

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09.12.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.No.18186 of 2020

K.Murugan

... Petitioner

Vs.

The Joint-II Sub Registrar,
Dharmapuri,
Dharmapuri District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned refusal check slip dated 18.09.2020 in Refusal No.RFL/2 Number Joint Sub Registrar Dharmapuri/95/2020 issued by the respondent and quash the same, consequently, direct the respondent to register the Codicil Deed of Dhivyam Educational and Charitable Trust dated 31.08.2020 executed by the petitioner and other Trustees of Dhivyam Educational and Charitable.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

This writ petition has been filed challenging the impugned refusal check slip issued by the respondent dated 18.09.2020 and for a consequential direction to the respondent to register the codicil deed of the trust dated 31.08.2020.

2. The case of the petitioner is that the charitable trust was started with an object to provide education to poor students. According to the petitioner, the Managing trustee was involved in various irregularities and illegalities and hence, a suit has been filed before the District Court, Dharmapuri, in O.S.No.48 of 2020. It is stated that an interim application was filed in IA No.3 of 2020, seeking for an interim injunction against the Managing trustee and his family members not to interfere with the running of the trust and the Civil Court has also granted an order of interim injunction and it was also extended until further orders on 21.11.2020.

3. The Board of Trustees held a meeting on 23.08.2020 and proposed various amendment in the trust deed dated 25.07.2012. This was incorporated in a codicil deed dated 31.08.2020 and it

was presented for registration before the respondent. The respondent on receipt of the deed, refused to register the deed by placing reliance upon clause 49 of the Original Trust deed dated 25.07.2012. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard the learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned special Government Pleader appearing on behalf of the respondents.

5. A careful reading of clause 49 of the Original Trust deed dated 25.07.2012 shows that if any amendment is made to the trust deed, it will be carried out only by the founder cum Managing trustee during his/her life time and only thereafter, the Board of Trustees will get such a right to amend the trust deed. In the present case, there is a serious dispute between the Board of Trustees and the Managing Trustee. A suit is pending in this regard and an interim order has also been passed against the Managing trustee and his family members from interfering with the functioning of the trust. By means of the Codicil deed, various amendments have been brought forth in the original trust deed.

6. It will be relevant to take note of the clause contained in the Codicil Deed, which deals with the procedure that has to be followed for the purpose of amending the trust deed. For proper understanding, the relevant amended clause 49 is extracted hereunder :-

49. It is declared that any amendment in the Trust Deed except the Resignation or Retirement of any trustee and either admission or taking any person as trustee shall be carried out only with the previous permission of the Commissioner of Income Tax or from the Court.

7. It is clear from the above amended clause that amendment in the trust deed will have to be carried out only with the previous permission of the Court or the Commissioner of Income tax except where the amendment only pertains to resignation or retirement of any trustee or admission of any trustee.

8. In the present case, the amendment that is proposed to the original trust deed covers a lot of issues which even as per the Codicil deed would require a permission from the Court for carrying out the amendment in the trust deed.

9. In the considered view of this Court, the respondent has strictly gone by the relevant clause contained in the original trust deed and has refused to register the codicil

deed. This Court does not find any infirmity in the decision taken by the respondent.

10. In view of the above discussion, the only option left open to the petitioner would be to file an appropriate application before the concerned Court before which, the suit in O.S.No.48 of 2020 is pending and seek for appropriate directions to permit the Board of Trustees to amend the trust deed by means of the Codicil Deed. Once such directions are given by the Competent Civil Court, it will always be open to the petitioner to thereafter present the Codicil Deed for registration before the respondent and the respondent can always act upon the order passed by the competent Civil Court. Except giving this liberty to the petitioner, no further orders can be passed in this writ petition.

11. This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar (CS III)

/true copy/
Sub Asst. Registrar

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To

1.The District Court, Dharmapuri

2.The Joint-II Sub Registrar,
Dharmapuri,
Dharmapuri District.

+1 cc to the Government Pleader sr40436

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