

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 4th July, 2019**

+ **CS(OS) 119/2019**

**THE VISHWA NATH & SANTOSH BAKSHI CHARITABLE
EDUCATIONAL TRUST (REGD.) & ANR. Plaintiffs**

Through: Mr. Amitabh Chaturvedi & Mr.
Sangeeth Mohan, Advs.

Versus

..... Defendant

Through: Mr. Gautam Narayan & Ms.
Dacchita Shahi & Ms. Shivani
Vij, Advs. for GNCTD.
Mr. Akshay Makhija, Adv.,
Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.) and its Trustee Sharad Malik have instituted this proceeding (as a suit) under Section 7(1) of the Charitable & Religious Trusts Act, 1920 (CRT Act) read with principles of Section 34 of the Indian Trusts Act, 1882, pleading that (i) plot no.6/22, Shanti Niketan, New Delhi ad-measuring 393 sq. yds. was allotted by Delhi Development Authority (DDA) in equal shares to Vishwa Nath Bakshi and his wife Santosh Bakshi who were members of Government Servants Co-operative House Building Society which had developed the colony of Shanti Niketan and a perpetual sub lease dated 26th October, 1968 was executed by DDA in their favour; the said Vishwa Nath Bakshi and Santosh Bakshi constructed a double storeyed house on the said plot of land; no children were born to Vishwa Nath Bakshi

and Santosh Bakshi; (ii) Vishwa Nath Bakshi died intestate on 29th May, 1996 and his 50% undivided share in the aforesaid property was mutated in the name of Santosh Bakshi, being his sole heir; (iii) Santosh Bakshi executed a registered Will dated 18th November, 2010 bequeathing the property for charitable educational purposes; Santosh Bakshi also executed a registered Trust Deed dated 3rd January, 2012 setting up the plaintiff no.1 Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.) for charitable educational purposes, with plaintiff no.2 Sharad Malik, being the son of her brother, and willed that the property aforesaid should devolve upon the said Trust; (iv) plaintiff no.2 Sharad Malik is presently serving as Professor and Chairman of the Department of Electrical Engineering at Princeton University, USA; (v) after the death of Santosh Bakshi on 22nd December, 2012, probate was granted of her Will dated 18th November, 2010; (vi) the property aforesaid has also been mutated in the records of DDA in the name of plaintiff no.1 Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.), which has also got the leasehold rights in the land underneath the property converted into freehold and a Conveyance Deed of freehold rights in the land underneath the property has been executed in favour of plaintiff no.1 Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.) which is the sole and absolute owner in possession of the property; (vii) registered Will dated 18th November, 2010 of Santosh Bakshi vests power in plaintiff no. 2 Sharad Malik, as executor of the Will and Trustee of plaintiff no.1 Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.), to sell the property, to hold the

proceeds of sale and to, in consultation with Baldev Gogia, Ajay Yadav and Sudhir Shah, use the proceeds from the sale of the property for the spread of knowledge in education, by disbursing the received monies to appropriate charities / educational institutions / individual/s, as he may deem fit and proper; (viii) in order to effect sale of the property at market value, valuation report from two independent government approved valuers, determining the market value of the property at Rs.24,86,87,000/- and Rs.24,50,00,000/- have been obtained; (ix) the property is proposed to be sold at Rs.24,68,43,500/-, being the average of the market value of Rs.24,86,87,000/- and Rs.24,50,00,000/-; (x) feedback from the market is also suggestive of the value of the property ranging between Rs.23 crores to Rs.24.5 crores; (xi) however the circle rate of the property is Rs.25,95,89,786/-; (xii) though permission of the Court for sale is not required but in view of the fact that a large segment of public and community has beneficial interest in the sale proceeds of the property, which are to be applied towards spread of knowledge and education, it is deemed appropriate to seek the opinion, advice or direction of this Court in the question relating to sale of the property and which is a question affecting the management and administration of the trust property, within the meaning of Section 7(1) of the CRT Act read with principles of Section 34 of the Indian Trusts Act, 1882; and, (xiii) though consent / no objection of Harsh Gogia, Baldev Gogia, Madhuri Yadav, Ajay Yadav, Payal Malik and Sudhir Shah is not required but they have affirmed affidavits consenting to the proposed sale and which affidavits are filed before this Court.

