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CRP.No.2759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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M/s.MIOT Hospitals Educational Trust
Being represented by its Trustee
Dr.Barry Joseph Micheal. D.Rosario
Having Office at No.4/112,
Mount-Poonamallee Road,
Manapakkam, Chennai-600 089.

... Petitioner

Vs.

Nil

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, the judgment and decree order dated 11.08.2022 passed by the learned trial Court in Trust O.P.No.13 of 2022 before the District Sessions Court No.II, Kancheepuram, be set aside.



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For Petitioner : Mr.A.K.Sriram
for Mr.S.P.Siva Pradosh

ORDER

This Civil Revision Petition is filed, challenging the order passed by the Court below dismissing the petition filed by the revision petitioner under Sections 34 & 37 Indian Trust Act, seeking permission of the Court to sell the un-utilized property of the Trust described in the schedule to the petition.

2. Not being satisfied with the reasoning and information furnished by the petitioner in its petition seeking permission to sell the unutilized excess land, the Court below has dismissed the original petition. Aggrieved by the same, the petitioner Trust is before this Court.



3. The learned counsel for the petitioner submitted that the objectives of the Trust was mentioned in the Trust deed produced by the petitioner as Ex.P1 and hence, the reasoning given by the Court below that the petitioner failed to state the objectives of the Trust is erroneous.

4. The learned counsel for the petitioner further submitted that the reasoning given by the Court below that the petitioner failed to put forth the necessity to sell the Trust property and the purpose for which, the properties were sought to be sold and the details of the applications of the sale proceeds etc., are also erroneous.

5. In the light of the fact that the objectives of the Trust was already spelt out in the Trust deed and the sale proceeds obtained from sale of the Trust property would be applied in respect of any one of the numerous objectives enumerated in the Trust deed.

6. Further, the learned counsel for the petitioner submitted



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that even in cases where Indian Trust Act is not strictly applicable to the Private Trust, nevertheless the principles of Section 34 of the Indian Trust Act, are made applicable to the Private Religious and Charitable Trust and for the said proposition he relied on the judgment of ***AIR 1975 Cal 67 (In the matter of Dhanalal Karnawat and another)***.

7. Further, the learned counsel for the petitioner submitted that as per the Trust deed produced as Ex.P1, the trustees of the petitioner's Trust have got power to alienate the Trust properties. But however, it is always open to them to file a petition under Section 34 of the Indian Trust Act, seeking necessary advice, direction in the matters concerning the management and administration of the Trust property. In this regard, the learned counsel for the petitioner further relied on the judgment of the Mysore High Court in the case of ***In re D.V.Gundappa and others Vs. In re D.V.Gundappa*** reported in ***AIR 1951 Mys 6***.



8. Further, the learned counsel for the petitioner taking me to the Full Bench decision of *Sind High Court* reported in *AIR 1945 Sind 81*, submitted that Section 34 of the Trust Act, is for the benefit and protection of the Trustee. When the Court gives a direction under the said Section, the Trustees are under the obligation to obey the same.

9. Finally, the learned counsel for the petitioner submitted that in any event if this Court comes to the conclusion that the materials placed by the petitioner before the Court below for seeking permission of the Court to alienate the Trust property are in sufficient the petitioner may be given an opportunity to lead further evidence and for that purpose the matter may be remanded back to the file of the Court below.

10. I have considered the submissions made by the learned counsel for the petitioner and perused the typed set of papers. In the petition filed by the petitioner seeking permission of this Court to permit the petitioner Trust to sell its unutilized excess land, the petitioner had



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stated that the land which was sought to be sold had been kept unutilized from the date of purchase and the same needs to be utilized towards the objectives of the Trust. To meet the above said purpose, the Trust passed a resolution. The petitioner further averred in the petition that the Trust passed a resolution for selling the unutilized surplus land and based on the resolution, the petition had been filed seeking permission of this Court to sell the property.

11. When a Trust files an application under Section 34 of the Indian Trust Act, it has to be specifically averred how the sale of the property will benefit the Trust and the averments should also contain details with regard to the objectives of the Trust towards which sale proceeds will be applied. In the case on hand, the petitioner has not specifically averred how the sale of the Trust property would benefit the Trust. It is also not mentioned what is the market value of the property sought to be sold and whether the consideration mentioned in the agreement represents the correct market value and the same is beneficial



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to the Trust.

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12. The reading of the trust deed would suggest that the petitioner's Trust has got numerous objectives. It is not mentioned in the petition filed by the petitioner's Trust that with regard to advancement of which object the sale proceeds are likely to be applied. In the absence of the material details regarding the value of the property and the application of the sale proceeds towards object of the Trust and beneficial nature of the sale to the Trust etc., the Court below is not expected to give advise / directions as per Section 34 of the Indian Trust Act.

13. In view of the request made by the learned counsel for the petitioner that the matter may be sent back to the Court below to offer an opportunity to the petitioner to substantiate the need for selling the Trust property to the benefit of the Trust and to achieve the object of the Trust, it would be appropriate to remand the matter back to the file of



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the Court below to decide the original petition afresh in the light of the better affidavit and additional evidence to be let in by the petitioner.

14. In view of the above, I am inclined to set aside the impugned order and remand the matter back to the file of the Court below with the following directions. Accordingly, the impugned order is set aside and the matter is remained back to the file of the Court below. The petitioner is at liberty to file a better affidavit mentioning the need for sale of the Trust property, the benefit for the Trust by sale of property, the details with regard to the fact, how the sale proceeds will be applied to achieve the objectives of the Trust etc. The petitioner is also at liberty to lead additional evidence. Thereafter, on consideration of the materials available on record, the Court below is directed to pass order within a period of four weeks from the date of receipt of a copy of this order.

15. With the above directions, this Civil Revision Petition is



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disposed of. No costs.

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Index : Yes / No

Internet : Yes / No

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To

The District Sessions Court No.II, Kancheepuram.



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