

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11.04.2019

Judgment Delivered on : 18.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Original Side Appeal No. 376 of 2012
and
C.M.P.Nos.19594 of 2016 and 5868 of 2018

The Idol of Sri Ranganathaswamy
Srirangam, represented by its
Joint Commissioner/Executive Officer
at Devasthanam Office
Srirangam, Tiruchirapalli - 6. .. Appellant

Versus

1. Gopaldas Dwarakadoss
Family Trust Estate
No.145, North Chitira Street
Srirangam, Tiruchirapalli - 6
2. Mr. G. Madan Mohan Das
No.79, Old No.41, Perumal Mudali Street
Sowcarpet, Chennai - 600 079
3. Mr. J.H. Najamudeen
Son of Late. Jainullabdeen
No.5, Yanai Katti Maidhanam
Cantonment, Trichy .. Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules of this Court read with Clause 15 of the Letters Patent, against the Order dated 28.03.2012 passed in Application No.1309 of 2012 in OP No.203/10 on the file of this Court.

For Appellant : Mr.S.R.Rajagopal, Additional Advocate General
assisted by Mr.R.Karthikeyan,

For Respondents: Mr.R.Thiagarajan for R1
R-2 died

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (O.S.A) had been filed against the order dated 28.03.2012 passed in Application No.1309 of 2012 in O.P.No.203 of 2010. The said application, namely A.No.1309 of 2012, has been filed by the appellant herein seeking to set aside the order dated 02.11.2010 passed in O.P.No.203 of 2010 granting permission to the first respondent for alienating the property(ies) belonging to the first respondent-Trust to the third respondent and to consequently cancel the confirmation of sale in favour of the third respondent herein.

2. For appreciation of the factual matrix involved in this case, reference is being made to the Original Petition in O.P.No.203 of 2010 filed by the first respondent herein (Trust) under Section 34 of the Indian Trusts Act, seeking permission of this Court to sell the property(ies) belonging to the Trust mentioned in the schedule to the said O.P. and invest the sale proceeds in any Nationalised Bank in Fixed Deposit Scheme. In the said Original Petition, reference was made to a Scheme Decree dated 17.02.1925 passed in C.S.No.721 of 1923 by this Court, whereby the properties owned by Malayalkaveri Bai Ammal's Trust and Gopaldas Dwarakadas Trust, were ordered to be consolidated and all the assets of both the Trusts, wherever situated, were directed to be treated as "one Estate" belonging to Gopaldas Dwarakadas Family Trust Estate. Accordingly, all the immovable properties belonging to Malayalkaveri Bai Ammal's Trust, situated in the Districts of Trichirapalli, Tanjore, Madurai and Pudukkottai Districts, formed part of the assets of Gopaldas Dwarakadas Family Trust Estate. The Trust was administered by the Managing Trustee who belongs to the family of Gopaldas Dwarakadas and it was succeeded by his successors. It was contended on behalf of the Trust Estate that as per Clause 11 of the Scheme Decree dated 17.02.1925 in C.S.No.721 of 1923, the Managing Trustee is empowered to conduct the charities through the surplus income of the Trust Estate according to the Mamool and practice and accordingly, the Trust Estate is engaged in performing (i) Six Upayams in Sri Ranganathar Temple at Sri Rangam (ii) One Upayam in Samayapuram Mariamman Temple at Trichy and (iii) Daily feeding around 300 poor people in and around Trichy. According to the first respondent-Trust, the income derived from the Trust properties through lease amount paid by cultivating tenants, is very meagre, besides it is being paid irregularly due to various reasons. Therefore, the first respondent-Trust has filed the aforesaid Original Petition seeking permission to sell some of the lands mentioned in the

schedule to the petition therein and to invest the sale proceeds in any Nationalised Bank in Fixed Deposits for the purpose of utilising the said amount more effectively for performing the charitable activities.

3. In the said O.P., after obtaining the valuation and assessing the market value of the property(ies) in question, the learned Single Judge has given a direction to advertise the sale notice in the newspapers and offers were directed to be received in a sealed cover by the Registrar General of this Court. Accordingly, the sale notice was published and four offers were received for item Nos.1 and 3 and no offers were received for item No.2. While considering the offers made, two Trustees objected to the selling of the properties, and therefore, in O.P.No.203 of 2010, order was passed by this Court on 13.09.2010 postponing the auction. But one of the persons who objected to the selling of the properties, namely Madhan Mohan Dass, the second respondent herein, who died during the pendency of the present appeal, got impleaded as a respondent in the original proceedings as per order dated 05.01.2010 in Application No.5544 of 2010 in O.P.No.203 of 2010.

4. In O.P.No.203 of 2010, a counter affidavit was filed by the second respondent opposing the prayer sought for in the Original Petition (O.P.No.203 of 2010) stating that the Original Petition itself is not maintainable, since the provisions of Section 34 of the Indian Trusts Act cannot be invoked in this case. If at all any application has to be filed, it can only be filed in the Scheme Suit in C.S.No.721 of 1923 as per Clause 11 of the Scheme Decree. It is further stated by the second respondent in the counter affidavit that permission of this Court can be obtained only after giving notice to all the parties concerned and they were not even made as parties. Pursuant to Clause 14 of the Scheme Decree, on 07.09.2005, a General Body Meeting was held in the residence of the Trust members and necessary Resolution was passed authorising the Trust to sell the immovable properties of the Trust. But Clause 14 of the Scheme Decree nowhere mentions about the General Body Resolution. As per Clause 14, due permission of this Court can be obtained only after giving notice to all the parties concerned. In the O.P., seeking permission to sell the properties, no notice was issued to any of the descendants and they were not even made as parties. In any event, due to improper handling of the accounts of the Trust, the Income Tax Authorities earlier seized some of the documents from the possession of the first respondent-Trust and demanded payment of arrears of Tax to the tune of Rs.78 lakhs. In the guise of doing other charities, the first respondent-Trust is attempting to alienate the property(ies) of the Trust without any necessity to do so. As per Clause 10 of the Scheme Decree, the Managing Trustee of the first respondent-Trust has to convene an Annual General Body Meeting to scrutinise the accounts, but it was not

conducted from the year 2005. There is no bona-fide intention in the above O.P. filed under Section 34 of the Indian Trusts Act seeking permission to sell the immovable properties and the same is contrary to the provisions of the Scheme Decree. Even as per Clause 14, when the cash in hand is not sufficient to pay the Revenue and the other charges to the Government and meet any urgent expenditure, the first respondent-Trust is at liberty to raise loan and as such, there is no necessity to sell the immovable properties. The Trust owns vast extent of Income fetching properties and if they are managed properly, it would definitely fetch more than the sufficient income to meet the expenditure. The first respondent-Trust cannot seek permission to sell the properties under the guise of doing other charities, other than Mamool charities, when there is no surplus income. Thus, according to the second respondent, invocation of Section 34 of the Indian Trusts Act is not proper and prayed for dismissal of the Original Petition.

5. Though the second respondent has filed the abovesaid counter affidavit, opposing the Original Petition in O.P.No.203 of 2010 filed under Section 34 of the Indian Trusts Act, seeking permission of the Court to sell the property(ies) of the first respondent-Trust, subsequently he has withdrawn his objection on the ground that his allegation were only against the Managing Trustee, who was selling the Trust properties without permission of the Court. Since the application has been filed by the Trust to get due permission of the Court to sell the property(ies), he had no objection for the properties to be sold on the orders of the Court.