Appropriate order / decree granting permission to sell the property on 'as is where is basis' at the base sale price of Rs.24.69 crores and opinion / advice as to the other modalities of sale of the property, are sought.

2. The matter came up first before this Court on 27th February, 2019 when *inter alia* the following order was passed:

“4. The proceeding, though initially titled as a petition, has been given the number as of a suit, perhaps owing to the Roster drawn up of this Court not prescribing any specific roster relating to such proceedings.

5. The counsel for the petitioners draws attention to the dicta of this Court in **Dr. Man Singh** AIR 1974 Del 228 and appeal to the Division Bench whereagainst was subject matter of **Dr. Man Singh** AIR 1978 Del 274. However, a reading of the said judgments also does not clarify whether a proceeding under Section 7 of the Charitable and Religious Trusts Act is to be treated as a suit or as a petition.

7. The Registry has listed the proceeding subject to objection as to maintainability and court fees.

8. The said objection is kept open.

9. Else, I am of the opinion that in any proceeding of this nature, even though *ex parte*, notice is required to be issued to the State. Section 5 of the Charitable and Religious Trusts Act in relation to a petition under Section 3 thereof empowers the Court to issue notice of the petition to such person/s as may be deemed appropriate. It is felt that considering the nature of the direction sought with respect to a Charitable Trust situated at Delhi and having immovable property at

Delhi, the Standing Counsel (Civil) of the Government of NCT of Delhi (GNCTD) should be called.

10. Issue notice to the Standing Counsel (Civil) of GNCTD by all modes including dasti, returnable on 15th March, 2019.

11. It is also deemed appropriate to appoint an Amicus to assist the Court.

12. Mr. Akshay Makhija, Advocate is appointed as the Amicus to assist the Court.

14. The Amicus Curiae and the Standing Counsel (Civil) of GNCTD to, on the next date of hearing, come prepared to address, including on the following aspects: (i) maintainability of the petition; (ii) jurisdiction in which the petition is to be entertained; (iii) the valuation of such a proceeding and court fees thereon; (iv) whether modality of sale of an immovable property falls within the meaning of the words 'opinion', 'advice' or 'direction' in Section 7 aforesaid; (v) if the above question is answered in affirmative, whether the sale is to be under supervision of the Court and / or through the Court Auctioneer or can be in other modes expedient; and, (v) whether citation in the newspapers of the petition is to be issued."

3. Mr. Amitabh Chaturvedi counsel for the plaintiffs, Mr. Gautam Narayan counsel for Government of NCT of Delhi (GNCTD) and Mr. Akshay Makhija, Amicus Curiae have been heard.

4. The CRT Act has been enacted to provide more effectual control over the administration of Charitable and Religious Trusts. Section 3 thereof entitles any person having an interest in any trust created or existing for a public purpose of a charitable or religious

nature, to apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situated, to obtain an order directing the trustee to furnish particulars as to the nature and objects of the trust and / or as to the value, condition, management and application of the subject matter of the trust and of the income belonging thereto and directing that the accounts of the trust be examined and audited. Section 4 thereof provides for the contents and verification, Section 5 provides for the procedure and Section 6 provides for the consequences of failure of the trustee to comply with the order under Section 5, in relation to a petition under Section 3. Thereafter Section 7, invoking Sub-Section (1) whereof this petition has been filed, is as under:

“7. Powers of trustee to apply for directions. -- (1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advise or direction of the court on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy

thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.”

5. The Indian Trusts Act has been enacted to define and amend the law relating to Private Trusts and Trustees (as distinct from public trust as the subject Trust is stated to be) but Section 34 thereof, principles whereof are also invoked in filing of this petition, provides as under:

“34. Right to apply to court for opinion in management of trust-property. – 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 other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.”

