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C.R.P.No.2523 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2523 of 2024

Pebble Green Trust,
Rep. By its Permanent Trustee,
Mrs.Usha R.Prabhakaran,
W/o.Late S.G.Prabhakaran,
Having Office at
No.14, Pebble Green,
Sterling Avenue,
Sakthi Nagar, Porur,
Chennai – 600 116.

... Petitioner

Vs.

NIL

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the conditions mentioned in Paragraph 10(8) and 10(9) of the fair and decretal order dated 01.02.2024 passed by the learned District and Sessions Judge, District Court-II, Kanchipuram in Trust O.P.No.97 of 2023.



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For Petitioner : Mr.P.H.Arvind Pandian
Senior Counsel
for Mr.A.Karthikeyan

ORDER

This civil revision petition is filed to set aside the conditions mentioned in Paragraph 10(8) and 10(9) of the fair and decreetal order dated 01.02.2024 passed in Trust O.P.No.97/2023 by the learned District and Sessions Judge, District Court-II, Kanchipuram.

2.The contention of the learned senior counsel appearing for the petitioner is that an application under Section 34 of the Trust Act r/w. 151 of CPC to permit the Permanent Trustee to sell the schedule of properties belonging to the Trust to any other person/parties offering higher/reasonable price fixed by the Court based upon the prevailing market value of the property fixed by the Registration Department and to deposit the sale proceeds and other benefits in the bank account of the sole beneficiary Mr.G.P.Prajnesh to fulfill the object and intent of the Trust. The petitioner,



namely, Pebble Green Trust is a private trust constituted by a registered deed of Declaration of Private Trust dated 15.12.2008, Document No.2359 of 2008 registered at the office of the Joint Sub-Registrar-II, Saidapet. The Trust carrying on its activities from 15.12.2008, from the funds of the Trust for the sole benefit of the beneficiary, who is none other than the son of the Permanent Trustee, as per Clause 4 of the Trust Deed. The permanent trustees are Shri.S.G.Prabakaran and his wife Mrs.Usha R.Prabakaran, the duties and liabilities of the Trustees and the Board of Trustees are set out in paragraph 3 of the Trust Deed. The sole beneficiary of the Trust is Mr.G.B.Prajnesh, who is the son of the Permanent Trustees. The petitioner Trust purchased some lands, which are as follows:

SCHEDULE-A

Item No.1

All the piece and parcel of vacant land situate in S.No.653/11B (Part) in Nandambakkam Village, previously in Sriperumbudur Taluk and now in Kundrathur Taluk, Kancheepuram District, Tamil Nadu and measuring an extent of 0 Acre 3.25 Cents.

Item No.2



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All the piece and parcel of vacant land situate in S.No.653/11B (Part) in Nandambakkam Village, previously in Sriperumbudur Taluk and now in Kundrathur Taluk, Kancheepuram District, Tamil Nadu and measuring an extent of 0 Acre 3.25 Cents.

SCHEDULE-B

Item No.1

All the piece and parcel of vacant lands situate in Poonthandalam Village previously in Sriperumbudur Taluk and now in Kundrathur Taluk, Kancheepuram District, Tamil Nadu, in the Survey numbers with corresponding extents as detailed below:

Sl.No.	Survey No.	Extent in Acres	Village Name
1	191/1A (Part)	0.07	Poonthandalam
2	193/6A (Part)	0.17	Poonthandalam
3	193/5A	0.58	Poonthandalam
4	193/4A	0.56	Poonthandalam
5	193/3A	0.57	Poonthandalam
6	193/2A	0.77	Poonthandalam
7	193/1B1	0.28	Poonthandalam
8	193/1A1	0.41	Poonthandalam
	Total	3.41	

Item No.2



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All the piece and parcel of vacant lands situate in Poonthandalam Village previously in Sriperumbudur Taluk and now in Kundrathur Taluk, Kancheepuram District, Tamil Nadu, in the Survey numbers with corresponding extents as detailed below:

Sl.No.	Survey No.	Extent in Acres	Village Name
1	191/1A (Part)	0.30	Poonthandalam
2	193/6A (Part)	0.40	Poonthandalam
3	164/1A	0.39	Poonthandalam
4	191/2	0.43	Poonthandalam
5	193/7B	0.73	Poonthandalam
6	193/7A	0.49	Poonthandalam
	Total	2.74	

3.One of the Permanent Trustee Mr.S.G.Prabakaran passed away on 09.11.2019, thereafter Mrs.Usha R.Prabakaran, the other Permanent Trustee is in-charge of the Trust. The Board resolution of the Trust dated 10.02.2023 authorized the surviving sole Permanent Trustee to sell the above properties, re-invest the sale proceeds appropriately. Further, the surviving sole permanent trustee Mrs.Usha R.Prabakaran is to sign all the documents related to sale, to approach the competent court to get permission



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to sell the said properties, to execute, submit and register the sale deed documents for registration before the competent registering authorities and to take all the relevant steps to complete the above said task. The Trust is operating in good faith for the benefit of Mr.G.P.Prajnesh, who is the sole beneficiary of the Trust. Thereafter, as per the requirement of Section 34 of the Indian Trust Act, the sole surviving permanent trustee filed a petition in Trust O.P.No.97 of 2023, wherein the learned District and Sessions Judge, District Court-II, Kanchipuram passed a fair and decreetal order on 01.02.2024 with certain conditions, of which, the petitioner is aggrieved against the conditions imposed in Paragraph 10(8) and 10(9), which are as follows:

10(8).On confirmation of the sale and on deposit of the sale consideration into Court the sale consideration is ordered to be deposited in a Nationalized Bank.

