IN THE HIGH COURT OF JUDICATURE AT MADRAS

| | |
|---|---|
| Judgment reserved on | 24.02.2020 |
| Judgment pronounced on | 26.05.2020 |

CORAM

**THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY**

**O.P.No.1086 of 2019**

Swami Dayanandha Saraswathi Memorial Trust,
Rep. by its Managing Trustee R.Kannan
No.38, II Floor, Venkata Krishna Road,
R.A.Puram, Mandaveli.
Chennai - 600 028. ... Petitioner

vs.

Sri Ramachandra Educational Trust,
Rep. by its Managing Trustee
Mr.Kumbeswaran
Dharmaneethi Village,
Ayarpadi Post, Nemili Taluk,
Vellore District. ... Respondent



This Petition is filed under Section 34 of the Indian Trust Act, 1882 to approve and grant permission and sanction to take over the Respondent Trust whose objects are similar to that of the Petitioner and take over the Institution Sri Ramachandra Polytechnic College, situated at Dharmaneedhi Village, Vellore District, along with its assets and liabilities.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.K.Kanniappan

**O R D E R**

This Petition is filed under Section 34 of the Indian Trust Act,1882 (the Trusts Act) to approve, grant permission and sanction for the take over of the Respondent Trust(whose objects are similar to that of the Petitioner Trust) including the institution, Sri Ramachandra Polytechnic College situated at Dharmaneedhi Village, Vellore District, along with its assets and liabilities, by the Petitioner Trust.

2. The case of the Petitioner is that the Petitioner Trust was established under the Trust Deed dated 15.10.2007 (Ex.P-1) and as a public charitable trust under Trust Deed dated 23.03.2017 (Ex.P-4). The objects and purposes of the Petitioner Trust are, inter alia, the following: to set up and run educational institutions, including schools and colleges; to promote traditional knowledge forms and carry out translation of ancient manuscripts, preserve and protect ancient manuscripts in any manner including scanning; to digitalize ancient works of art and literature and other works of importance; to promote Indian culture, literature, folk arts, drama, traditional dances, classical music events, theatre shows, village fairs; support Indian heritage and

culture; and award scholarships and other financial aid to deserving students, etc. It is stated that the Trust has four Trustees, namely: (1) R.Kannan, who is the settlor and Managing Trustee; (2) Vasanthi Kannan; (3) R.Hariharan; and (4) V.N.Shiva Shankar. The Trust is registered under Section 12AA of the Income Tax Act, 1961 (the Income Tax Act), with effect from the financial year 2017-2018, which corresponds to the assessment year 2018-2019.

3. The Respondent Trust was established by Dr.Aranganathan under Trust Deed dated 15.10.2007 (Ex.R-1). Subsequently, several supplementary trust deeds were executed, the last of which is a Supplementary Deed dated 12.09.2019 (Ex.P-9 and R-2). The present Managing Trustee of the Respondent Trust is stated to be Mr.R.Kumbeswaran. The objects and purposes of the Respondent Trust are, inter alia, as follows: to spread knowledge and education by the publication of books, classics and other literature and by the establishment of specific endowments and memorials for public charitable purposes; to establish, contribute to or support educational or cultural institutions, colleges, schools, libraries, book trusts, reading rooms, industrial training institutes, technical institutes, polytechnics, workshops, cottage and small scale industries, research institutes and other public educational or cultural or charitable institutions; to promote education and learning, including primary education; give scholarships and prizes, etc.

4. The Managing Trustee of the Respondent Trust states, in his proof affidavit, that the trustees of the Respondent Trust, at the meeting on 14.09.2019 (Ex.R-3), resolved to hand over the management and administration of the Respondent Trust, including the Sri Ramachandra Polytechnic College, to the Petitioner Trust by way of merger for better administration and development of the Trust so as to fulfil the objects and purposes of the Respondent Trust. In this situation, in view of the fact that the objects and purposes of the Petitioner Trust and Respondent Trust are similar, the Petitioner Trust intends to take over the Respondent Trust, including the existing educational institution, namely, the Sri Ramachandra Polytechnic College at Dharumaneedhi Village, Vellore District along with its assets and liabilities. The present Petition is filed for that purpose.

5. The Respondent Trust is also a public charitable trust, which is registered under Section 12 AA of the Income Tax Act by order dated 06.07.2011 of the Director of Income Tax(Exemptions), Chennai. In addition, it enjoys exemptions for donations received under Section 80-G of the Income Tax Act. The Respondent Trust owns lands at Village No.43, Dharumaneedhi Village, Arokonam Taluk, Nemeli, Vellore District ad measuring 8 acres 27 cents in various survey numbers as set out in paragraph 5 of the Petition and the building constructed on the said lands. It is stated in the Petition that

C.S. No.5 of 2019 was filed earlier for the same relief and was subsequently withdrawn with liberty to file a fresh suit under order dated 03.09.2019 of this Court.

