
(1993) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1985 of 1992

Muffakham Jah and Another

APPELLANT

Vs

Prince Mukarram Jah Bahadur and Another

RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Trusts Act, 1882 — Section 34

Citation : (1993) 2 ALT 396

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : K. Pratap Reddy and M. Sai Reddy, for the Appellant; G.S.R. Anjaneyulu, for the Respondent

Judgement

Motilal B. Naik, J.—This revision petition is directed against the order dated 10-7-1992 in O.P.No. 564 of 1992 on the file of the Chief Judge, City Civil Court, Hyderabad.

2. Petitioners filed O.P.No. 564 of 1992 u/s 34 of the Indian Trusts Act, 1882 (hereinafter referred to as "the Act") praying for appointment of a Court Commissioner to inspect the sacred relics mentioned in the schedules to the H.E.H. the Nizam's Sacred Relics Trust deed and the H.E.H. the Nizam's Supplemental Sacred Relics Trust deed including the accretions and additions thereto located in the building known as "Bari Devadi, Khilwath Mubarak", Hyderabad and make an inventory thereof. A further direction was also sought to the trustees to strictly confine to the directions specified in Clause 6 of the H.E.H. the Nizam's Sacred Relics Trust and to restrain the employees of the 1st respondent from interfering with the duties of the trustees.

3. The main grievance as made out by the petitioners before the Original Court, in brief, is as under:- The late H.E.H. the Nizam VII Nawab Sri Mir Osman Ali Khan Bahadur, the then ruler of Hyderabad State created trusts known as "H.E.H. the Nizam's Sacred Relics Trust, dated 2-11-1950" and "H.E.H. the Nizam's Supplemental Sacred Relics Trust, dated 27-1-1952" for purposes of performing

certain religious ceremonies and holding of religious discourses during the mourning period of Muharrum, Safar and Ramadhan and for preserving the sacred relics permanently. The settler appointed himself and two others named in the trust deeds as the trustees of both the trusts and transferred the sacred relics mentioned in the schedules thereto to the trustees in trust, with the aforesaid object and also laid down the code of succession to the office of the trustees. The trustees have been administering the trusts, and the sacred relics are kept and secured in the premises known as "Bari Devadi, Khilwath Mubarak", Hyderabad under watch and ward. The settler died on 24-2-1967 and the trustees appointed thereafter from time to time were managing the said trusts. Under Clause 6 of the trust deed dated 2-11-1950, it is provided that on the twelfth day of Muharrum of each Hijri year, the trustees shall meet together and check the sacred relics lying in Bari Devadi, so as to verify that they along with the articles added to them from time to time are intact and kept safe. The said clause also applies to the sacred relics covered by the trust deed dated 27-1-1952 and the trustees have been implementing the said directives of the settler. Petitioners and respondents are the present trustees. The fifth trustee, one Col.B.H. Zaidi of Delhi, died recently.

4. A large number of devotees participate in the observances, ceremonies and discourses during the period from 1st to 12th of Muharrum of every "Hilali" year i.e., the Lunar year, as per the Muslim calender and the meeting of the trustees and checking and verification of sacred relics are to be made on the 12th Muharrum 1413 Hijri i.e., the 13th July, 1992 in terms of Clause 6 of the trust deed. The sacred relics are kept in safe custody under lock and key and secured by effective system of burglar alarms, strong rooms (vaults) and watch and ward by the trustees.

5. While so, on 1-6-1991 around 4-30 p.m., a telephonic message was received from Mr. Sadruddin Javeri, Principal Advisor and Chairman, H.E.H. the Nizam's Private Estate that the 1st respondent, who is one of the trustees, would inspect the sacred relics on the following day and due to short notice, all the trustees could not be informed about the message. On 2-6-1991 around 12-30 p.m., the 1st respondent along with Princess Manoliya Jah arrived at the premises. The 2nd respondent, Secretary and Additional Secretary of H.E.H. the Nizam's Trust and Mr. Sadruddin Javeri along with other individuals were also present. After inspecting the seal on the lock to the outer door of the strong room and the slip bearing signatures of the petitioners and the Secretary, which were intact, the outer door, the inner door and the strong room were opened and the 1st respondent along with the 2nd respondent and Mr. Sadruddin Javeri inspected the various items and they also removed the slips containing the signatures of the petitioners. The Secretary of H.E.H. the Nizam's Trusts was prevented from entering the vault causing physical obstructions. After inspection, the 1st respondent got affixed slips bearing his signatures and of the 2nd respondent after obtaining the signatures of the Secretary outside. The 1st respondent acted illegally and unauthorisedly and against the letter and spirit of the trust-deeds by

misusing his positron. They also brought unconcerned persons unauthorisedly into the vault and removed the seals, which were fixed by the trustees at the time of their last inspection.

