IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3479 of 2015
Date of Decision-04.10.2017

Shri Kanshi Ram Kahan Devi Grover Welfare Society (Regd).
... Petitioner

Versus

General Public ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Salil Kapoor, Advocate and
Mr. Sumit Lalchandani, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 22.09.2014 passed by the Additional District Judge, Amritsar vide which the application filed by the petitioner for permission to sell the property of the petitioner/Trust was dismissed.

[2]. Shri Kanshi Ram Grover Welfare Society, Amritsar which was subsequently amended as Shri Kanshi Ram Kahan Devi Welfare Society is a registered Trust. The Trust has defined aims and objects i.e.

"(a) To create social and moral awareness among the people with regard to their obligations towards each other and to create an atmosphere of mutual help.

(b) To further the work of relief and general welfare of the people.

(c) To undertake such activities charitable and social which may be in furtherance of the objects mentioned or in general may be beneficial to the society.

(d) The society shall be strictly non-political and shall render its services irrespective of caste, creed and any other distinction."

[3]. The Trust has its registered office at No.1, Gopal Nagar, Majitha Road, Amritsar. The composition of the welfare society is defined in number in terms of life membership, membership and vacancies to be caused on account of death of a member, voluntary relinquishment, insanity, being convicted of a moral turpitude and subversive activities by any member undermining the society. As per provision of dissolution, if the society fails to carry out its objects or is found otherwise unfit for the purposes of the affairs and is also found that the society is mis-managed by its management, then the Deputy Commissioner of Amritsar shall have the authority to assume effective control over the affairs and properties of the society/Trust and shall run the society without changing its name and objects in such a manner as he thinks fit or may make such arrangement in respect of it which he considers suitable so as to get the society run in conformity with the objects. The society was registered under the Registrar of Firms and Societies, Punjab on 16.03.1959.

[4]. Petitioner filed an application for permission to sell the property of the petitioner/Trust i.e. property No.1103/18, New XVIII, Gopal Nagar, Amritsar in khasra No.172 on the ground that the Trust was registered with the Registrar of Society on 16.03.1959. Earlier the name of petitioner/Trust was Shri Kanshi Ram Grover Welfare Society, Amritsar which was subsequently amended as Shri Kanshi Ram Kahan Devi Welfare Society and was registered with the Registrar of Societies on 26.05.1971. Original trustees have died. The new trustees came into being namely Sh. P.K. Grover, Sh. V.K. Grover, Sh. Uday Grover and Smt. Kusum Grover. The aforesaid trustees are settled in Mumbai. The property was given to the Trust/society for the welfare of the general public. Presently, the property has been occupied by some tenants and some illegal construction and trespassing over the property have also occurred. Since the present trustees are settled in Mumbai, therefore, they cannot look after the affairs of the Trust in Amritsar and are unable to look after the properties in any manner. On account of this, it is not possible for the trustees to carry out the charitable works in an appropriate manner. The rent received from the tenants is a very meager amount and such a meager amount is not sufficient to meet out day to day expenses of the Trust. The trustees vide resolution dated 17.09.2013 have decided to sell the above said property of the Trust and to use the sale proceeds for charitable purposes in accordance with objectives of the society for the best possible use in the city of Mumbai where the interest of the society and its objects

can be personally watched by the trustee members of the petitioner Trust/society.

[5]. Prayer of the petitioner was declined by the Additional District Judge, Amritsar primarily on the ground that as per dissolution clause in the trust deed, if the society fails to carry out its objects or is found otherwise unfit for the purposes or is found to be mismanaged, the Deputy Commissioner of Amritsar shall have the authority to assume effective control over the affairs and properties of the Trust without changing its name and objects. Inability of the trustees to look after the affairs of the society in an appropriate manner being residents of Mumbai would be properly met as per the clause of dissolution in the trust deed itself. Additional District Judge, Amritsar by not agreeing with the petitioner, dismissed the petition vide order dated 22.09.2014. That is how, the present revision petition came to be filed.

