THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

CRP NPD No.5294 of 2024

A.Annamalai Senthilkumar
Managing Trustee of
Hong Kong Indians & Exnora Public Charitable Trust,
residing at No.A-16, Colony Road, 11th Cross Street,
Thillai Nagar, Tiruchirapalli – 620 018. . . . Petitioner

Versus

No respondent . . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the impugned judgment and decree dated 08.04.2024 passed in Trust O.P.No.99 of 2023 by the Principal District Court, Cuddalore as illegal.

For petitioner : Mr.K.Sharath Chandran

O R D E R

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. Brief facts of the case is as follows :

The petitioner Trust filed an application under section 34 of the Trust Act seeking permission to sell the trust property based on the resolution passed in the Trust and also amended portion of the trust deed. The impugned Order came to be passed mainly on the ground that as per the Trust Deed, the alienation of the immovable property of trust shall be done with the permission of the Director of Income Tax [Exemptions], Chennai. Further, the Director of Income Tax [Exemptions] has not been made as a party in the petition. Hence, the said application has been dismissed.

3. The learned counsel appearing for the petitioner would fairly submit that the application ought not to have been filed under section 34 of the Trust Act, as the Trust being a public charitable Trust. If at all, any permission is required, a suit under section 92 of Code of Civil Procedure ought to have been filed. At any event, it is his contention that the trust deed itself provide permission to the trustees to sell the trust property. Therefore, the Order dismissing the application has to be set aside and the trustees may be permitted to sell the trust properties as per the trust deed, of course, subject to obtaining approval of the Director of Income Tax [Exemptions].

4. As rightly pointed out by the learned counsel appearing for the petitioner, the application under section 34 of the Trust Act ought not to have been entertained by the trial Court, since the trust is a public charitable trust as per the trust deed. A very perusal of the trust deed itself indicate that the trust deed has been amended on 24.07.2023 wherein, clause 20 has been incorporated giving power to the trustees to sell the property.

5. 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 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 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 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.”

Therefore, as the very trust deed makes it clear the any sale is always subject to the approval of the Director of Income Tax [Exemptions], such conditions are to be scrupulously followed by the trustees while dealing with the properties.

6. With the above observation, this Civil Revision Petition is disposed of. No costs.

02.01.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,
The Principal District Judge,
Cuddalore.

N. SATHISH KUMAR, J.

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