6. On 22-7-1991 a letter seems to have been received from the Principal Advisor of the 1st respondent stating that after making inspection on 2-6-1991 it was found that many of the important items were not made available and they were either removed or placed in some other place. The letter also contained some strongly worded language, which is objectionable against the trustees and the Secretary of H.E.H. the Nizam's Trusts. However, in the meeting of the Board of Trustees held on 25-7-1991, the 2nd respondent assured the other trustees that no item was missing. The 1st respondent did not attend a single meeting of the Board of Trustees and never evinced any interest in the trusts and his Principal Advisor took the initiative for inspecting the sacred relics. In view of the above circumstances and in view of the great value of the sacred relics and the religious sentiments attached thereto, it was sought by the petitioners that a person of integrity and responsibility could be directed to make inspection in the presence of the trustees on 13-7-1992, being the 12th day of Muharrum, and verify all the relics. Since 13-7-1992 was short approaching, the petitioners also sought appointment of a Commissioner to inspect the sacred relics and make inventory thereof along with other articles added from time to time, housed in the premises known as Bari Devadi, Khilwath Mubarak, Hyderabad.

7. Under the background of these averments, the respondents filed counter inter alia contending that the allegations made are untrue and not tenable. The main objection taken by the respondents is that u/s 34 of the Act, under which the O.P. was filed, the jurisdiction of the Court is only consultative and advisory on any present question respecting the management and administration of the trust property. The petitioners had not disclosed any present difficulty in the administration of the trust property. The application is filed in the guise of seeking redressal of personal grievance. It is further stated that the Court is ousted from granting the relief sought by the petitioners. If any direction is given, that would tantamount to going against Clause 6 of the trust deed.

8. The Court below, on hearing the arguments of both sides, felt that appointment of Commissioner is not warranted in the situation. But, however, permitted the petitioners to accompany the other trustees i.e., the respondents and the attorney of the 1st respondent - who, by that time was said to be abroad along with the Secretary and Additional Secretary of H.E.H. the Nizam's Trusts - to inspect and check the sacred relics and all accretions and additions thereto housed in Bari Devadi, Khilwath Mubarak, Hyderabad, on the 12th day of Muharrum 1413 Hijri i.e., 13th day of July, 1992. The Court below further directed the procedure to be followed at the time of inspection. As against this direction, the present revision is filed.

9. Sri K. Pratap Reddy, learned counsel for the petitioners, contended that the direction of the Court below permitting the petitioners to accompany the other

trustees and to inspect the premises where the sacred relics are preserved and verify themselves personally, is of no consequence, as under Clause 6 of the trust deed, the petitioners are entitled to visit at any time the premises. Under the background of letter dated 22-7-1991 received by the 1st respondent from the Principal Advisor indicating that certain important items were either missing or removed, it became necessary for the petitioners to dispel any clouds of doubts over their heads in the society and, therefore, they sought a direction from the Court u/s 34 of the Act. It is further contended that when an application is filed u/s 34 of the Act, the Court could grant appropriate relief taking into account the facts and circumstances of the case. Since the trusts are created by the settler for religious sentiments attached to the sacred relics, if any clouds of misunderstanding as to the missing of the items is known to the people, the petitioners cannot gracefully stay in the society and, therefore, it was sought before the Court that an independent person could be appointed as Commissioner to inspect the sacred relics and take inventory of all the items in accordance with the schedule appended to the trust deeds.

10. On behalf of the respondents, Sri G.S.R. Anjaneyulu mainly contended that the scope of application u/s 34 of the Act is very limited and the relief sought in the application is beyond the purview of the Court. However, he contends the Court below has rightly directed the petitioners to accompany the trustees on the 12th day of Muharrum, which fell on 13-7-92, but the petitioners failed to inspect the premises on that day. Therefore, the intention of the petitioners would make it clear that they are trying to settle personal bickerings by using the process of the Court.

11. In order to appreciate the rival contentions and acquaint ourselves with the relevant provisions, it is necessary to extract Section 34 of the Act, which reads:

"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 intended by, such of the persons interested of 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."

12. Sri Anjaneyulu contends that an application u/s 34 of the Act is maintainable before the 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. But, in the instant case, according to him, what the petitioners are trying to seek is appointment of a Commissioner for the purpose of taking inventory of the sacred relics, which is beyond the scope and purview of the Section. In order to substantiate his contention, he has placed reliance on the decision of the Supreme Court in *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, .

