

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2018

Coram

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.11045 of 2017

in

WMP No.5296 of 2018

Dr. M.A.M. Ramaswamy Chettiar of Chettinad

Charitable Trust Represented by,

Its Managing Trustee Dr. A.C. Muthiah,
Chettinad House, R.A. Puram,
Chennai

... Petitioner

Vs.

1. The Regional Transport Officer,
Chennai (South East)
Chennai - 600 028.

2. M.A.M.R. Muthiah
Group-Managing Director
Rani Seethai Hall Building
5th Floor, 603, Anna Salai,
Chennai - 600 005.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records on the file 1st respondent in proceedings R. No.425/A2/2016 dated 27.01.2017 and direct the 1st respondent to transfer the ownership of the vehicle listed in the petition dated 05.01.2016 of the petitioner, to the petitioner trust.

For Petitioner : Mr.S. Sithirai Anandam

For R1 : Mr. M. Elumalai,
Govt. Advocate

For R2 : Mr.V. Raghavachari
for Mr.T. Balaji

O R D E R

This Writ Petition has been filed by the petitioner for issuance of Writ of certiorarified Mandamus to call for the records on the file of the 1st respondent in proceedings R. No.425/A2/2016 dated 27.07.2017 and quash the same. Further, the petitioner is seeking for direction to the 1st respondent to transfer the ownership of the vehicles set out in

the petitioner's representation dated 05.01.2016 in the name of the petitioner's trust.

2. Brief facts which are relevant for the purpose of deciding this Writ petition are as follows:

3. The petitioner had made a representation along with documents to the 1st respondent on 05.01.2016 requesting to transfer the ownership of the vehicles enclosed in the list therein in the name of Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust consequent to the demise of Dr. M.A.M. Ramaswamy. Since the representation has not been considered, the petitioner had filed W.P. No.8601 of 2016 seeking for a direction to the 1st respondent to transfer the ownership of the Motor Vehicles in the name of Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust. After hearing both the parties, this Court by its order dated 28.07.2016, directed the 1st respondent, Regional Transport Officer as under:

...

4. "In view of the above said submission, the first respondent is directed to consider both the applications of the petitioner as well as the second respondent, in accordance with Section 56 of the Motor Vehicles Act 1956, after giving sufficient opportunity to both parties, within a period of two months from the date of receipt of a copy of this order"

5. Subsequent to the above order, both parties are summoned and an enquiry conducted by the first respondent. After hearing the arguments of both parties, the Regional Transport officer passed the impugned order in R. No.425/A2/2016, dated 27.01.2017 as under:

...

" In the above circumstances that 12 vehicles registered in the name of Mr. M.A.M. Ramaswamy, S/o. Muthiah Chettiar, No.1/2, Greenways Salai, Raja Annamalaipuram, Chennai-600 028 could not be transferred neither in the Trust's Name nor in the name of adopted son Thiru. M.A.M.R. Muthiah.

In the light of disputed facts and legal issues, proper conclusion could not be reached at this stage. Hence the application submitted by the petitioner are returned and both parties are directed to approach the appropriate legal forum."

6. Assailing the above said impugned order, the petitioner has filed this writ petition.

7. Heard the learned Counsel for the petitioner and the learned Government Advocate Counsel for the first respondent as

well as the learned counsel for the Second respondent.

8. The learned counsel appearing for the petitioner would submit that the founder M.A.M. Ramaswamy Chettiar specifically created a private trust by trust deed dated 16.02.2015 for a sum of Rs.1000/- wherein Clause 7 of trust deed states that the trust includes " any other movable properties that the Founder shall transfer to the Trust by means of delivery of possession in future and also " Any other property which may be received by the Trustee/s on behalf of the Trust by way of transfer, donation etc.

9. It is further contended by the learned Counsel for the petitioner that as per the Clause 9(iii) of Trust Deed, after the lifetime of the Settlor, the properties of this Trust would go to Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust, registered under document No.51 of 2015 dated 09.02.2015 in the office of the Sub-Registrar, Mylapore." Hence, the property of the private trust would go to Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust after the demise of Dr. M.A.M. Ramaswamy. Therefore, the petitioner being the public Charitable trust would become the owner. Further it is admitted by the counsel for the petitioner that the transfer of ownership is sought on the basis of oral Gift in favour of the Private Trust.

10. The counter affidavit filed by the First respondent stated that the transfer could not be done in favour of the petitioner's trust due to the reason that the said will of the trust is not probated as required under Sec.213 of Indian Succession Act, 1925. In the absence of probate of the Will, the transfer of the vehicles in the Trust's name should not be done. At the same time, the second respondent has not produced the legal heir certificate at the time of hearing so as to claim ownership to the vehicles and heirship. Accordingly, the transfer applications were returned.

11. The learned Counsel appearing for the second respondent would submit that the second respondent is in the possession of the properties and the some of the vehicles possessed by the second respondent were stolen by one trustee. In respect of this, a police complaint was lodged by the second respondent. Having regard to the above, the right to possess movable property cannot be adjudicated in the Writ petition. Hence this petition is not maintainable.

12. Having considered the facts and circumstance of the case the the main contention of the petitioner is that 12 Vehicles which are subject matter of the writ petition, are the properties of the petitioner's trust.

13. The learned Counsel for the petitioner mainly relied upon Clause 7 in the trust deed dated 16.02.2015. In Clause 7 of the trust deed, the founder has created the trust for a sum of Rs.1000/- and also indicated that any other movable properties founder shall transfer to the Trust by means of delivery of possession in future, shall also be included as trust property.

14. The above clause clearly indicates that only on transfer of any movable properties by founder himself in future the properties will come as Trust properties. In the given case no material was placed to show that any such transfer was taken place in respect of movable properties in favour of private trust. On the contrary, the counsel for the petitioner would state that there was oral gift in respect of movable properties in favour of the private trust. I am of the view that only when trust acquire the ownership of such properties by transfer as stated in Clause 7, then clause 9 would come into play that is, after the life time of the settlor, the properties of this trust would go to the public trust. Clause 9 is subject to the proof of clause 7.i.e. transfer. Admittedly, the case of transfer in favour of public trust is a disputed fact and the same cannot be decided in this writ petition since it is matter of evidence.

15. Having considered the above facts, I am of the view that there is a disputed fact involved in this writ petition, the petitioner has to work out for their remedy in a manner known to law. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

lbm

To

1. The Regional Transport Officer
Chennai (South East)
Chennai 28.

+1 CC to Govt. Pleader sr 47575.

+1 CC to Mr.T. Balaji Advocate sr 47115.

+1 CC to Mr.S. Sithirai Anandan, Advocate sr 46309.

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SP(07/08/2018)