6. When the Original Petition was taken up for hearing, this Court, by order dated 02.11.2010 concluded that the properties being held by a Family Trust, there may not be any impediment to grant permission to sell the properties. Accordingly, this Court accepted the offer made by the third respondent-Mr.J.M.Najumudeen, who offered a sum of Rs.1,25,00,000/- as sale price for the property in Survey No.1041, measuring 3.50 hectares at Melur Village, Srirangam Taluk, Trichy District and confirmed the sale in his favour. Similarly, in respect of the land in Survey No.96, measuring 1.92 hectares situated at Vaigainallur Village, Kulithalai Taluk, Karur District, this Court had accepted the offer made by one Mr.K.Arunachalam for Rs.18 lakhs and confirmed the sale in his favour. The sale deeds, as directed by the Court, were executed in favour of the individual purchasers, after complying with all formalities. Insofar as the third respondent is concerned, sale deed was executed in respect of the property(ies) sold to him in Document No.3385 of 2010 in the Office of the Registrar of Srirangam, by the first respondent-Trust.

7. Thereafter, the appellant herein, namely the Idol/Deity of Sri Ranganatha Swamy Temple, has filed an Application in A.No.1309 of 2012 in O.P.No.203 of 2010 seeking to set aside the

said order dated 02.11.2010 and to recall the permission and/or confirmation made for sale of the properties in favour of the third respondent herein. It is the contention of the appellant in the said application filed through its Executive Officer, Devasthanam Office, Srirangam, Tiruchirapalli District that the appellant-Idol is a donee under the Trust Deed dated 29.10.1831 and is a beneficiary and absolute owner of the property(ies), as the property(ies) had been dedicated absolutely for the performance of religious services of the appellant-Idol, and the property(ies) was/were sold in favour of the third respondent herein at the instance of the first respondent herein. The property(ies) in question covered in the title deeds of Melur Village Nos.786 and 787 were gifted permanently for performance of the religious charity of the appellant-Idol. The gift was made by one Saadhubai Ammal, widow of Davi Bokwajee Kasidas, who settled the property(ies) in favour of the appellant, by gift deed dated 29.10.1831, which is evident from the entries in the Inam Fair Register in Column Nos.12, 15 to 18 and 21, which inter-alia reveals that the gift is made only in favour of the appellant-Idol. According to the appellant, the intention of the donor is only to benefit the Idol-donee by dedication and not in favour of any individual. The persons mentioned in the Inam Fair Register are only Trustees, who have an obligation to perform religious services to the appellant-Idol. As per the recitals in the gift deed dated 29.10.1831, if any of the conditions imposed are contravened, then the possession of the property(ies) will vest back to the original donee, namely the appellant-Idol and with regard to the possession of the persons mentioned in the Inam Fair Register, the Trustees are entitled to remain in possession only as "Service performers" without the power of alienating the properties. As per the recitals in the gift deed dated 29.10.1831, the object of the gift deed is only to benefit the appellant-Idol and not any individual. Even if there is any portion of income available, it cannot be used or enjoyed by the Trustees personally or by their legal heirs. Thus, there is no provision contained in the gift deed dated 29.10.1831 to alienate or encumber the property(ies) in question to any individual. The religious services required to be performed to the appellant-Idol, have to be performed only out of the income derived from the property(ies). The religious services founded by the Founder, are connected with the religious institution and hence, they are definitely "Religious Specific Endowments". If for any reason, the property(ies) covered under the gift deed dated 29.10.1831, had to be alienated, it can be done only with the permission of the Tamil Nadu Hindu Religious and Charitable Endowments Department (in short TNHR & CE) through its Commissioner as empowered under Section 34 of the T.N.H.R. & C.E. Act 22 of 1959 and in the absence of such prior permission, the alienation will be void, since the religious charities are connected with the public religious institution and thus they

are "Religious Specific Endowments" and the provisions of the Indian Trusts Act, will not apply and hence, the application filed by the first respondent in O.P.No.203 of 2010 under the provisions of Section 34 of the Indian Trusts Act, ought to have been rejected. In fact, the Trustees were appointed by the land owner Saadhubai Ammal to manage the property(ies) and perform the religious services hereditarily to the appellant-Idol and therefore, except the first respondent-Trust through its Trustees, no one has any right, title or interest over the property(ies). Even the possession of the property(ies) by the Trustee, is only for and on behalf of the benefit of the appellant-Idol. In fact, the erstwhile Trustees of the first respondent-Trust, suppressing the existence of the gift deed dated 29.10.1831, executed by Mrs.Saadhubai Ammal and by also suppressing the material entries contained in the Inam Fair Register, filed a suit in C.S.No.721 of 1923 before this Court for management and accounting for the property(ies) in question. The said suit was subsequently compromised among the parties themselves and a Scheme was also framed. In fact, another suit earlier filed in C.S.No.21 of 1892 by the Trustees, also ended in compromise between the parties, though the appellant-Idol being the beneficiary of the gift deed, and also being necessary party, was not impleaded in C.S.No.21 of 1892. Further, no prior permission was obtained from the Commissioner of T.N.H.R & C.E, as contemplated under Section 34 of the T.N.H.R. & C.E. Act. Therefore, it was contended that the sale in favour of the third respondent-auction purchaser, is not valid and will not bind the appellant-Idol in any manner. The sale in favour of the third respondent-auction purchaser was made without notice to the beneficiary of the property(ies), being the appellant-Idol. Contrary to the intention of the Founder of the Trust and the permanent nature of the gift, the Trustees entered into an agreement claiming the Trust as private family Trust on 05.06.1955. The said agreement, dated 05.06.1955 is also void and it will not bind the appellant-Idol. Even under the alleged void agreement, dated 05.06.1955, under Clause 6 of the Scheme Decree, the property (ies) comprised in the application, which is situated in Melur Village, had been set apart for performance of the religious charities to the appellant-Idol. Suppressing the above facts, the respondents 1 and 2 filed an application in Trust O.P.No.203 of 2010 on the file of this Court under Section 34 of the Indian Trusts Act seeking permission for alienation of the property(ies). Even in that application, the appellant-Idol, which is the beneficiary under the Gift and the entries in the Inam Fair Register and which is a necessary party to object the sale and permission, was wilfully and wantonly not made as a party to the said proceedings. No proper publication was also made through the dailies of Trichy Edition, but were made in Tirunelveli and Madurai Editions. Thus, the respondents 1 and 2

kept the appellant-Idol in dark to put forth its objections for sale and the permission sought for before this Court. They obtained permission by playing fraud on this Court. The appellant-idol was also not impleaded as a party to Original Petition No.203 of 2010. In fact, even prior to the filing of O.P.No.203 of 2010, the respondents 1 and 2 have entered into an agreement of sale dated 14.03.2006 with one Maan Sarovar Paras Builders Private Limited, represented by its Director Mr.P.Dinesh. As stated supra, any alienation or agreement of sale can be made in respect of the religious Trust properties by the Trustees only after obtaining permission from the T.N.H.R. & C.E. Commissioner under Section 34 of the T.N.H.R. & C.E. Act; otherwise the proposed alienation or the agreement of sale, is void. In the instant case, even this alleged agreement entered into between the first respondent-Trust and Maan Sarovar Paras Builders Private Limited, was without the knowledge of the appellant-Idol, which is a beneficiary under the gift deed, dated 29.10.1831 and the entries in the Inam Fair Register. The entire proceedings emanated before this Court at the instance of the respondents, which culminated in the order dated 02.11.2010, are vitiated by suppression of material facts, with an intention to grab the property(ies) in question, to which the appellant-Idol is the beneficiary. Therefore, the appellant-Idol filed A.No.1309 of 2012 in O.P.No.203 of 2010 praying to set aside the order dated 02.11.2010 granting permission to alienate the property(ies) in question.