6. The counsel for the plaintiffs has argued, that (i) though Section 7 of the CRT Act does not lay down any guidelines for sale of trust property but reference can be made to Section 36 of the Bombay Public Trusts Act, 1950 read with Rule 24 of the Bombay Public Trusts Rules, 1951, dealing with the alienation of immovable property of public trust, and which provide for sale by previous sanction of the Charity Commissioner appointed thereunder and which sanction may be granted subject to such terms as the Charity Commissioner may impose; (ii) reliance is placed on ***Sailesh Developers Vs. Joint Charity Commissioner, Maharashtra*** 2007 SCC OnLine Bom 124 (FB) and ***Arunodaya Prefab Vs. M.D. Kambli*** 1978 SCC OnLine Bom 91 dealing with the said provisions of the Bombay Public Trusts Act and Rules, and also on ***Mahammad Hussain Dabahayatsab Mulla Vs. The Charity Commissioner, Belgaum*** 1996 SCC OnLine Kar 299; (iii) the plaintiffs have been able to obtain the best offer of Rs.25.60 crores in the market and seek permission to sell at the said price; (iv) the Trust can be administrated, only by sale of the Trust

property, as envisaged in the Will aforesaid also; (v) since the best offer obtained for the property, of Rs.25.60 crores, is lower than the circle rate of Rs.25.96 crores, it is deemed appropriate to seek permission of the Court, to avoid fingers being pointed out owing to sale below the circle rate, though the Supreme Court in **Cyrus Rustom Patel Vs. Charity Commissioner, Maharashtra** 2017 SCC OnLine SC 1273 and in **Ambadevi Sanstha Vs. Joint Charity Commissioner** 2018 SCC OnLine SC 1933 has held that sale of Trust property can always be made by private negotiations; (vi) the plaintiff no.2 Sharad Malik, as executor of the Will of Santosh Bakshi, also is entitled to sell the property in the absence of any restriction in this regard in the Will; and, (vii) however the plaintiff no.2 Sharad Malik is willing to abide by such conditions as may be imposed by this Court.

7. The counsel for GNCTD has submitted, that (a) proviso to Section 7 (1) of the CRT Act specifically states that Court is not bound to give its opinion, advice or direction on any question which is not proper for summary disposal; (b) Section 34 of the Indian Trusts Act is a *pari materia* provision with respect to private trust; (c) the Courts are thus empowered to render opinion or issue directions with regard to trust property, in a petition preferred by the trustee, if questions are capable of being summarily decided; (d) Section 92(f) of the Code of Civil Procedure, 1908 (CPC) also provides for issuance of direction by the Court for administration of any trusts; however the scope of Section 92 is wider; (e) the High Court of Calcutta in **Nilima Ghosh Vs. Prakriti Bhusan Mitter** 1981 SCC OnLine Cal 93 (DB) has held that the Indian Trusts Act creates a special forum for seeking

opinion of the Court regarding administration and management of the trust; (f) the High Court of Calcutta, in ***Sukhlal Chandanmull Karnani Trust Vs. Shew Kumar Karnani*** 1973 SCC OnLine Cal 70 also held that opinion regarding appointment of trustees does not require evidence to be led by way of a suit under Section 92 of the CPC and rendered its opinion under Section 7 of the CRT Act; (g) this Court in ***Dr. Man Singh*** supra held the petition under Sections 34 and 37 of the Indian Trusts Act, seeking direction to sell the immovable property of the trust, to be maintainable under Section 7 of the CRT Act; (h) in ***Re: Birla Jankalyan Trust*** 1970 SCC OnLine Cal 70, it has been held that the word ‘directions’ does not mean adjudication and determination of substantive rights, but means directions to help the executors in the difficulties in respect of practical management or administration, where no disputed question of title or difficult question of construction of Will or complicated questions of law are involved; (i) the High Court of Punjab, in ***Budh Singh Dhahan Vs. Malkiat Singh*** 2009 SCC OnLine P&H 1034, in exercise of powers under Section 7 of the CRT Act issued a direction to the President of the Trust to call a meeting of the General House of the Trust; (j) this petition under Section 7 of the CRT Act is thus maintainable; (k) the intention of Santosh Bakshi, settlor of the Trust, is reflected through the Trust Deed and which must be interpreted to carry out such intention; the intention clearly was to sell the property on her demise and utilize the sale proceeds for educational purposes, for which the trust was created; (l) a permission to sell the property of the trust falls within the ambit of administration and management of trust property;