13. On the contrary, Sri Pratap Reddy contends that the true interpretation of Section 34 could be, though looks to be advisory in nature, a direction could also be sought on any question respecting the management or administration of the trust properties. In the instant case, when there is a whisper that certain items, which are of greater magnitude, are missing, taking inventory or ascertaining the fact as to the missing of items would fall within the purview of the questions "respecting the management or administration of the trust-property". He further contended that no prejudice would be caused if an independent person is appointed as a Commissioner to take inventory of all the items which are housed in Bari Devadi, Khilwath Mubarak, so that the doubts could be dispelled and the petitioners would also have an idea as to whether any items are missing. Sri Pratap Reddy has taken me through the decisions dealing with Section 34 of the Act viz., *Avoch Thevar Vs. Chummar*, . and *In Re Md. Hashim Gazdar* AIR 1945 Sind. 81. Besides these two decisions, he has placed before me a book titled as "*Underhill's Law of Trusts and Trustees*", 13th Edition, by David, J. Hayton, wherein at page 688, Article 90 reads as under:

"Right of trustee or beneficiary to take the direction of the court or a judge in relation to specific questions:

(1) An action may be brought for the determination of any question or for, any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the execution under the direction of the court of the trust in connection with which the question arises or the relief is sought. Without prejudice to the generality of the foregoing words:

(a) an action may be brought for the determination of the following questions:

(i) any question arising in the execution of a trust;

(ii) any question as to the composition of any class of persons having a beneficial interest in any property subject to a trust;

(iii) any question as to the rights or interests of a person claiming to be beneficially entitled under a trust;

(b) an action may be brought for any of the following reliefs:

- (i) an order requiring a trustee to furnish and, if necessary, verify accounts;
- (ii) an order requiring the payment into court of money held by a person in his capacity as trustee;
- (iii) an order directing a person to do or abstain from doing a particular act in his capacity as trustee;
- (iv) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as trustee;
- (v) an order directing any act to be done in the execution of a trust which the court could order to be done if the trust were being executed under the direction of the court."

Relying on the above article, Sri Pratap Reddy contends that courts, in given circumstances, can mould the relief.

14. The decision relied on by Sri Anjaneyulu in *Official Trustee, W.B. v. Sachindra* (1 supra) has no bearing on the facts and circumstances of the case. In that decision, the High Court ordered permitting the settler to revoke a particular clause and permitted the said alteration being done by deed. Therefore, the Supreme Court, while interpreting Section 34 of the Act, held that u/s 34 "the Court could have only given "opinion, advice or direction on any presented question respecting the management or administration of the trust property" and not on any other matters. The relief prayed for by the settler did not relate to the management or administration of the trust property but on the other hand it asked for authority to alter the quantum of interest given to each of the beneficiaries by a deed *inter vivos*". In the instant case, there is no alteration sought in the clauses. Clause 6 of the trust deed provides as under:

"It is hereby further agreed and declared that on the 12th day of Muharrum of each Hijri year the trustees shall meet together and check the Sacred Relics lying in the said Bari Devadi so as to verify and ascertain that they are kept safe and intact in accordance with the particulars thereof specified in the schedules hereunder written as also all other Sacred Relics and articles which may from time to time hereafter be added to the said collection of Sacred Relics."

15. A reading of this clause would make it abundantly clear that the trustees are bound to inspect the sacred relics on the twelfth day of Muharrum and verify whether they are intact. Sri Anjaneyulu contended that when the clause specifically provides that inspection is to be done only by the trustees, no third person is entitled to inspect and if at all such inspection is done, it would be contrary to Clause 6 of the deed. I am afraid, this submission cannot be accepted. There is no prohibition for the trustees to take the assistance of a person of integrity for verification of the sacred relics. There is also no prohibition that the sacred relics could be inspected as and when the trustees desire. The only safeguard provided in Clause 6 is that at least on the twelfth day of Muharrum the trustees must visit and inspect the sacred relics and check them

whether they are intact. The submission that no third person other than the trustees could enter the premises and check the sacred relics runs contrary to the fact that apart from the respondents, who are the trustees, Princess Manoliya Jah and one Mr. Sadruddin Javeri, who are not the trustees, also entered the premises and inspected the sacred relics. Therefore, the submission on this aspect sounds hollow.

16. It is worthy to note that on 1-6-1991 around 4-30 p.m., a message was sent by Mr. Sadruddin Javeri, Principal Advisor and Chairman, H.E.H. the Nizam's Private Estate to the effect that the 1st respondent would be visiting the sacred relics on 2-6-1991 at 12-30 p.m. It is this aspect which is seriously canvassed by Sri Pratap Reddy stating that the respondents were aware that the petitioners were not in the city and the inspection was arranged under this background. The other people who are not connected with the trusts were also invited and the Secretary accompanying the respondents was prevented from inspecting the sacred relics. Though it is stated that on 25-7-1991 inspection took place, it is now found that no such inspection was held. Therefore, the letter dated 22-7-1991 is of provocative nature and throws aspersions on the petitioners and in order to dislodge the misgivings, an application u/s 34 of the Act was rightly filed and sought appointment of a Commissioner.