6. I heard the learned counsel for the Petitioner and the learned counsel for the Respondent.

7. The learned counsel for the Petitioner provided an over view of the facts and circumstances relating to the filing of the Petition. He pointed out that evidence was recorded in support of the Petition by examining the Managing Trustee of the Petitioner as P.W.1. Through P.W.1, he pointed out that 9 documents were exhibited as Exs.P1 to P9. The Respondent also adduced evidence by examining the Managing Trustee of the Respondent as R.W.1. 7 documents were exhibited through R.W.1 as Ex.R1 to Ex.R7. By relying upon the said documents, the learned counsel contended that the present Petition is liable to be allowed. In specific, he contended that the Petitioner Trust and the Respondent Trust have very similar objects and that both the Trusts have agreed that the Respondent Trust would be taken over by the Petitioner Trust along with the Sri Ramachandra Polytechnic College and all its assets and liabilities. In view of such consent, it is submitted that permission may be granted by this Court for the take over. In support of his submissions, the learned counsel relied upon

the judgment of the Hon'ble Supreme Court in **State of UP v. Bansi Dhar, AIR 1974 SC 1084,** where the Supreme Court held that the doctrine of c*y pres* applies where a general charitable goal is indicated by the donor without specifying a special object or mode. According to the learned counsel, this doctrine applies to the present case because the objects and purposes of the Respondent Trust are similar and the merger would enable the fulfilment of the objects and purposes as nearly as possible in the facts and circumstances by applying the doctrine of *cy pres.* The learned counsel for the Respondent Trust also submits that the Respondent Trust resolved that the Petitioner Trust should take over the management and administration of the Respondent Trust, including the educational institution and is agreeable to being taken over.

8. I considered the submissions of the learned counsel for the respective parties and examined the evidence recorded in this case.



9. The first question that should be considered is whether an order of the nature requested for can be granted in this Petition. Section 34 of the Trusts Act does not apply to public charitable trusts. In **Sheik Abdul Kayum v. Mulla Alibhai, AIR 1963 SC 309,** the Hon'ble Supreme Court held that the principles contained in the Trusts

Act may be applied even to a public charitable trust. However, in **Trustees of HEH The Nizam's Pilgrimage Money Trust v. Commissioner of Income Tax, Hyderabad, (2000) 4 SCC 179**, at paragraph 10, the Hon'ble Supreme Court held that Section 34 creates a special right that cannot be applied as a general principle. Nonetheless, except to the extent excluded by Section 5(d) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 7 of the Charitable and Religious Trusts Act, 1920, applies to public charitable trusts and is analogous to Section 34 of the Trusts Act. Both these provisions enable a trustee to apply for the opinion, advice or direction of the court on any question affecting the management or administration of the trust property subject to the caveat that the court should consider it appropriate to decide such question in summary proceedings. With specific reference to Section 34, it is evident that this provision is intended to deal with questions that are capable of being dealt with in summary proceedings and not questions of detail, difficulty or importance. In this context, it is relevant to set out Section 34 which is as under:



**Section 34 of The Indian Trusts Act, 1882**

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.

Notwithstanding the fact that Section 34 *per se* is not applicable, I propose to examine whether a case is made out if Section 7 of the Charitable and Religious Trusts Act or the principles in Section 34 of the Trusts Act were to be applied.

10. The Petitioner Trust intends to take over the Respondent Trust, including the Sri Ramachandra Polytechnic College and its assets and liabilities. In effect, this is a proposed merger of two trusts. Both the Trusts are public charitable trusts, which are registered with the income tax authorities under Section 12 AA of the Income Tax Act. The Respondent Trust also enjoys exemptions in respect of donations under Section 80-G of the Income Tax Act. The documentary evidence of the Petitioner Trust consists of the Trust

Deed dated 15.10.2007 (Ex.P-1), the Trust Deed dated 23.03.2017 (Ex.P-4) and various supplementary deeds of the Respondent Trust, the last of which is the Supplementary Trust Deed dated 12.09.2019 (Ex.P-9). The income and expenditure statements of the Petitioner Trust and the income tax returns are not on record. Even the registration certificate issued by the income tax authorities is not on record and, therefore, the conditions subject to which such registration was granted cannot be discerned. On perusal of Ex.P-4, I find that there are 4 trustees, of whom only the Managing Trustee is before the Court.