[6]. I have heard learned counsel for the parties.

[7]. Learned counsel for the petitioner submitted that it is not a case of mis-management, rather the trustees are residents of Mumbai. The accounts of the Trust have been managed properly and have been audited as per law. The payments have been duly made towards income tax and other taxes. Since the rental received by the Trust is a nominal amount and expenses are high, therefore, the property of the Trust is sought to be sold and out of the amount

so received from the sale, the aims and objects of the Trust can be carried forward.

[8]. Learned counsel relied upon case of ***Snehasagar Charitable Trust Vs. General Public*** decided on 18.05.2010 ***in W.P. (C) No.10680 of 2010*** by Kerala High Court i.e. ***2010(2) KLJ 1037*** and contended that even in the absence of any recital in the trust deed giving powers to trustees to sell the property of the Trust, the Court can assume its role to evaluate the entire facts and circumstances of the case and then form an opinion that the attempt is not to deplete the assets of the Trust, but the same is for the benefit of the Trust. Learned counsel also submitted that the affairs of the Trust are to be managed from the income towards rental and such income was not enough to maintain the affairs of the Trust in terms of its aims and objects, therefore the requirement of the Trust after evaluating the expenditure for maintenance has to be met by way of recurring income and that can only be secured by means of allowing the sale of property in question and to keep the amount as a fixed nucleus with interest accruing thereupon for the purposes of proper utilization towards aims and objects of the Trust. Learned counsel also relied upon the case of ***Vishadra Charitable Trust represented by its Trustees*** decided on 23.10.2013 in ***O.P. No.209 of 2013*** by the Madras High Court, granting permission to the Trust to sell the property of the Trust under Section 34 of the Indian Trust Act and the case of ***Shri Shri 1008 Shri Thakur***

Madan Vs. Pubic in General decided on 15.01.2013 in ***W.P. No.6121 of 2012*** by the Madhya Pradesh High Court.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. Learned Assistant Advocate General, Punjab appeared in pursuance of order dated 03.07.2015 vide which respondent No.2 was impleaded. As per nomenclature of the Trust itself, it is a registered Trust having registered office in the premise No.1, Gopal Nagar, Majitha Road, Amritsar. The Trust has defined aims and objects for creating social and moral awareness amongst the people with regard to their obligation towards each other and to create an atmosphere of mutual help. The assignment of relief and general welfare of public is also one of the aim and object of the Trust. The Trust is to undertake charitable and social activities which are beneficial to the society. The Trust is totally non-political and shall render its services irrespective of caste, creed and any other distinction. Apparently, as per aim and objectives of the trust, the benefits are to be advanced to the persons residing within area of operation of the trust. As per dissolution clause, in the event of finding that the society has failed to carry out its objects or is found otherwise unfit for fulfilling the purposes, the Deputy Commissioner, Amritsar shall have the authority to assume effective control of affairs and properties of the Trust for effective management as per nomenclature. The prayer made in the application is somewhat in

the form of taking away the amount to Mumbai after selling the assets of the Trust and to utilize the same in the city of Mumbai where the interest of the society and its objects can be personally watched by the trustee members of the petitioner Trust/society. It cannot be understood as to how the interest of the beneficiaries of Amritsar would be watched by the trustees in Mumbai, particularly when the prayer itself is suggestive of the fact that the trustees will use the amount and total sale proceeds of the property for charitable purposes in accordance with objects of the society for best possible use in the city of Mumbai, where the interest of the society and its objects can be personally watched by the members of the society.