the High Court of Madras also in exercise of power under Section 7 of the CRT Act, in ***Sathyanarayana Charitable Trust Vs. C.H. Mahesh Kumar Reddy*** 2012 SCC OnLine Mad 3115 (DB), allowed the sale of the trust property for the reason that the value of the property was deteriorating and the trustee was authorized to sell the property; (m) the High Court of Madras, in ***N.S. Ramaraj Vs. Rajapalayam Poonachamiyar Madam Nanthavanam*** 2014 SCC OnLine Mad 7133, held that under Section 34 of the Indian Trusts Act, sale of trust property can be directed, if necessary for implementation and continuation of the object of the trust and if the condition of the property was so bad that continued preservation thereof was a challenge; (n) in accordance with Section 5(2) of the Delhi High Court (Amendment) Act, 2015, the petition must be entertained in the High Court of Delhi under its Ordinary Original Civil Jurisdiction; (o) subject proceedings are to be valued as a ‘petition’ and the court fees payable is as on a ‘petition’, under the Court Fees Act, 1870; and, (p) the Court may consider a court auction for sale of the property.

8. Mr. Akshay Makhija, Amicus Curiae has contended, that (i) Section 7 of the CRT Act is akin to Section 34 of the Indian Trusts Act and Section 92 of the CPC; (ii) however a trustee of a public trust is not required to mandatorily obtain an order from the Civil Court to deal with the property of the trust; (iii) the powers of administration, are normally set out in the trust deed and if the trust deed confers the powers of sale, then an order of the Civil Court is not necessary; (iv) the petition is maintainable under Section 7 of the CRT Act and can also be registered as a suit under Section 90 read with Order XXXVI

of the CPC; (v) in terms of ***Dr. Man Singh*** supra, Section 7 of the CRT Act is a more appropriate provision than Section 34 of the Indian Trusts Act and Section 92 of the CPC, in the circumstances of this case; (vi) the High Court of Madras, in ***Rajagopal Vs. Balachandran*** 2001 SCC OnLine Mad 656 held that Courts have a general, *parens patriae* jurisdiction over trusts of charitable and religious nature and any such application should be dealt with by the Courts, not as a purely adversarial litigation; (vii) in ***Nilima Ghosh*** supra it was held that a question relating to management and administration of trust property should be referred to the Principal Civil Court of Original jurisdiction; (viii) this Court, on its original side, is akin to a Court of Original Principal Jurisdiction, subject to pecuniary jurisdiction; (ix) thus the petition is entertainable by this Court; (x) the valuation of the present proceedings for the purposes of jurisdiction would be in accordance with the valuation of the property, for sale whereof directions are sought but the relief claimed being akin to a declaratory relief without any secondary relief, court fees has to be as per Clause 17(iii) of Schedule II to the Court Fees Act; (xi) in ***Chenchu Rami Reddy Vs. Government of Andhra Pradesh*** (1986) 3 SCC 391, it has been held that such properties should be sold by public auction and not by private negotiation; (xii) the petition is silent about how the sale proceeds are intended to be used; the plaintiffs should be directed to submit a plan of action as to utilization of such sale proceeds and be ordered to be bound thereby; and (xiii) Section 7(2) contemplates issuance of citation in the newspaper; opportunity by citation should

be given to all who may be interested in putting forth their views qua the sale, for which permission is sought.

9. I have considered the contentions of the counsel for the plaintiffs, counsel for GNCTD and learned Amicus Curiae.

10. The first question is, whether the proceeding under Section 7(1) of the CRT Act is a suit.

11. The empowering provision of law i.e. Section 7 of the CRT Act empowers the trustee of a trust for a public purpose of a charitable or religious nature to “apply by petition to the Court”, making it clear that the same does not envisage a ‘suit’, as distinct from a ‘petition’. The legislature, while drafting the CPC and enacting Section 92 therein relating to public charities, expressly provided for the proceeding therein to be by way of a ‘suit’. However, while drafting Section 7, the word ‘petition’ was used. Therefrom, it appears that the legislature, for a proceeding under Section 92 of the CPC, deemed a proceeding by way of a suit to be an appropriate remedy but while enacting Section 7 of the CRT Act deemed a proceeding by way of a petition to be appropriate. It is not as if the said distinction is without any reason. While a proceeding under Section 92 of the CPC was envisaged to be contentious, requiring an adjudication as a suit, a proceeding under Section 7 of the CRT Act, merely for the opinion, advice or direction of the Court, was not envisaged to be contentious by nature. Thus, a petition, which does not necessarily entail the procedure as provided for adversarial claim as in a suit, was deemed to be apposite.