8. While so, earlier, the agreement holder-Maan Sarovar Paras Builders Private Limited, has filed three Applications in A.Nos.1263 to 1265 of 2011 in O.P.No.203 of 2010. While Application No.1263 of 2011 was filed for setting aside the order dated 02.11.2010 passed in O.P.No.203 of 2010 confirming the sale in favour of the third respondent, Application No.1264 of 2011 was filed to direct the first and third respondents therein to immediately execute a registered sale deed cancelling the registered sale deed bearing Document No.3385 of 2010, dated 20.12.2010, executed in favour of the third respondent by the first respondent-Trust, registered in the Office of the Registrar of Srirangam. Similarly, the agreement holder aforesaid has also filed Application No.1265 of 2011 praying to direct the first respondent therein to forthwith register the sale deed in respect of the property(ies) in Survey No.1041 ad-measuring 8 acres and 84 cents in Melore Village, Srirangam Taluk, within the sub-registration of District of Srirangam in Tiruchirapalli District, by receiving the balance sale consideration of Rs.360 lakhs. According to the agreement holder aforesaid, his right, title and interest in the property(ies), as an agreement holder, is defeated by reason of the execution of the sale deed dated 20.12.2010 in favour of the third respondent herein and thereby he is prejudiced.

9. By order dated 28.03.2012, the learned Single Judge had

taken up Application No.1309 of 2012 filed by the appellant-Idol, as also Application Nos.1263 to 1265 of 2011 filed by the agreement holder, namely Maan Sarovar Paras Builders Pvt. Ltd., and after considering the rival submissions made, the learned Single Judge dismissed the applications filed by the appellant-Idol as well as the agreement holder. The learned Single Judge rendered a finding that the Inam Register relied on by the appellant-Idol does not show any dedication of the property(ies) in question in favour of the Deity. It was further held that the appellant-Idol has relied upon the following documents: (i) the Trust Deed, dated 29.10.1831, (ii) Scheme Decree dated 16.08.1895 in C.S.No.21 of 1892, (iii) Extract of Inam Registers in Melur Village, (iv) Copy of the unregistered agreement, dated 05.06.1955 and (v) Copy of the application in O.A.No.37 of 2001 filed by the Trust before the T.N.H.R. & C.E., which show that the first document under which the dedication of the property (ies) is said to be made in favour of the Temple by one Saadhubai Ammal, is not made available before this Court. It was further held that in O.A.No.37 of 2001 filed by the Trust, the description of the properties, which are charged for performing the religious acts, are mentioned, but it does not include the property(ies) in question as one of the properties. Thus, the learned Single Judge has held that there is no dedication of the subject property(ies) in favour of the Deity and it was further held that the sale price fixed by this Court for sale of the property(ies) in question in favour of the auction purchaser, is over and above the prevailing guideline. Thus, the learned Single Judge had dismissed A.No.1309 of 2012 in O.P.No.203 of 2010 by the impugned order dated 28.03.2012. Challenging the order dated 28.03.2012 in Application No.1309 of 2012 in O.P.No.203 of 2010, the present Appeal is filed by the appellant-Idol.

10. Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the appellant-Idol, at the outset, invited the attention of this Court to para No.8 of O.P.No.203 of 2010 filed by the first respondent-Trust and submitted that the first respondent-Trust has categorically admitted that the Trust is engaged in performing: (i) Six Upayams in Sri Ranganathar Temple at Srirangam; (ii) One Upayam in Samayapuram Mariyamman Temple at Trichy and (iii) Daily feeding of nearly 300 poor people at Trichy. Thus, the Trust squarely falls within the definition of "Religious Charitable Endowment". In this context, the learned Additional Advocate General placed reliance on Section 1 of the Indian Trusts Act, and submitted that the Indian Trusts Act clearly bars application of the said Act to public or private religious or charitable endowments, and hence, the learned Additional Advocate General submitted that the first respondent-Trust is not entitled to invoke the provisions of Section 34 of the Indian Trusts Act, as per which, "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 respecting the management or administration of the trust-property(ies) other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal." Since the first respondent-Trust falls within the definition of "religious charities" and "religious endowments", the first respondent-Trust is not entitled to invoke the provisions of Section 34 of the Indian Trusts Act. In this context, the learned Additional Advocate General has also invited the attention of this Court to Section 34 of the Indian Trusts Act, 1882.

11. Thus, by relying upon Sections 1 and 34 of the Indian Trusts Act, the learned Additional Advocate General submitted that Section 34 of the Indian Trusts Act gives a right to Trustee without instituting a suit, to file a petition before the Principal Civil Court of Original Jurisdiction to seek permission with respect to the issues relating to management and/or administration of the Trust property(ies). But, so far as the present case is concerned, in the light of the admission made in para No.8 of O.P.No.203 of 2010 filed by the first respondent-Trust, the first respondent-Trust is not entitled to invoke Section 34 of The Indian Trusts Act, since it falls within the ambit of the "religious charities" and "religious endowments". Under Section 34 of the T.N.H.R. & C.E. Act, the sanction of the Commissioner of the T.N.H.R. & C.E. Department is mandatory and sale of any property(ies) endowed, is null and void, unless the sanction of the Commissioner of the H.R. & C.E. Department is obtained. In this context, reference has been made to the decision of the Honourable Supreme Court in the case of Joint Commissioner, Hindu Religious and Charitable Endowments, Administrative Department Vs. Jayaraman and others, reported in 2006 (1) SCC 257, in which, the Supreme Court had interpreted the scope of Section 34 of the Indian Trusts Act. It has been categorically held in that decision that the permission of the Commissioner of the H.R. & C.E. Department ought to have been obtained before effecting sale or any other form of alienation. It was further held that where the permission of the Commissioner was not obtained by the Trustees, the Court did not have any authority to permit the sale, as the Court's role is of "advisory nature" under Section 34 of the Indian Trusts Act. It was further observed by the Apex Court in that decision that the Indian Trusts Act shall be made applicable only with regard to the private Trusts and Trustees. It is useful to extract the relevant portion of the said decision of the Supreme Court as follows:-

"9.Section 6 (18) defines a 'religious institution' as meaning a math, temple or specific endowment. Going by the definition, it is clear that the endowment in question is governed by the HR&CE Act. Even if one were to accept the case of

the claimants that it was an inam granted to an archaka, the same would come within the definition of 'religious endowment' or 'endowment' under the Act in view of Explanation (1) thereto. Thus, it is clear that the endowment, gift or donation was governed by the HR & CE Act. It is in this context that we have to appreciate the effect of the conduct of the claimants in getting themselves appointed as trustees by moving under Section 63 (b) of the Act. Any alienation would, prima facie, be hit by Section 34 of the Act and even if the case of the claimants were to be taken at face value, the transaction would be hit by Section 41 of the Act. In either case, the permission contemplated by the respective sections was a must and the District Court lacked jurisdiction to give the permission for sale on an application under Section 34 of the Trusts Act, 1882, that too, without issuing notice to and hearing the authorities under the HR & CE Act.

