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**Court :** Delhi

**Decided On :** Mar-23-1982

**Reported in :** AIR1982Delhi453; 21(1982)DLT404; 1982(3)DRJ207

**Judge :** A.B. Rohatgi and; Leela Seth, JJ.

**Acts :** Trust Act, 1882 - Sections 34

**Appeal No. :** Civil Revision Appeal No. 779 of 1981

**Appellant :** Shanti Devi

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** R.K. Makhija,; D.S. Marwah,; Alok Kumar,;

**Judgement :**

**Avadh Behari Rohatgi, J.**

(1) Shri Gopal Singh was a retired judge of the High Court for the States of Punjab and Haryana. He was a bachelor. He had no issue. He founded a charitable trust called Gopal Singh Trust. He executed a deed of trust on 11.10.1973 which was subsequently altered in some respects by another trust deed dated 30.6.75. The deed recites that the trust is created 'with a view to promote charitable objects such as health and medical facilities education & training of boys and girls and adults for acquisition of knowledge and development of character so as to make

them healthy and educated citizens, for amelioration and uplift of backward and poverty- stricken people of India, for international good will and understanding and for bettering the lot of women and children.'

(2) The trust deed provides that the founder shall be the administrator and manager of the trust and will be remunerated with Rs. 1600.00 per month. After his death the trust shall be managed by a trustee or trustees as may be declared by him. So Shri Gopal Singh was the sole trustee in his life time.

(3) At the time the trust deed was executed the founder was constructing a building in Niti Bagh, a lawyers' colony where he had been allotted a plot by the Niti Bagh Cooperative Society. This was House No. 10, Niti Bagh, New Delhi. The trust deed provides that 'such portion of the building at 10, Niti Bagh, when completed, may be used for office of the trust and for carrying out its purposes and objects as the sole trustee or the trustees deem it necessary. Its remaining portion be let out.'

(4) Shri Gopal Singh died on 15.9.1977. He did not appoint any trustees as was contemplated by him in the deed of trust. The deed provides for the constitution of a Board Of Trustees. Clause 5 says:

'If in case of appointment of Board of Trustees, any one of the trustees retires, resigns, dies, neglectful or wanting in capacity to act as a trustee, the appointment of that trustee shall be by the remaining trustee or trustees. In a meeting of the Board of Trustees, when so appointed, simple majority decisions by the Board will be effective on any question arising in the management of the affairs of the Trust, But the founder did not appoint any trustee, as we have said. Nor did he constitute any board of trustees. Shri Gopal Singh had two brothers, Sant Singh & Lal Singh. Sant Singh has a daughter Shanti Devi. Lal Singh is dead. He has left behind two sons-Amir Singh & Hans Raj. On the death of Shri Gopal Singh there was a scramble for possession of trust properties. On 1.6.1978 Shanti Devi and her father Sant Singh made an application under section 34 of the Indian Trusts Act 1882 (the Act) to the district judge seeking his opinion, advice and direction for the due administration of the trust properties of Gopal Singh Trust. In the application Shanti Devi alleged that the founder had adopted her, who was misplace, as his

daughter. She claimed to be the only heir and legal representative of the founder of the trust. She also claimed that she was the do facte trustee of Gopal Singh Trust. She declared herself as a trustee and appointed her father, Sant Singh, as a managing trustee. This appointment of herself as trustee and her father as managing trustee was alleged to have been made by Shanti Devi in the purported 'exercise of her powers conferred by section 73 of the Indian Trusts Act 1882.'

(5) Shanti Devi and Sant Singh alleged that they were vitally interested in the proper management and control of Gopal Singh Trust and with a view to administer the trust properly and also for their own protection they seek the opinion, advice and direction of the court for the purpose of leasing out 10 Niti Bagh, the building constructed by Shri Gopal Singh. They prayed that 'appropriate advice and/or direction in the matter of management and administration of trust property of Gopal Singh Trust, in particular 10 Niti Bagh, New Delhi in relation to leasing out the said property in whole or in part and the maintenance of library housed in the said property be made and the said property be directed to be given on lease or license on such rent or license fee as may be best available, by the petitioner'.

(6) This application was opposed by Amir Singh and Hans Raj sons of Shri Lal Chand, and the Niti Bagh Welfare Association. During the pendency of the case, two advocates of this court, Shri J. Mahajan and Shri Satya Dev Sharma, made applications to the court that 10 Niti Bagh or part thereof may be let out to them and that they were prepared to pay such rent as may be considered reasonable by the court. Subsequently, a third application was made by M/s Universal Commercial Corporation for premises being given to them on rent and they offered to pay Rs. 14,000.00 per month. Yet a fourth offer came from another party for taking the premises on a rent of Rs. 17,000.00 per month.

(7) When these offers were before the court Shanti Devi and Sant Singh made an application on 5.8.81 under O. 23 rule I Civil Procedure Code that they wanted to withdraw their application as a settlement had been reached between them on the one hand and Amir Singh & Hans Raj on the other. This application for withdrawal of the case was resisted by all parties except Amir Singh & Hans Raj.

(8) On this application the question arose before the district judge whether he should allow Shanti Devi & Sant Singh to withdraw the main petition under section 34 of the Act. This application was strenuously contested by Mr. