bank for putting up new construction.

8.On a perusal of Ex.P1 Trust Deed dated 04.03.1972, it could be seen that the founder of the Trust was desirous to create a Trust over the Trust property for charitable purposes, including construction of a Marriage Hall, for the relief of poor and for the eduction, medical expenses of the poor people and other such similar activities. From the recitals found in the Trust Deed, it is clear that the founder of the Trust was desirous of constructing a Marriage Hall for the relief of the poor and to utilize the income derived from the Marriage Hall for the educational and medical expenses of the poor people. Therefore, from the recitals of the Trust Deed, it is also clear that the intention of the founder of the Trust viz., Veerasamy Mudaliar was to help the poor people by constructing a Marriage

Hall for their benefit and also by taking care of their medical and educational expenses. For achieving this object, the founder has stated that a Marriage Hall can also be constructed for the benefit of the poor people and the income derived from the Marriage Hall can be used for the welfare of the poor people.

9.It is settled position that in the event of the Trust property not generating sufficient income, the Court can give permission to the Trustee to sell the property. But for giving such a direction, there must be ample evidence produced by the Trustee to prove that the Trust property is not generating sufficient income and that by selling the same, it would be beneficial for the Trust to achieve the objects of the Trust. Though in the Trust Deed it has been mentioned that for generating the funds for charitable purposes and for the welfare of the poor people, the Marriage Hall can be constructed, now, that the Trustees contend that the Marriage Hall constructed in the Trust property is not generating sufficient income to meet the objects of the Trust. It is the case of the petitioners that the Marriage Hall is rented out for Rs.12,000/- per marriage. Further, they have stated that since the Marriage Hall is dilapidated, there is a shortfall in the bookings. It is understandable that nowadays people expect all facilities in the Marriage Halls and when the Marriage Hall is in dilapidated condition, as stated by the petitioners, bookings for the Marriage Hall would definitely fall. The petitioners have stated that only during the financial year 2010-11, the Trust achieved the highest income of Rs.2,73,000/-. The Trustees have stated that if the commercial complex is constructed in the Trust property, it would fetch an annual income of Rs.25 lakhs. The District Court, while dismissing the petition, observed that there is no surplus funds available with the Trust, apart from meeting the charities. When it is the case of the petitioners that the Marriage Hall is not fetching sufficient income and for that purpose, they require the permission of the Court to construct a commercial complex for generating higher income, one cannot expect the Trust to have surplus funds. If they have surplus funds in the account, then there is no necessity for demolishing the Marriage Hall and seek for permission to construct a commercial complex.

10.The object of the Trust is only to help the poor people towards their medical land educational expenses. It is also the object of the Trust to construct a Marriage Hall for the benefit of the poor, apart from meeting their medical and educational expenses. The District Court has come to the conclusion that the petitioners are not administering the Trust *bona fidely* stating that there is no surplus money available with the Trust. The Court below, on a perusal of Ex.P25 Audit Report for the year 2010-2012, observed that inspite of the Trust property located in a prime locality in Kanchipuram, showing “NIL” surplus income is only because of mismanagement or falsification of accounts. The Court below came to the conclusion that the accounts produced by the petitioners is false. For coming to that conclusion, the Court below, took into consideration the advance rent of Rs.5,000/- received by the Trust on 23.04.2008 and that the Trust had spent a sum of Rs.6,000/- towards expenditure. The Court below also observed that no prudent Management would spend Rs.6,000/- towards miscellaneous expenses for getting a rent of Rs.5,000/- for the Marriage Hall. The finding rendered by the trial Court is erroneous for the reason that according to the petitioners, from 01.04.2008, they charged Rs.12,000/- per wedding. Out of this Rs.12,000/-, they spent Rs.6,000/- towards miscellaneous expenses. Even according to the Court below, on 23.04.2008, the Trust had received only an advance of Rs.5,000/- and it is not the total rent received by the Trust for the wedding. If the Trust had received the total rent of Rs.5,000/- and spent Rs.6,000/- towards miscellaneous expenses, in that case, the finding giving by the Court below can be construed as a correct finding. The Court below cannot take into consideration the advance amount alone for tallying with the expenditures incurred by the Trust per wedding. From Ex.P12, ledger entries showing expenses towards charity works done by the Trust for the years 2008-2012, it is clear that the Trustees were doing charity out of the income derived from the Marriage Hall.

11.Since the object of the Trust is to run a Marriage Hall for the benefit of the poor people and to help the poor people to meet their medical and educational expenses out of the income derived from the Marriage Hall, I am of the view that the existing Marriage Hall should not be demolished since the Trust is charging at a subsidised rate for the benefit of the poor people. If the Marriage Hall is demolished, it will not achieve the objects of the Trust by helping the poor people to celebrate the marriages. The Court below found that the borrowal of Rs.2 crores may, at last, result in the loss of Trust property itself and the same may lead to unlawful enrichment of the Trustees. Though, there is no evidence with regard to the observation made by the Court below, on what basis the said finding is given by the Court below is not known. Since I am inclined to reject the Original Petition solely on the ground that demolition of the Marriage Hall would result in not achieving the objects of the Trust in a proper manner. As already stated, when the object was to construct a Marriage Hall for the benefit of the poor people, if the said Marriage Hall is demolished, it will run contrary to the objects of the Trust. Instead of demolishing the Marriage Hall, the petitioners/Trustees can carry out the renovation works in the Marriage Hall for getting better income from the same and thereby, helping the poor people in celebrating the marriages. If the Marriage Hall is renovated, the Trust can earn more income, thereby, can fulfill the desire of the founder of the Trust.

12.For the reasons stated above, the Civil Revision Petition is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

13.After pronouncement of orders, Mr.V.Lakshminarayanan, learned counsel appearing for the petitioners sought liberty to file appropriate application before the District Court, Kanchipuram for renovating or demolishing the existing Marriage Hall and to construct a new Marriage Hall in the Trust property.

14.It is open to the petitioners to file appropriate application before the District Court, Kanchipuram seeking for such a relief and the District Court, Kanchipuram shall decide the same on merits and in accordance with law.

Index : No **16.09.2016**
Internet : Yes
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M.DURAISWAMY,J.
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To

1.The District Court II,
Kanchipuram.

Order made in
C.R.P.(NPD).No.3996 of 2014

16.09.2016