10. The claimants had themselves applied under Section 63 (b) of the HR & CE Act and had got themselves appointed as trustees. They had themselves held out and accepted that the HR & CE Act applies to the trust concerned. There is no case that the temples are not public temples and are not under the control of the HR & CE Department in terms of the HR & CE Act. At best, the contention is only that the lands were conveyed in trust not to the temples or to the deities, but to the poojaries of the temple but with an obligation to utilise the income from the properties for the poojas and upkeep of the temple. This certainly brought in the HR & CE Act and the control of the authorities thereunder, even in respect of the administration of the trust by the claimants. The claimants were really estopped from raising a contention that the HR & CE Act had no application or that they did not need the permission of the Commissioner under the Act for alienation either under Section 34 or under Section 41 of the HR & CE Act. The claimants were disentitled to bypass the provisions of the HR & CE Act and to secure an order from the District Judge without notice to the HR&CE Department by moving an application under Section 34 of The Trusts Act, 1882. The order thus obtained cannot bind the trust or the properties, or the deities or the HR & CE Department. Similarly, no reliance can be placed on the so-called patta obtained by the claimants from the Settlement Tahsildar without notice to the HR & CE Department."

12. The learned Additional Advocate General appearing for the appellant-Idol further submitted that the scope of interference by the Courts under Section 34 of the Indian Trusts Act, had also been interpreted by a plethora of decisions, such as in the case of V.K.Srinivasachariyar Vs. Ramanujam reported in AIR 1986 Madras 314 = 1986 (1) MLJ 337, in the case of Ashok Kumar Kapur Vs. Ashok Khanna reported in 2007 (5) SCC 189 and in the case of Official Trustee, West Bengal Vs. Sachindra Nath Chatterjee reported in AIR 1969 SC 823.

13. Thus, by placing reliance on the above decisions, the learned Additional Advocate General contended that the Trust, on an earlier occasion, approached the Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Therefore also, the approach of the Trust to institute the suit without obtaining prior permission for sale of the property(ies) in question, cannot be countenanced. The Trust squarely falls within the meaning and definition of "religious and charitable endowment" and therefore, the first respondent-Trust is estopped from invoking Section 34 of the Indian Trusts Act and filing Original Petition No.203 of 2010. Section 1 of the Indian Trusts Act clearly states that it shall not apply to public or private religious or charitable endowments. Further, the property(ies) in question belongs to two different Trusts, i.e., Malayal Kaveri Bai Ammal Trust and Gopaldas Dwarakdoss Family Trust Estate and these properties have to be dealt with strictly in accordance with the Scheme Decree passed in C.S.No.721 of 1923. While so, the learned Single Judge, by treating the property(ies) in question as belonging to that of a private trust, passed the order dated 02.11.2010 in O.P.No.203 of 2010 according permission to sell the property(ies) in question. Aggrieved by the same, the appellant filed Application No.1309 of 2012 to set aside the order dated 02.11.2010 in O.P.No.203 of 2010 and the learned Single Judge dismissed Application Nos.1309 of 2012 by the impugned order dated 28.03.2012 by concluding that there is no dedication in favour of the Idol for any specific religious and charitable purpose to be performed upon the Idol, which is contrary to the averments made in O.P.No.203 of 2010.

14. The learned Additional Advocate General also submitted that in the Scheme Decree dated 17.02.1925 passed in C.S.No.721 of 1923, there is a specific Clause No.14, as per which the alienation of the property(ies) is prohibited, except with the permission of this Court and at that time, the Hindu Religious and Charitable Endowments Department Act was not enacted and it was not in force. Even assuming that there is no complete or absolute dedication of the property(ies) solely for the purpose of religious and charitable purpose, to ensure continuance of

performance of the charities, the authority under Section 63 of The Tamil Nadu Hindu Religious and Charitable Endowments Act is competent to apportion the amount out of the income or the sale consideration. Further, Clause 11 of the Scheme Decree contemplates that, first, the charities relating to the Trust, have to be fulfilled according to the "Mamool" (meaning "usual") and practice hitherto prevailing and only in case of surplus, if any, the Managing Trustee of the Trust shall be at liberty to utilise such surplus income of the Trust/Estate for other charitable purpose. Further, as per Clause 12 of the Scheme Decree in C.S. No. 721 of 1923, the Trustees are mandated to perform the religious charities at the "Pakoda" at Srirangam by providing for meeting their personal expense in visiting Srirangam. Therefore, it is submitted that there is a specific endowment created in favour of the appellant-Idol, while so, the findings of the learned Single Judge that there was no dedication for any charitable purpose upon the Idol, is legally not sustainable.

15. The learned Additional Advocate General further proceeded to contend that an "endowment" in favour of the appellant/Idol/Deity in respect of the properties of the first respondent, had been created, while so, the first respondent-Trust, by ignoring the provisions contained under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, filed the petition under Section 34 of the Indian Trusts Act, which is not maintainable. This is more so that the Trust in this case, had been held to be a "public religious and charitable Trust" by this Court in the earlier proceedings in W.P.Nos.15125 and 15126 of 2000. The first respondent-Trust being a public charitable Trust, cannot maintain a petition under Section 34 of The Indian Trusts Act and seek for permission to sell the properties. The learned Additional Advocate General appearing for the appellant also contended that even assuming without admitting that the sale in favour of the third respondent is valid, the sale price at which the sale of the property(ies) was confirmed in favour of the third respondent, is meagre and it does not reflect the prevailing guideline value or market value of the land in question. The learned Additional Advocate General thus prayed for allowing this appeal.

16. Per contra, the learned counsel appearing for the first respondent/Trust contended that Clause 14 of the Scheme Decree deals with alienation of the property(ies), of course, subject to the permission of this Court. As per Clause 14 of the Scheme Decree, the Managing Trustee shall not have power to sell, mortgage or alienate any of the immovable properties of the Trust, except with the permission of this Court. It was further stated that if the income derived from the property(ies), is not sufficient to meet the immediate and urgent expenditure, then the Managing Trustee shall be at liberty to raise loan and

discharge the same subsequently from and out of the income derived from the property(ies). Therefore, the contention that the Trust ought not to have approached this Court seeking sale of the properties in question, cannot be sustained.

