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CRP NPD.No.5136 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP No.5136 of 2024

Sri Sivasakthi Dharma Paripalana Seva Trust
Rep by its Founder Trustee Mr.B.Sekaran Nair
No.11, Anbalagan Street, Nehru Nagar
Velachery, Chennai – 600 042

. . . Petitioner

Versus

No respondent

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the order dated 20.01.2017 in Trust Original Petition No.2 of 2016 (on the file of Principal District Judge at Chengalpattu).

For petitioner : Mr.A.Thiyagarajan



CRP NPD.No.5136 of 2024

ORDER

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Challenge has been made against the impugned Order of the Original Petition filed by the petitioner under section 34 of the Indian Trust Act declining to grant permission to sell the trust property, in the present Civil Revision Petition.

2. The petitioner Trust filed an application under section 34 of the Trust Act seeking permission to sell the trust property based on the trust deed. The impugned Order came to be passed mainly on the ground that accounts of the trust has not been properly submitted before the Court. Hence, the said application has been dismissed.

3. Heard the learned counsel for the petitioner and perused the materials placed on record.

4. The very Trust Deed provides power to the Trustees to sell the property. The relevant condition in the Trust Deed itself indicate as follows:

“[f] To sell, dispose of, alienate or otherwise deal with property



comprising the TRUST FUND”

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5. Now, the petitioner had also filed statement of account before this Court. Further, in this regard, it is useful to refer the judgment of the Constitution Bench of Supreme Court of India in **Chairman Madappa Vs. M.N.Mahanthadevaru and others** reported in **AIR 1966 SC 878**, wherein in para 10 it has been held as follows :

“10. We are however of opinion that prayer for such a relief though permissible in a suit under [S. 92](#) does not in any way circumscribe or take away from trustees or managers of public trusts the right of ordinary administration of trust-property which would include letting, selling, mortgaging or exchanging such property for the benefit of the trust. We cannot infer from the presence of such a relief being provided in a suit under [s. 92\(1\)](#) that the right of trustees or managers of the trust to carry on the ordinary administration of trust-property is in any way affected thereby. If this were so, it would make administration of trust- property by trustees or managers next to impossible. This will be clear from a few examples which we may give. Suppose there is a lot of odds -and ends accumulated and the trustees or managers of a public trust want to dispose of



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those odds and ends if they are of no use to the trust. If the interpretation suggested on behalf of the -appellant is accepted, the trustees or managers could not sell even -such odds and end's without filing a suit for authorising them to sell such movable property. Obviously this could not have been -the intention behind cl. (f) in [S. 92\(1\)](#). Take another case where -the public trust has a good deal of land and arranges to cultivate 'it itself and gets crops every half year. If the produce is not all required for the trust and has to be sold, the presence of cl. (f) in [s. 92 \(1\)](#) does not require that every half year a suit should be filed by trustees or managers with the permission of the Advocate General to sell such crop. The absurdity of the argument on behalf of the appellant based on cl. (f) of [S. 92\(1\)](#) is therefore obvious and that clause does not in our opinion have the effect of circumscribing the powers of trustees or managers to carry on ordinary administration of trust-property and to deal with it in such manner as they think best for the benefit of the trust and if necessary even to let, sell, mortgage or exchange it. It seems that cl. (f) was put in inter alia to give power to court to permit lease, sale, mortgage or exchange of property where, for example there may be a prohibition in this regard in the trust deed relating to a Public trust. There may be other situations where it may be necessary



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to alienate trust property which might require court's sanction and that is why there is such a provision in cl. (f) in s. 92(1). But that clause in our opinion was not meant to limit in any way' the Power of trustees or managers to manage the trust- property to the. best advantage of the trust and in its interest, and if necessary, even to let, sell, mortgage or exchange such property. Further if cl. (f) cannot be read to limit the powers of trustees or managers to manage the trust-property in the interest of the trust and to deal with it in such manner as would be to the best advantage of the trust, there can be no bar -to a provision being made in a scheme for directions by the court in that behalf. If anything, such a provision would be in the interest of ;he trust, for the court would not give directions to let, sell, mortgage or exchange the trust property or any part thereof unless it was clearly in the interest of the trust. Such a, direction can certainly be sought by the trustees or managers or even by one manager out of two if they cannot agree, and there is nothing in cl.(f) in our opinion which militates against the provision in the scheme for obtaining such direction. We may add that we say nothing about obtaining of such directions by persons other than managers or trustees, for this is not a case where the direction was sought by a person other than a co- manager. Whether such a direction can be sought by persons other than trustees or



WEB COPY

managers or one of two managers as provided in paras (11) and (12) of the scheme is a matter which does not arise for consideration in the present case and we express no opinion thereon. We are dealing with a case where the prayer is made by one trustee and the order passed thereon relates to matters which are incidental to acts of management of the trust-property and we have no doubt that cl. (f) in [s. 92\(1\)](#) cannot be read in such a way as to hamper the ordinary administration of trust-properties by trustees or managers thereof; and if that is so, there can be no invalidity in a provision in the scheme which directs the trustees or managers or, even one out of two co- managers when they cannot agree to obtain directions of the court with respect to the disposal or alienation of the property belonging to the trust. We are therefore of opinion that cl. (f) does not apply to the circumstances of this case and no suit under s. 92 was necessary in consequence. The Additional District Judge had jurisdiction to give directions which he did under paras (11) and (12) of the scheme, as these directions are of the nature of ordinary administration of trust-property and do not fall within cl. (f) in [s. 92\(1\)](#) of the Code of Civil Procedure.”

6. Such view of the matter, this Court is of the view that the Trial Court ought to have granted permission. Hence, the order impugned order stands



CRP NPD.No.5136 of 2024

quashed.

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7. Accordingly, the permission is granted subject to the condition that property shall be sold in a public auction not by way of private negotiation. The petitioner Trust is directed to call for applications, effect wide paper publications and sell the property, the realised amount shall be utilised for the object of the Trust and the amount has to be deposited in the trust account. Necessary account in this regard be produced before the Trial Court within a period of two months.

8. With the above observation, this Civil Revision Petition stands allowed. No costs.

27.01.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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WEB COPY



CRP NPD.No.5136 of 2024

N. SATHISH KUMAR, J.

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To,

The Principal District Judge,
Chengalpattu

CRP NPD No.5136 of 2024

27.01.2025

Page 8 / 8