12. The High Court of Calcutta also in ***Re: Birla Jankalyan Trust*** supra has held that the proceedings, as under Section 7 of the CRT Act, are to help the trustees in the difficulties in respect of practical management or administration of the trust, where no disputed question of title or difficult question of construction of Will or complicated questions of law are involved. To the same effect is ***Budh Singh Dhahan*** supra laying down that in such a proceeding, no evidence or detailed arguments are required and summary procedure has to be adopted. In ***Rameshwardas Birla Vs. Advocate General of West Bengal*** MANU/WB/0381/1956, it was held that the jurisdiction under Section 7 of the CRT Act is exercisable only for the proper management of the Trust; when there is no dispute which normally calls for adjudication by way of a suit, Section 7 of the CRT Act is the more appropriate provision in law. The High Court of Bombay also, in ***Naraindas Menghraj Nagpal Vs. Lalchand Menghraj Nagpal*** 1979 SCC OnLine Bom 32 held that a petition under Section 34 of the Indian Trusts Act cannot be invoked to resolve controversies of fact or law; Section 34 is intended to invoke by a summary procedure, the advisory capacity of the Court, where there is no dispute between the parties; Section 34 and cannot be resorted to, where the Court must adjudicate upon disputed questions of law or fact; under Section 34, the Court will not advise trustees on disputed questions of law or fact but only on undisputed matters of management or administration; reliance was placed on the earlier dicta of the same Court in ***Re: Lakshmibai*** ILR 1888 12 Bom 638. The High Court of Jammu & Kashmir also, in ***Krishen Kumar Khosa Vs. Krishen Lal*** AIR 1979 J&K 13

held that a petition under Section 34 of the Trusts Act cannot be treated as a civil suit.

13. The position is made further clear by the proviso to Section 7(1) of the CRT Act to the effect that the Court is not even bound to give such opinion, advice or direction as sought.

14. Thus, I hold the proceeding under Section 7 of the CRT Act, to be by way of a petition, and to have a nomenclature of a petition and not as a suit.

15. I find that the Roster drawn up of this Court does not make any provision for a petition *per se* or for a petition under Section 7(2) of the CRT Act. It is perhaps for the said reason that the plaintiff has had to file this proceeding, giving the nomenclature of a suit, to be registered by the Registry of this Court.

16. The next question to be considered is, whether a petition under Section 7(2) of the CRT Act, lies before this Court having Ordinary Original Civil Jurisdiction in suits, valuation whereof for the purpose of jurisdiction is above Rs.2 crores, or the petition lies only before the District Judge.

17. Section 7(1) only provides for a petition thereunder to be before “the Court, within the local limits of whose jurisdiction any substantial part of the subject matter of the trust is situate”. However Section 2 of the CRT Act is as under:-

“2. Interpretation. – In this Act, unless there is anything repugnant in the subject or context, “the court” means the court of the district Judge or any other court empowered in that behalf by the State Government and

includes the High Court in the exercise of its ordinary original civil jurisdiction.”

18. I have recently in ***Ritu Garg Vs. State*** MANU/DE/2744/2019, in the context of a petition under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, on the basis of the language used therein as well as in the Guardians & Wards Act, 1890, following ***James Francis Dillon Vs. Holy Cross Social Service Centre*** 1985 SCC OnLine Del 28 held that the Ordinary Original Civil Jurisdiction of the High Court under Section 5(2) of the Delhi High Court Act, 1966 is only in respect of suits and not in respect of proceedings under other statutes required to be filed in the Principal Civil Court of Original Jurisdiction. It was held that the High Court having original jurisdiction is the Principal Civil Court of Original jurisdiction only for suits and not for such proceedings under other statutes, prescribed to lie before the Principal Civil Court of Original Jurisdiction or the District Judge. Following the same, which would apply to present case also, this Court would not have jurisdiction to entertain this petition.

19. However, notwithstanding the same and only for the reason that there does not appear to be any precedent in this respect, I refrain from rejecting this petition. It is deemed appropriate that this Court, having heard the counsels, answers the queries raised.