17. The learned counsel appearing for the first respondent, tracing the facts relating to acquisition of the properties and formation of the Trust, contended that one Giridharadas and his forefathers had migrated from Gujarat to Tiruchirapalli, Tamil Nadu and other parts of Tamil Nadu. They were Traders in gems and jewellery, apart from being financiers. On 17.12.1864, the dry land measuring 9.46 acres in Melur Village, Tiruchirapalli Taluk, was granted to one Nandigeswara Dass, initially as "Inam land" and subsequently it was converted into a permanent freehold land, which can be inherited by his lineal descendants. While so, C.S.No.21 of 1892 was filed between Govardhanadas, Giridharadas, Gopaldas Giridardas and five others. The suit was filed for rendition of accounts of the family property(ies) managed by the first defendant in the suit as Manager of the Hindu Undivided Family and for declaration of plaintiff's equal right to manage the properties. In the said suit, a compromise was arrived at on 16.08.1895. Again C.S.No.721 of 1923 was filed and it was decreed in terms of the compromise reached between the parties, in and by which, the properties standing in the name of Malaiyaal Kaveribai Ammal Trust and Gopaldas Dwarakdoss Family Estate were merged and came to be known as Gopaldoss Dwarakdoss Family Trust Estate and all the properties of the Trusts were treated as "one Estate", namely The Gopaldoss Dwarakdoss Family Trust Estate. Thereafter, all the immovable properties of the Trust were managed by Krishna Doss Vital Doss and after his death by G.K. Rangil Doss. On 05.06.1955, pursuant to the Resolution dated 10.04.1955 passed among the members of Gopaldas Dwarakdas Family Trust, setting out various terms on which the income derived from the properties shall be used, an arrangement was entered into between the family members of Gopaldas Dwarakadoss and the properties were set out under various schedules thereunder and the manner in which they were to be used, was also set out in the said arrangement. While so, in the year 1987, C.S.No.812 of 1987 was filed before this Court to sell three items of the properties belonging to the Trust, especially when the Trust was confronted with various Tax recovery proceedings and in order to clear the dues, it was decided to sell the properties. By order dated 04.11.1987, this Court, in C.S.No.812 of 1987, permitted sale of one of the properties at No.1, Williams Road, Tiruchirapalli and it was sold in favour of the Customs and Central Excise Department. In the year 2000, the Assistant Commissioner, Land Reforms initiated proceedings against the first respondent-Trust purportedly on the ground that the Trust is a Public Trust and is entitled to hold only five standard acres of land. Challenging the same, W.P.Nos.15125 and 15126 of 2000 were filed

by the Trust and by order dated 06.11.2009, a Division Bench of this Court dismissed the writ petitions. Aggrieved by the same, Special Leave Petitions were filed before the Honourable Apex Court in Special Leave to Appeal(C) Nos.7828 to 7829 of 2010 and they were allowed on 14.07.2014 holding that the Trust is not a Public Trust and it is only a private Trust. By placing reliance on the order dated 14.07.2014 passed by the Honourable Supreme Court, the learned counsel for the first respondent-Trust contended that the first respondent-Trust is only a private Trust and the arguments raised to the contrary, have to be rejected.

18. The learned counsel appearing for the first respondent also invited the attention of this Court that O.P.No.685 of 2006 was filed before this Court seeking permission to sell 10 items of properties belonging to the Trust, but the said Original Petition was withdrawn by the Trust. Thereafter, the present O.P.No.203 of 2010 was filed for sale of 3 items of properties situated at Melur Village, Pettaivaithalai Village and Vaigainallur Village. Even though objections were raised before this Court by Madan Mohandass and another, those objectors themselves withdrew their objections. This Court, considering the legitimate claim of the Trust for sale of the properties, ordered to effect paper publication for auction of the three properties and the auction was scheduled on 02.11.2010. In response, four offers were received for item Nos.1 and 3, but no offer was received for item No.2. Item No.1 of the property (ies) was sold in favour of the third respondent herein for Rs.1,25,00,000/- and the third item was sold in favour of one K.Arunachalam for Rs.18,00,000/-. According to the learned counsel appearing for the first respondent, the appellant has questioned only the sale made in favour of the third respondent herein, but did not challenge the sale confirmed in favour of Tr.Arunachalam in respect of item No.3 of the properties.

19. The learned counsel appearing for the first respondent further contended that the appellant failed to prove that the property(ies) sold in favour of the third respondent herein is specifically endowed or it is a "religious endowment" made in favour of the appellant/Idol. In this context, a reference was made to Section 6(17) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, wherein the term "religious endowment" or "endowment" had been defined to mean and include all properties belonging to or given or endowed for the support of "Maths" or "Temples", or given or endowed for the performance of any service or charity of a public nature connected therewith or for any other religious charity and it includes the institution concerned and also the premises thereof, but does not include "gifts" of property(ies) made as "personal gifts" to Archaka, service holder or other employee of a religious institution. Thus, the learned counsel appearing for the first respondent contended that the first respondent-Trust is a

private Trust and the order passed by the Division Bench of this Court in W.P.Nos.15125 and 15126 of 2000, had been set aside by the Honourable Supreme Court by specifically holding that the first respondent herein is a private Trust. Further, there is no endowment created in favour of the appellant-Idol with respect to the property(ies) sold in favour of the third respondent herein. Above all, an order passed under Section 34 of the Indian Trusts Act, is not appellable under Clause 15 of the Letters Patent, as has been held by the Honourable Supreme Court in the case of Ashok Kumar Kapur and others Vs. Ashok Khanna and others, reported in 2007 (5) SCC 189. Even otherwise, according to the learned counsel appearing for the first respondent, the properties were sought to be sold only for the purpose of carrying charitable activities and to meet the overheads and statutory dues, which are clearly set out in Original Petition No.203 of 2010. The sale consideration fetched out of sale of the properties, are deposited in an interest bearing account and the interest therefrom will be withdrawn once in three months to meet the charitable expenses to be rendered by the Trust. Therefore, according to the learned counsel appearing for the first respondent, the sale in favour of the third respondent will only result in continuance of the charitable activities by the Trust and it does not call for any interference by this Court.

20. Mr.P.L.Narayanan, learned counsel appearing for the third respondent contended that in the auction sale conducted by this Court, the property(ies) measuring 3.58 hectares or 8.84 acres in Melur, Srirangam Taluk, was purchased by the third respondent. The auction sale was conducted by this Court, in which the third respondent participated and emerged as a successful bidder. Accordingly, a sale deed was executed and registered in favour of the third respondent. However, after execution of the sale deed, noticing that there is a spurt in the cost of the land sold in favour of the third respondent, the Managing Trustee of the first respondent-Trust set up one Maan Sarovar Paras Builders Pvt Ltd., and they claimed to be an agreement holder in respect of the property(ies) purchased by the third respondent. In fact, the so-called agreement of sale is unregistered and based on the same, a claim was made for preference in respect of purchase of the property(ies). The claim made by the agreement holder in Application Nos.1263 to 1265 of 2011 was dismissed by this Court on 28.03.2012, which was subsequently affirmed by this Court in O.S.A.Nos.185 to 187 of 2012, by a Division Bench of this Court by judgment dated 24.09.2012. In the applications in A.Nos.1263 to 1265 of 2011, the first respondent Trust unlawfully supported the applicant therein and attempted to deprive the legitimate interest of the third respondent herein. In fact, after purchase, the third respondent developed the property(ies) into a multi-storied blocks numbering about 200 and almost all the blocks were sold

in favour of the purchasers, who were none other than the Priests of Arulmighu Sri Ranganathar Temple, Sri Rangam. It is needless to mention that the properties were sold by the third respondent for a minimal price to accommodate the Priests who are just above the poverty line.

21. According to the learned counsel appearing for the third respondent-auction purchaser, the Scheme Decree passed by this Court in C.S. No. 721 of 1923, duly protects the interest of the third respondent. As per the Clauses contained therein, a discretion is conferred on the Trustees to utilise the surplus income, if any, for charitable or religious purpose. Further, as per the Clauses contained in the Scheme Decree, the Managing Trustee is empowered to sell, mortgage or alienate the properties of the Trust with the permission of this Court. Accordingly, with the permission of this Court, the property (ies) was sold in favour of the third respondent.