10(9).The trustees are at liberty to withdraw the interest alone once in a year by producing the necessary documents before this Court.

4.The conditions imposed in Paragraph 10(8) and 10(9) are



diametrically opposed to the Trust Deed and the powers of the Permanent Trustees in paragraph 3(x) of the Deed of Declaration of Trust, which reads as follows:

“3(x) The Permanent Trustee or Permanent Trustees have the power to invest the funds of the Trust by way of deposits in Banks, Company Deposits or in any company shares and Government Securities, or in any kind of schemes of Mutual Fund/s, Portfolio Management Scheme/s of any licensed firm, institution, or in any Wealth Management Scheme/s of any firm/institution or hand over to the Wealth Managers (for management) of bank/s, investment bank/s or institutions or firms handling such business of Wealth Management professionally, or in approved REITs that may be set up for investing in Real Estate Assets, as well as in any other movable properties. The Permanent Trustees shall likewise have the power to sell, pledge or otherwise transfer or deal with such properties. The Permanent Trustees have likewise the power to sell or otherwise transfer the business or any of the assets of the business [both movable and immovable] carried on by the Permanent Trustees with the funds of the Trust as may be found necessary from time to time.”



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5.The learned senior counsel further submitted that the sole beneficiary of the Trust Mr.G.P.Prajnesh is a well renowned tennis player who represented India in Davis Cup on many occasions and won medals at Asian Games. The beneficiary had unique financial needs for engaging specialized coach, training programmes, travel and to participate in competitions. The above said properties lying vacant for a long time, generate no income or appreciation. Hence, for more lucrative investment which would ensure sufficient funds available to cover the aforementioned expenses and supporting the beneficiary's career development and success, the sole Permanent Trustee found it necessary to sell those properties and re-invest the proceeds in a profitable venture which could significantly enhance the financial benefit to the beneficiary. Besides selling the properties and investing in business or company shares or in wealth management schemes or in any other movable properties as per the Trust Deed, would give more flexibility to met the beneficiary's immediate and future financial needs, keeping the beneficiary's interest in mind. The learned District and Sessions Judge permitted the petition mentioned



properties to be sold in public auction and not by private negotiations, since public auction would fetch more value and passed an order with conditions and the petitioner is aggrieved against condition 10(8) and 10(9) alone. He would submit that the learned Judge ought not to have directed the sale consideration to be deposited in a Nationalized Bank as opposed to the account maintained by the Petitioner Trust in Corporation Bank, T.Nagar Branch. Further, the learned Judge imposing a condition that the Trustees are at liberty to withdraw the interest alone once in a year is not proper and unworkable. The learned Judge has completely overlooked Clause 3(viii) of the Trust Deed, which confers right on the Permanent Trustee to carry on business with the funds of the Trust as may found convenient from time to time. Further, Clause 3(ix) of the Trust Deed empowers the Permanent Trustee to enter into partnership on behalf of the Trust by utilizing the funds of the Trust.

6.The learned senior counsel further submitted that the Permanent Trustee is authorized to enter into any business arrangement or deal or transaction to carry on any kind of business with any organization. Further,



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the learned Judge has failed to take note of the fact that the interest rate offered for bank deposits are normally lower than the potential returns from well chosen business investment or in diversified portfolio of business. Investing the funds in a business or shares or in some other real estate can potentially provide significantly higher returns which would benefit the beneficiary. The interest income from the bank deposits will not be commensurate to the investments made in business or shares or any other real estate investment which have potential for capital appreciation. Hence directing the sale proceeds to be deposited as Fixed Deposit in a Nationalized Bank would not be in the best interest of the beneficiary. Thus the above petition filed to set aside the conditions mentioned in Paragraph 10(8) and 10(9) of the fair and decretal order dated 01.02.2024.

7.Considering the submissions made and on perusal of the materials,, it is seen that the learned District and Sessions Judge overlooking the Deed of Declaration of Trust in its entirety and the powers of the Permanent Trustee as set out in Paragraph 3(i) to 3(xiii) of the Trust Deed had passed order with such unworkable condition. Admittedly, the Trust was formed



by the father of the beneficiary inducting the petitioner mother of the beneficiary as one of the Permanent Trustee. The other Permanent Trustee/father of the beneficiary Mr.S.G.Prabhakaran passed away and only Permanent Trustee is the mother of the beneficiary. It is a private Trust, all the properties purchased and invested by the Permanent Trustees. Since the petitioner Pebble Green Trust is a Private Trust, the Permanent Trustees are free to deal with the properties and the funds of the Trust to be invested as per the Deed of Declaration of Trust. In view of the same, imposing conditions by the learned District and Sessions Judge in Paragraph 10(8) and 10(9) in the fair and decreetal order dated 01.02.2024 is against Clause 3(x) of Deed of Declaration of Trust and in the interest of the beneficiary. In view of the same, these two conditions are deleted and consequently, Clause 3(x) set out in the Deed of Declaration of Trust to be substituted. Hence, the petitioner Trust is free to deal with the sale consideration received pursuant to the sale of the properties as per the Deed of Declaration of Trust. No separate new bank account in a Nationalized Bank is required to deposit the sale proceeds and the existing bank account of the Trust in Corporation Bank can be continued and used for the transactions.



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8. With the above directions, the civil revision petition stands allowed.

No costs.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

The District and Sessions Judge,
District Court-II,
Kanchipuram.



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M.NIRMAL KUMAR, J.

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