[11]. A Trust is an obligation annexed to the ownership of the property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another. The person reposes or declares the confidence is known as author of the Trust. The person who accepts the confidence is called the trustee. The person for whose benefit the confidence is accepted is called the beneficiary. The subject matter of the Trust is called trust property/trust money. The beneficial interest or interest of the beneficiary is his right against the trustee as owner of the trust property. The instrument by which the Trust is declared is known as instrument of Trust. A breach of any duty by the trustee will be

known as breach of Trust. Beneficiary has a right to obtain his beneficial interest against the trustee as owner of the trust property.

[12]. The beneficiaries in the instant case are the residents of the area where the Trust/trust property is situated. The trustees are required to utilize the trust property for effectively executing and administering the aims and objects of the Trust for the benefit of the beneficiaries and for due administration thereof. The trustees cannot utilize such amount for any other purpose. The proposed utilization of the amount for alleged purpose at Mumbai may result in breach of trust. By virtue of head office of the Trust at Amirtsar, the area of operation of Trust can be visualized in Amirtsar or its surrounding areas, therefore, the residents of Amritsar or its surrounding areas can be the beneficiaries of the Trust and by virtue of intended effort of the trustees, the beneficiaries would be adversely effected as the aims and objects of the Trust are sought to be fulfilled by the trustees while living in Mumbai and by utilizing the sale proceeds of the trust property there. The creation of Trust as per Section 6 of the Trusts Act, 1882 stipulates that a trust is created when the author of the Trust indicates with reasonable certainty by any words or acts i.e.

(a) an intention on his part to create thereby a trust,

(b) the purpose of the trust,

(c) the beneficiary,

(d) trust property.

The Trust is not complete until the trust property is vested in trustees for the benefit of *cestui que* trust.

[13]. As per Section 34 of the Trusts Act, 1882, any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions in respect of management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. The filing of such application cannot be treated to be an application under Section 92 CPC. The jurisdiction of the Court under Section 34 of the Indian Trust Act is only advisory in nature.

[14]. Since the trust property is situated in Amritsar, the aims and objects of the Trust are revolving around the welfare of the people and the activities of the Trust are charitable in nature, therefore, the area of Amritsar and its surrounding can be termed as beneficiaries of the Trust. In the event of selling the property by the trustees and taking the same to Mumbai for its utilization in Mumbai would be prejudicial to the interest of the beneficiaries and would amount to breach of the duties as per interpretation clause in terms of Section 3 of the Trusts Act. No such situation arose in the cited precedents wherein the opinion was sought for disposing of the property of the Trust for construction of new building in place of old one at the same site, therefore, the facts involved in ***Snehsagar Charitable Trust's case (supra)*** are distinct and are not applicable

to the facts and circumstances of the present case. Secondly in ***Shri Shri 1008 Shri Thakur Madan's case (supra)***, the Trust was created and Mandir was being maintained from the income of the Trust. The affairs of Mandir were sought to be maintained by way of selling the property of the Trust and the permission was granted in that context. Similarly in ***Vishadra Charitable Trust's case (supra)***, similar proposition arose. There was no shifting of place of utilization of the sale proceeds.

[15]. In the case in hand, the entire intended effort of the trustees is to sell the property of the Trust at Amritsar and take the sale proceeds to Mumbai for best possible utilization in the city of Mumbai, where the aims and objects of the society can be personally watched by the trustees. I failed to understand as to how the trustees after selling the trust property at Amritsar, would personally watch the interest of the Trust, that too by utilizing the amount in the city of Mumbai. Admittedly, the property of the Trust has been occupied by the tenants and encroachments have also come in a big way. The trustees are non-residents of Amritsar, therefore it is a case of mis-management.

[16]. In view of above facts on record, dissolution clause of the trust deed would come into play, which authorizes the Deputy Commissioner, Amritsar to take charge of the affairs of the Trust for its effective management.

[17]. In the light of aforesaid facts, I do not see any justification to interfere in the impugned order dated 22.09.2014 passed by the Additional District Judge, Amritsar. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

04.10.2017
Prince

Whether reasoned/speaking **Yes/No**

Whether Reportable **Yes/No**