22. The learned counsel appearing for the third respondent further contended that the appellants have taken a plea that the subject property(ies) sold in favour of the third respondent, is dedicated to the appellant-Idol by Sadhubai Ammal under a Gift deed dated 29.10.1831 and therefore, the property(ies) is absolutely dedicated to the appellant-Idol. However, the learned Single Judge rendered a specific finding that the property(ies) in question is not part of the gift deed executed by Sadhubai Ammal, but it belonged to one Nandigaswara Dass. Even otherwise, in the Scheme Decree, nowhere the name of the appellant-Idol-Deity, viz., Lord Sri Ranganathasamy, had been mentioned. Further, reliance placed by the appellant to the Inam Register of the year 1864, does not show any dedication of the property(ies) in favour of the appellant-Idol and this was also rightly appreciated by the learned Single Judge. Thus, without correlating the survey numbers mentioned in the Inam Register with the present survey number of the property(ies) in question, the appellant merely contends that the Inam Register indicates the ownership of the property(ies) in favour of Sadhubai Ammal. In fact, the learned counsel for the third respondent demonstrated that Field No.473 was not the land gifted by Saadhu Bai Ammal and the land gifted pertains to Field No.474. The said Field No.474 held by Sadhubai Ammal was subsequently classified as Title Deed No.787, which in turn was converted as R.S.No.25/1 and subsequently as T.S.No.1046. On the other hand, the title deed conferred on Nandigaswara Dass relates to Title Deed No.786 and Field No.473, which was later converted and re-classified as R.S.No.25/2 and subsequently as T.S.No.1041. Further, during the course of hearing of this appeal, the appellant did not produce the Temple Title Register or the extract thereof, to prove the ownership of the land in question. Therefore, an inference could be drawn to the effect that the appellant has not produced any document of title showing the ownership of the property(ies).

23. According to the learned counsel appearing for the third respondent, in the year 1955, an unregistered agreement was entered into between the family members of the Managing Trustee of the first respondent-Trust for performance of certain "Ubhayams" to certain Temples/Deities. In the said agreement, the properties set out in Schedule 'D' and item No.8 in Schedule 'B' alone have been earmarked for performance of charities and no other schedule properties have been set apart for this purpose. At the same time, in Clause 14 of the agreement, it is stated that if there is no sufficient income to meet the expenses, the income derived from the property(ies) mentioned in Schedule 'C' shall be utilised. The items of properties described in Schedule 'C' relate to the property(ies) measuring 20 Acres and 22 cents in Melur Village. Thus, there is no definite dedication of the property(ies) situated in Melur Village in favour of the appellant/Idol.

24. The learned counsel appearing for the third respondent further contended that the Temple has miserably failed to show that it is the abovesaid property(ies) that had been part of the subject property(ies). This property(ies) or Schedule-C property(ies) under the caption "Melur Thopes, Trichy" 20 acres and 22 cents, cannot be termed as one and the same property (ies), unless there are definite details about it. In fact, the Scheme Decree spells out in Schedule-E therein in Serial No.39 cites the subject property(ies) to be one piece of land forming Western portion of Padugai Garden; Village's name is given as Melur; and Taluk's name has been given as Trichinopoly Taluk. The learned Single Judge has clearly spelt out that the subject property(ies) is not one of the properties covered in Schedule-C of the 1955 unregistered agreement.

25. As regards the jurisdiction of Hindu Religious and Charitable Endowments Department, it is contended by the learned counsel appearing for the third respondent that the first respondent-Trust has approached this Court as per Clause 14 of the Scheme Decree passed in C.S.No.721 of 1923, as per which, the property(ies) of the Trust can be alienated with the permission of this Court. Accordingly, by relying upon Clause 14 of the Scheme Decree, the Original Petition was filed before this Court. According to the learned counsel appearing for the third respondent, this Court, as a custodian of Trust property (ies), has granted permission to sell the property(ies). In such view of the matter, it has to be construed that the provisions of Section 34 of the Indian Trusts Act, had been wrongly mentioned while filing the Original Petition before this Court by the Trust by citing the law and it is only procedural in nature and the appellate Court can always apply the correct provision of law and treat the order to be deemed to have been passed under the correct provision of law. Even otherwise, this Court has got power to grant such permission under Section 151 of the Code of Civil Procedure and in the light of Clause 14 or

15 of the Scheme Decree. In this context, the learned counsel appearing for the third respondent relied on a decision of the Calcutta High Court reported in AIR 1975 Calcutta 67 (Dhanalal Karnawat Vs. State of West Bengal).

26. With regard to the submission made by the learned Additional Advocate General appearing for the appellant that the property(ies) was/were specifically endowed to the appellant-Idol, it is replied by the learned counsel appearing for the third respondent-auction purchaser, by relying on a decision of a Division Bench of this Court reported in the case of S.Kandasami Iyer and another Vs. Sivachidambaram Chettiar and another, reported in 1922 (xvi) L.W 341, contended that the "Kattalai" in a Hindu temple itself is an independent religious Trust and such a "Kattalai" is not subject to control by the Temple Committee. According to the learned counsel appearing for the third respondent, mere existence of a "Kattalai" without "specific endowment" or "dedication" of a property(ies), will not entitle the Hindu Religious and Charitable Endowments Department to claim a right over such property(ies), as they are not Temple property(ies). In this case, there was no "Kattalai" or "specific endowment" in respect of the property(ies) sold to the third respondent, to the appellant-Idol and therefore, Hindu Religious and Charitable Endowments Department has no jurisdiction to assert a right over the property(ies) in question. In this context, the learned counsel appearing for the third respondent relied on a decision of the Honourable Supreme Court in the case of Menakuru Dasaratharami Reddi Vs. Duddukuru Subba Rao reported in AIR 1957 SC 797, wherein it was held in para No.5 that "If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character." Thus, "religious charity" is commonly called as "Kattalai" in Hindu Temples and such "Kattalai" must be clear and certain and must show that a particular property(ies) is exclusively set apart or dedicated for the purpose of charitable activities to the Deity or the Temple in tune with the definition of "specific endowment" given in Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. In the absence of any proof to show the nature of "Kattalai", for performance of which, the subject matter of the property(ies) had been specifically endowed, the claim of the appellant cannot be sustained.

27. Above all, it is contended by the learned counsel appearing for the third respondent that after the sale of the property(ies) in favour of the third respondent, the sale proceeds to the tune of Rs.1.25 crores had been deposited to the account of the appellant-Idol in a Fixed Deposit Scheme and the Temple is drawing a sum of Rs.1,25,000/- as interest every month. The interest withdrawn by the Temple for the past 100 months itself has worked out to Rs.1.25 crores and therefore,

there is no loss of Revenue caused to the appellant-Idol by reason of sale of the property(ies) in favour of the third respondent. Therefore, out of the Revenue earned by the Temple, the "Kattalai" or "charitable activities" can be performed continuously in the "Pagoda" of Arulmighu Srirangam Temple without any impediment. The learned counsel appearing for the third respondent therefore prayed for dismissal of the appeal.

28. Pending the present O.S.A., the second respondent-G.Madan Mohanm Das, died and this Court, by order dated 14.07.2017, recorded the submission made by the learned counsel appearing for the appellant that the appellant does not wish to proceed against the legal representatives, if any of the second respondent.