20. The next question to be considered is, the court fees to be payable on a petition under Section 7 of the CRT Act.

21. The Court Fees Act, 1870 does not make any specific provision for a petition or for a proceeding under Section 7(2) of the CRT Act. Article 1 in Schedule II thereof though provides for court fees payable

on applications or petitions to be made to different authorities or Court but none of the entries thereunder also provides for an application or petition under Section 7 of the CRT Act. Without the legislature laying any fee on such a petition, it has but to be held that no fee/court fee is payable on a petition under Section 7 of the CRT Act.

22. I will next consider the procedure to be adopted by a Court, in a petition under Section 7(2) of the CRT Act.

23. One of the questions which arises under this head, is the persons required to be impleaded as respondents to such a petition. The plaintiffs herein have not impleaded anyone as respondent and have sought *ex parte* opinion, advice and directions from this Court. It is the case in the plaint that the plaintiff no.2 is the sole trustee; since in terms of the Trust Deed sale has to be in consultation with Harsh Gogia, Baldev Gogia, Madhuri Yadav, Ajay Yadav, Payal Malik and Sudhir Shah, the plaintiffs along with the plaint have filed affidavits of no objection of the said persons.

24. In my view, the State within whose jurisdiction the subject matter of the trust is situate, is necessarily required to be impleaded as a respondent in such a petition. This is so because the Court has a very limited execution machinery of its own and for any investigation to be done, requires the assistance of the State. Considering the nature of the advice, opinion and/or direction sought in this petition also, the Court requires the State to carry out the valuation and has no means of its own to value the property. The State, even otherwise has a considerable interest in a public charity of a religious or charitable

nature and exercises control and supervision over the citizens / persons who are beneficiaries of the public charity and is an essential party.

25. Besides the State, depending upon the facts pertaining to each public charity, respondents may be impleaded or directed by the Court to be impleaded. If there are more than one trustee and the petition has been presented by only one of the trustees, the other trustees may be required to be impleaded as respondents. Similarly, if the Court is of the view that for rendering the opinion, advice and/or direction sought, it is essential to hear any person other than the applicant / petitioner and / or that such other person may be interested in or concerned with the management or administration of the trust, such person should be impleaded and / or may be directed to be impleaded as the respondent. The Court, in the matter of rendering such opinion, advice or direction, is acting for the better management and administration of the trust property and ought to exercise all caution, by hearing all persons who may have an interest, for the sake of best management and administration of the trust property.

26. As far as other procedural aspects of such a petition / proceeding under Section 7 are concerned, the CRT Act gives complete freedom to the Court to modulate the procedure. The Court thus has freedom to devise the procedure as may be the requirement considering the nature of the opinion, advice or direction sought and no hard and fast rule can be laid down. In this judgment, the Court is to only grant the permission sought to sell the property on 'as is where is basis' at a price slightly below the prevailing market value of the property as per the circle rate; this will require determination by the

Court of the prevalent market price and for which purpose, the Court, besides seeking the opinion of the concerned State authority, would also be required to ensure that the sale is conducted in a manner best suited to fetch the best price available and ensure that the price received is applied in the manner provided in the Trust Deed. This purpose can be subserved by seeking valuation of the property in modes as may be found expedient and by directing wide publication of the sale, to fetch the best price, and ensuring that the price received is utilized for the purpose of the Trust.

27. That brings me to the question, whether there is any need for the Court to render advice, opinion or direction as sought and if so, what should that advice, opinion or direction.

28. Considering that the plaintiff no.2 is the sole trustee of the trust and is based outside India and unable to personally conduct the sale and has to necessarily rely on others appointed as attorneys, to ensure that neither plaintiff no.2 nor any of his attorneys do anything which will lead to the property of the plaintiff no.1 Trust fetching a price lower than the prevalent market value and further considering that the market value at which the sale is sought to be made and which is stated to be the best price the property is fetching today is lower than the circle rate price, a case for grant of opinion, advice and direction is made out.

29. In the facts of the case, when the plaintiffs themselves have along with the plaint filed valuation reports showing the valuation of the property as per circle rates to be more than the value which the property is fetching in the market, need to have the property valued

from the concerned Sub-Divisional Magistrate (SDM) in which the said jurisdiction vests is not felt in the present case. The same would lead to delays and wastage of property. It is stated in the plaint that after the death of Santosh Bakshi, attempts at divesting the plaintiff no.1 Trust of the property were made and which till now have been thwarted. It is felt that any further delay may lead to more such attempts and some of which may succeed.