17. The question, therefore, is, what could be the proper interpretation of Section 34 of the Act? When the Section says "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", in my view, the Court has to necessarily take into consideration the background of such an enactment being brought by the Legislature. The intention of the Legislature, when it said "the opinion or advice or direction of the court could be sought on any present question respecting the management or administration of trust-property", has to be construed if there is mismanagement of the trust property or aspersion indicating something fishy. The gravity of the allegation and the contest under which such an apprehension gave rise to seek the assistance of a competent court, which has original jurisdiction, has to be necessarily taken into account by the Court while interpreting Section 34 of the Act. Any narrow interpretation by understanding the meaning of each word used in the section would be something like a student telling the meaning of a word put to him/her by the teacher. Of course, Courts cannot interpret a provision, which would add totally a new dimension to the provision, which was not intended by the legislation. In the instant case, when inspection was made by the respondents and his supporters without proper notice to the petitioners, letter dated 22-7-1991 was addressed intimating that certain valuable articles were missing or were not found. That amounts to some gravity in the situation. Therefore, the intention of the Legislature in this context has to be read in an appropriate manner and has to be necessarily construed that the Court has to safeguard the interest of the trust. The decision in Official Trustee's case (1 supra) is on a different footing where the Court permitted the petitioner therein

to amend the clause itself vesting certain powers. This is not so in the instant case. In my considered view, the Court below ought to have granted the relief sought by the petitioners. When there is no bar for the petitioners to inspect the sacred relics on a particular day, as Clause 6 is very clear about it, no special permission is needed from the Court for inspecting the sacred relics.

18. Having regard to the facts and circumstances of the case, I am of the clear view that the petitioners are entitled for the relief sought. Therefore, the order impugned is set aside and the revision petition is allowed.

19. In view of the discussion, I am satisfied that an advocate-Commissioner could be appointed solely for the purpose of inspecting the sacred relics housed in Bari Devadi, Khilwath Mubarak, Hyderabad and take inventory of the articles. Since the twelfth day of Muharrum is falling on July 3, 1993 and the order is being pronounced today, the 2nd July, 1993, it would not be possible for the Commissioner to inspect the sacred relics and take inventory of the same on 3-7-1993. Therefore, the following order is made to meet the situation:

(1) Sri K.F. Baba, Advocate, High Court of Andhra Pradesh, Hyderabad, is appointed as Commissioner to inspect the sacred relics mentioned in the schedules to the H.E.H. the Nizam's Sacred Relics Trust deed dated 2-11-1950 and the H.E.H. the Nizam's Supplemental Sacred Relics Trust deed dated 27-1-1952, including the accretions and additions thereto, located in the building known as "Bari Devadi, Khilwath Mubarak, Hyderabad" and take an inventory thereof.

(2) The Commissioner shall complete the inspection and inventory on or before July 10, 1993, after intimating to all the trustees including the Secretary of the trusts the time and date of inspection.

(3) The trustees and the Secretary of the trusts, in all probabilities, shall be present at the time of the Commissioner taking inventory, and render him all such assistance which he is required.

(4) The petitioners shall furnish the schedules appended to the trust deeds dated 2-11-1950 and 27-1-1952 mentioned above, to the Commissioner.

(5) The Commissioner is at liberty to take such assistance which, in his opinion, is necessary, including that of law enforcing agencies, to discharge his functions.

(6) The Commissioner is also at liberty to take the assistance of such person or persons as he thinks fit and proper for the purpose of taking inventory.

(7) The Commissioner shall obtain signatures of the persons present at the time of inventory on the inventory report.

(8) The Commissioner shall not allow any person other than the trustees, Secretary of the trusts and such other persons who, in his opinion, are necessary, at the time of taking inventory.

(9) The Commissioner, with the help of the trustees, shall take care in keeping the sacred relics safely and in a secured manner as per the usual practice by affixing the seals with their signatures.

(10) The Commissioner shall also take care that no sacred relics could be removed or replaced by any person at the time of taking inventory.

(11) The Commissioner shall submit the report before the Court of the Chief Judge, City Civil Court, Hyderabad in O.P. No. 564/92 on his file, on or before the 15th July, 1993.

20. The Commissioner's fee is fixed at Rs. 5,000/- (Rupees five thousands only). The petitioners shall pay to the Commissioner the fee fixed by this Court and obtain necessary receipt from him. The petitioners are, however, entitled to claim the above amount from out of the funds of the trust on production of the receipt given by the Commissioner.

21. On receipt of the report of the Commissioner, the Court below is directed to dispose of the Original Petition in accordance with the provisions of the Act.