29. We have heard the learned counsel appearing on either side and perused the materials placed on record. Though very many contentions have been raised by the learned counsel appearing on either side in this appeal, we are conscious of the fact that we are not dealing with the title of the property(ies) in question. We are only required to examine as to whether there is a specific "Kattalai" or "Endowment" dedicated to the appellant-Idol in respect of the property(ies) in question and by reason of sale of the said property(ies) to the third respondent, the charitable activities could not be undertaken by the appellant-Idol. In other words, it has to be seen as to whether there is a "specific endowment" of the property(ies) sold to the third respondent herein (auction purchaser) in favour of the appellant-Idol or the income derived thereof is to be used for charitable and religious activities, since the first respondent-Trust is a "Religious Charitable Endowment".

30. Before dealing with the various contentions urged on behalf of both sides, it is necessary to refer to the definition "religious endowment" or "endowment" contained in Section 6(17) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, which reads as follows:-

"Section 6(17): "Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or for any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to archaka, service holder or other employee of a religious institution."

Explanation:(1) Any inam granted to an archaka, service holder or other employee or a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the

archaka, service holder or employee but shall be deemed to be a religious endowment.

Explanation: (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a 'religious endowment' or 'endowment' within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.

Provided that this explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1954, by the operation of the law of limitation."

31. Thus, it is evident that "endowment" mean and include dedication of any property(ies) in favour of a "Math" or "Temple" for performance of any charitable or religious activities. Such endowment must be specific in nature and not to be generic. However, in this case, there is no evidence to show that there is "specific endowment" in respect of the subject property(ies) in favour of the appellant/Idol. Even otherwise, the plea of the appellant that the property(ies) in question is/are the property(ies) dedicated to the appellant-Idol by Sadubai Ammal with direction to perform religious activities in the "Pagoda" of Sri Ranganathar Temple, had not been proved in the manner known to law. On the contrary, the third respondent has come out with facts and figures to show that the appellant-Idol-Deity could not correlate to the property(ies) purchased by the third respondent to the property(ies) owned by Sadhubai Ammal and also failed to show that the property(ies) sold to the third respondent is/are the property(ies) "specifically endowed" in favour of the appellant-Idol for performance or "religious or charitable activities". Even though the learned Additional Advocate General appearing for the appellant-Idol has placed reliance on the "Inam Register" of the Village concerned, the learned Single Judge had dealt with the same in para Nos.16 and 17 of the impugned order and concluded as follows:-

"16. As already referred to, the appellant idol relied upon the following documents in support of its claim (1) the trust deed dated 29.10.1831 (2) scheme decree dated 16.08.1985 in C.S. No. 21 of 1892 (3) extract of Inam register in melur Village (4)

Copy of the unregistered agreement dated 05.06.1955 and (5) copy of the application in O.A. No. 37 of 2001 filed by the trust before HR & CE. Out of five documents, the document Nos. 2 to 5 are produced by way of two typed set of papers. Whereas, the first document under which the dedication of the property is said to be made in favour of the temple by one Sadhubaiammal is not made available before this Court. As far as the scheme decree is concerned, the contents of the same is not readable and no true typed copy of the same is made available. Even otherwise, though the name of Sri Ranganatha Swamy is referred to therein, the schedule of the property does not clearly show that the property in question is one of the properties covered in the scheme decree in C.S. No. 21 of 1892. Even otherwise, by virtue of subsequent scheme decree dated 17.02.1923, the trust known as "Malayal Kaveribai Ammal trust" referred to in rajanamah filed in C.S. No. 21 of 1892 was consolidated with the present trust and the properties in the name of the other trust and managed by individuals are declared to be belonging to the present trust.

17. As far as the inam register is concerned, the same as pointed out by the contesting purchaser does not show any dedication of this property in favour of the deity. There is no document produced on the side of the temple co-relating the survey number mentioned therein with that of the present survey numbers of the petition mentioned properties. Whereas, the contesting respondent has produced one document titled as title deed No.786 enclosed in the typed set of papers and the same is also referred to in the affidavit filed by the applicant idol as document No.2 in the same type set, as per which, the property measuring 9.46 acres of dry land is granted in favour of individual Nanthegaswaradas. As far as the unregistered agreement is concerned, here again, the property in question is not one of the properties covered in schedule "C" surplus of income of which, is agreed to be utilised for performance of specific endowment, created by the trustees through this unregistered agreement dated 05.06.1955."

32. Thus, the learned Single Judge, on appreciation of the facts in extensu, has rendered a specific finding that the property(ies) sold in favour of the third respondent, is/are not the one which is/are "specifically endowed" or earmarked for performance of charitable activities and such a finding, in our opinion, does not require our interference.

33. It is to be noted that a religious charity commonly called as "Kattalai" in Hindu Temples, must be clear and certain and at the same time, the property(ies) set apart for that purpose, must also be clear and certain. A Public Trust may have any number of properties and the same Trust may also have dedicated a few properties in favour of any Temple or Math. Section 6(19) of the T.N.H.R. & C.E. Act defines "specific endowment" to mean any property(ies) or money endowed for performance of any specific service or charity in a Math or Temple, or for performance of any other religious charity, but it does not include an "Inam" of the nature described in Explanation (1) therein. From this definition, it is clear that both the property(ies) as well as corresponding specific service or charity, must be clear with exact name and details. In this case, the subject property(ies) is 8.84 acres of land in Melur Village, but what is the corresponding named specific service or charity that is to be done in the Temple, is conspicuously absent. In this regard, a reference could be placed to a judgment of a Division Bench of this Court in the case of R.M.AR.AR.RM.AR.Ramanathan Chettiar Vs. H.R. and C.E., Madras reported in 1978 (91) LW 337 = MANU/TN/0669/1977, held that the "endowment" therein bristles with vagueness and has held it to be beyond the control of the T.N.H.R. & C.E. Moreover, the difference between the reported decisions and the case on hand is that, in the reported decisions, the "Kattalai" or the "Ubhayam" had been named clearly, but in which Temple it has to be performed, is not cited; but in the case on hand, though a general and vague statement with regard to the "Ubhayam" has been made in para No.8 of OP No. 203 of 2010, the name of the "Kattalai" or "Ubhayam" or in which Temple it is sought to be performed, is not clearly spelt out. Further, there is no link to the subject property(ies) with "Kattalai" or "Ubhayam" so as to make it "specific endowment". Production of Kattalai receipts is of little use, if it is not shown that the subject property(ies) has been dedicated for that "Kattalai" as stated above. Therefore, both "the religious ceremony in the Temple" and the "fund or property(ies) set apart for such religious ceremony" must be clear and specific and the same is not the case on hand. In the circumstances, the T.N.H.R. & C.E. Department has no say in the matter.

34. The law is not that the moment a Trust is a Public Trust, all its properties or income, are dedicated to a Temple. A Public Trust may have any number of properties, some of which may be dedicated or endowed and some of which may not be dedicated or not endowed. If the Trust wishes to sell it, the properties which are endowed or dedicated, it must approach the T.N.H.R. & C.E. Department under Section 34 of the T.N.H.R. & C.E. Act, but these properties should be in the same Trust. If some of the properties are not dedicated and endowed to sell,

the Trust or anybody need not approach the T.N.H.R. & C.E. Department under Section 34 of the T.N.H.R. & C.E. Act. In the instant case, it is not established that the property(ies) of the first respondent-Trust were dedicated or endowed to the appellant-Idol-Deity.