30. At the same time, the market price pleaded by the plaintiffs cannot be believed. This Court is required to do its own exercise for determining the best market price the property can fetch.

31. In the facts of the present case, it is deemed appropriate to entrust the task of overseeing the sale of the property at the best price to Mr. Akshay Makhija, Advocate/Learned Amicus Curiae, who has graciously consented to the same.

32. In consultation with the appearing counsels, a draft Public Notice to be issued, inviting bids for sale, has been finalized. It is deemed appropriate that the same be prominently published (as may be deemed appropriate by Mr. Akshay Makhija, Advocate) with the following text in ‘Times of India’ and ‘Navbharat Times’ newspapers and on the Notice Board of this Court and of all the District Courts:-

“PUBLIC NOTICE OF SALE

Property No. 6/22, Shanti Niketan, New Delhi.

Whereas Shri Sharad Malik being the sole Trustee of the
Vishwa Nath and Santosh Bakshi Charitable Educational Trust

(Regd.) (Trust), owner of above Property, comprising of freehold land *ad-measuring* 393 sq. yds. with a double storeyed house thereon, has applied to the High Court of Delhi by CS(OS) No.119/2019 for sale of the said property for a price of Rs.24.69 crores as against the Circle Rate Price of Rs.25,95,89,786/- and the High Court of Delhi has deemed it appropriate to invite offers for sale with the intent to have the property sold at the best price available and appointed Mr. Akshay Makhija, Advocate to oversee the sale with the said intent.

Offers are invited for purchase of the property on the following terms:-

- (i) Inspection of the property and photocopies of the title documents can be made between _____ to _____ from 11.00 am in the morning to 7 pm in the evening.
- (ii) Offers for purchase price in sealed envelope may be submitted with Mr. Amitabh Chaturvedi, Advocate for the Trust at _____ between _____ and _____ from 11 am in the morning to 7 pm in the evening.
- (iii) The said offers will be opened by Mr. Akshay Makhija, Advocate on _____ at _____(time) in his Chamber at _____ and all intending purchasers are required to be present at that time.

- (iv) The three highest offers of purchase price above Rs.24.69 crores will be selected and the purchaser bidding the highest would be required to deposit with Mr. Amitabh Chaturvedi, Advocate for the Trust 10% of the bid price, by Bank Draft in the name of Vishwa Nath and Santosh Bakshi Charitable Educational Trust (Regd.), by 7.00 pm of the next day. On the highest purchaser not complying with the said requirement, successive similar opportunities shall be given to the next two purchasers.
- (v) The said 10% of the amount would be deposited in the bank account of Trust.
- (vi) The balance sale price would be payable within **60 days** thereof, against delivery of vacant peaceful physical possession of the property and extension of sale deed at the cost of purchaser, failing which the amount paid of 10% shall stand irrevocable forfeited to the Trust and the Trust would be entitled to sell the property at the negotiated price of Rs.24.69 crores or above as may be fetched.

Amitabh Chaturvedi,
Advocate for the Trust”

33. The plaintiff no.2 Sharad Malik is also directed to within six weeks, file before this Court his own affidavit disclosing the exact manner in which the sale price so received and/or the forfeited amounts are intended to be used for the purpose of the Trust and would remain bound by the same. A copy of the said affidavit be also supplied to Mr. Akshay Makhija, Advocate who, if finds any lacuna therein, would be entitled to apply to this Court.

34. Though Mr. Akshay Makhija, Advocate till now, at the request of the Court, has acted *pro bono* and for which this Court expresses its gratitude to him but for the responsibilities entrusted to him for future, out of the sale price fetched, an amount of Rs.5,00,000/- be paid to him as honorarium.

35. With the aforesaid the proceedings are disposed of.

36. It will however be open to the plaintiffs and/or to Mr. Akshay Makhija, Advocate to, if need arises, apply for further directions/clarifications.

RAJIV SAHAI ENDLAW, J.

JULY 04, 2019

‘gsr’/pp..

(Corrected and released on 14th September, 2019).