11. As regards the Respondent Trust, on perusal of the trust deeds and supplementary trust deeds and, in particular, from the recitals of the Supplementary Trust Deed dated 12.09.2019 (Ex.P-9), a photocopy of which is marked after comparison with the original, I find that the number of trustees was reduced from 45 to 12 and, thereafter, increased to 7. Strangely, Ex.P-9, which is dated 12.09.2019, records that Mr.A.Aranganathan was relieved as a trustee by Supplementary Deed dated 18.09.2019. The said Supplementary Deed dated 18.09.2019 is not on record. Even more curiously, I find that Ex.R-2 (which is purportedly a photocopy marked on the basis that the original was produced when Ex.P-9 was marked) is purportedly the same Supplementary Trust Deed dated 12.09.2019,

but contains different recitals and records that A.Aranganathan was relieved from the board of trustees on 12.09.2019. In this connection, a resignation letter dated 03.09.2019 is produced to the effect that he resigned with effect from the said date. The contradictions with regard to the alleged resignation or relieving of the Founder Trustee/settlor from trusteeship gain greater significance in the context of the reliance on the doctrine of *cy pres.* The Petition was presented before this Court shortly thereafter on 23.09.2019. Once again, as in the case of the Petitioner Trust, the income and expenditure statements and the income tax returns of the Respondent Trust are not on record. Therefore, it is not possible to discern either the income and expenditure or the assets and liabilities. As stated in the context of the Petitioner Trust, the registration by the Income Tax Department, including the conditions relating thereto, are not on record. There is no evidence that the Income Tax Department was put on notice regarding the proposed merger and, more importantly, the consent of the Income Tax Department was not obtained with regard to the taking over of the assets and liabilities of the Respondent Trust by the Petitioner Trust.

12. For reasons set out above, I am of the view that material information and documents have not been disclosed, the documents submitted raise doubts and, on the basis of the evidence

on record, it is not possible to form an informed opinion as to whether the proposed take over of the Respondent Trust, including the Sri Ramachandra Polytechnic College along with its assets and liabilities, is in the interest of the Respondent Trust or in public interest whether by applying the doctrine of *cy pres* or otherwise. Therefore, I am of the view that complicated questions of detail, difficulty and importance arise for consideration in this case and, in my view, such questions cannot be decided either on the basis of the evidence on record or in a summary manner.

13. In the result, the Petition is rejected. No Costs.

**26.05.2020**

Speaking/Non Speaking order
Index : Yes/No
Internet :Yes/No

rrg



**Petitioner's side witness:**

P.W.1 - Mr.R.Kannan

**Respondent's side witness:**

R.W.1 - Mr.R.Kumbeswaran

**Petitioner's side exhibits:**

| Sl.No | Exhibits | Date | Particulars of Documents |
|---|---|---|---|
| 1. | Ex.P1 | 15.10.2007 | Certified copy of the Deed of Trust |
| 2. | Ex.P2 | 21.05.2009 | Certified copy of the Supplementary Deed dated 21.05.2009 |
| 3. | Ex.P3 | 23.04.2015 | Certified copy of the Deed of Amendment of Trust. |
| 4. | Ex.P4 | 23.03.2017 | Photo copy of the Trust Deed of Establishing a Public Charitable Trust. |
| 5. | Ex.P5 | 27.11.2017 | Original Deed of Declaration of Amendment. |
| 6. | Ex.P6 | 11.01.2019 | Photo copy of the Supplementary Deed of Trust |
| 7. | Ex.P7 | 12.04.2019 | Photo copy of the Supplementary Deed of Trust. |
| 8. | Ex.P8 | 04.07.2019 | Photo copy of the Supplementary Deed of Trust. |
| 9. | Ex.P9 | 12.09.2019 | Photo copy of the Supplementary Deed of Trust. |

**Respondent's side exhibits:**

| Sl.No | Exhibits | Date | Particulars of Documents |
|---|---|---|---|
| 1. | Ex.R1 | 15.10.2007 | Photo copy of Trust Deed |
| 2. | Ex.R2 | 12.09.2019 | Photo copy of Supplementary Trust Deed. |
| 3. | Ex.R3 | 14.09.2019 | Original Extract of the Board resolution of the Respondent. |
| 4. | Ex.R4 | 16.09.2019 | Original extract of the Board Resolution of the Petitioner |
| 5. | Ex.R5 | 12.09.2019 | Authorisation Letter of the Respondent Trust. |

26.05.2020

rrg

**SENTHILKUMAR RAMAMOORTHY, J.**

rrg

**O.P.No.1086 of 2019**





**26.05.2020**