35. The submission of the learned counsel appearing for the third respondent that since the first respondent-Trust is a public endowment Trust, the appellant-Idol cannot file a petition under Section 34 of the Indian Trusts Act, and arguments based on this score, are not legally sustainable. It is no doubt true that a wrong provision of law had been quoted by the counsel in the petition filed, but the Court is empowered to modify the same and deal with the matter. In this regard, the learned counsel appearing for the third respondent relied on a decision of the Calcutta High Court reported in AIR 1975 Calcutta 67 (cited supra) (In Re: Dhanalal Karnawat and another), which gives the fit answer to the case on hand. The relevant portion of the said decision of the Calcutta High Court reads as follows:

"5. The provisions of Section 34 of the Indian Trusts Act are similar to those of Section 7 of the Charitable and Religious Trusts Act. The impugned order was made on 11th April, 1973 on the application where in the cause title mention was made of Section 34 of the Indian Trusts Act. Apart from the said mention of Section 34 there was nothing to show that the application was not made under Section 7 of the Charitable and Religious Trusts Act. The application in effect was made by the trustees seeking a direction from this Court to grant lease of the Trust property No.48, Sir Hariram Goenka Street, Calcutta. As a matter of fact in the Charitable and Religious Trusts Act there are no provisions similar to those contained in the latter portion of Section 36 of the Indian Trusts Act. Therefore in this respect the provisions in the Trusts Act should be followed. In a case reported in AIR 1941 All 387, the Bench decision presided over by the Chief Justice Iqbal Ahmad has been that though the Indian Trusts Act does not apply to public or private religious charitable endowments, but nevertheless the principles underlying the sections served as useful guide. The sections mentioned in the said case were of course Sections 44 and 76 of the Indian Trusts Act.

6. It does not seem to me that by the

mention of Section 34 of the Indian Trusts Act in the cause title of the said application any injustice has been done by the said order dated 11th April, 1973 to the public trust. The objection therefore is technical and is overruled."

In the case on hand, the objection relating to wrong quoting of law, is only a technical objection and the same is liable to be rejected.

36. Admittedly, in this case, from and out of the income derived through the properties owned by the first respondent/Trust, certain charitable activities are being carried on, which are morefully set out in para No.8 of the Original Petition No. 203 of 2010, which includes: (i) Six Upayams in Sri Ranganathar Temple at Srirangam, (ii) One Upayam in Samayapuram Mariyamman Temple at Trichy and (iii) Daily feeding of 300 people who are poor at Trichy. At the same time, it is not shown that these charitable activities have to be performed from and out of the income earned through the property (ies) sold to the third respondent herein. There is no nexus or connection to the charitable activities performed by the first respondent-Trust to the property(ies) sold to the third respondent. Further, it is also an admitted fact that in C.S. No.721 of 1923, a Scheme Decree dated 17.02.1925 was passed, which contains various Clauses with a view to regulate the manner in which the properties of the Trust have to be utilised, more purposefully, to give effect to the charitable activities. In the Scheme Decree dated 17.02.1925, Clauses 14 and 15 deal with alienation of the properties of the Trust, which reads as follows:-

"14. Alienations etc., That the Managing Trustee shall have no power to sell, mortgage or alienate any of the immovable properties of the said Gopaldoss Dwarakadoss Family Trust Estate except with the permission of the High Court of Madras obtained for the purpose after notice to all parties concerned and that, if however, the cash on hand now is not enough to pay the revenue and other charges to the government and to meet any other immediate urgent expenditure, he shall be at liberty to raise a loan for the purpose of discharge of the same subsequently out of the receipts and that the said Managing Trustee shall not lease the trust properties for more than a period of three (3) years and that neither shall the said defendants have any power to transfer in any manner intervivos or by will their rights in the Trust Estate or to the Management thereof nor shall such rights be liable to attachment or any

trust by operation of law, and that all instruments including pattahs, muchilikas, leases etc., shall be taken in the name of the said Gopaldoss Dwarakadoss Family Trust estate and all correspondence and dealings shall be carried on by the Managing Trustee as Managing Trustee of the said Trust Estate.

15. That the parties hereto and the said descendants shall be at liberty to apply to this Court for directions in respect of any matters concerning the said Gopaldoss Dwarakadoss Family Trust Estate."

37. It is seen from the records that as per Clause 15 of the Scheme Decree, on 05.06.1955, there was a family arrangement between the heirs of the Trustees in which, in paragraph No.5, it was stated that the "C" Schedule property(ies) mentioned therein, includes the property(ies) situated at Melur, Srirangam Taluk, which shall continue to be managed by the Trust as hereto before. In other words, by virtue of the agreement between the family members, some of the properties belonging to the Trust, were disannexed so as to be enjoyed by some of the family members of the Trustee. However, as mentioned above, the properties mentioned as schedule "C", which includes the property(ies) at Melur, Srirangam Taluk, was left intact and it was earmarked for being utilised for performance of the religious charitable activities. Furthermore, one of the properties mentioned in "C" Schedule of the family arrangement, namely a bungalow in Abishegapuram together with 3.71 acres of land, was sold to the Central Excise Department by the first respondent-Trust with the permission of this Court in C.S. No. 812 of 1987. Thus, the Clause contained in the Scheme Decree dated 17.02.1925 has been given effect to and by invoking the Clause 14 contained therein, one of the pieces of properties mentioned in Schedule "C" of the family arrangement, had been sold. Therefore, it is evident that the Scheme Decree empowers the Managing Trustee of the first respondent-Trust to approach this Court and seek permission for alienation of any of the properties and accordingly, the first respondent-Trust approached this Court and based on the permission accorded, sale in favour of the third respondent was made. In such circumstances, prior permission of the Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department, in our opinion, is not necessary. This Court is the custodian of the Trust property(ies) and after thoughtful consideration, this Court accorded permission to sell some of the Trust Properties. This Court has in fact conducted auction sale and thereafter, the property(ies) was/were sold to the third respondent. The third respondent also deposited the sale proceeds of Rs.1.25 crores in a Fixed Deposit Scheme, interest of which is being

withdrawn by the Trust for the appellant/Idol from time to time. Thus, by reason of sale of the property(ies) in favour of the third respondent, the religious or charitable activities did not stop, rather, they are continued to be performed with the funds generated through sale of the property(ies) in favour of the third respondent. Above all, we also take note of the fact that after purchase, the third respondent developed the land into multi-storied blocks numbering about 200 and almost all the blocks were sold in favour of the purchasers, who are none other than the Priests of Sri Ranganathar Temple, Sri Ranganam. Therefore, on the touchstone of principles of equity also, we refrain from entertaining this appeal at the behest of the appellant-Idol. The learned Single Judge also, on appreciation of the above discussed facts, dismissed Application No.1309 of 2012 and we see no reason to interfere with the same.

38. For all the above reasons, we confirm the impugned order dated 28.03.2012 passed in Application No.1309 of 2012 in O.P.No.203 of 2010. Consequently, the Original Side Appeal is dismissed. No costs. C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

rsh/cs

Copy To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate SR.No.50689

+1cc to Mr.P.L.Narayanan, Advocate SR.No.50430

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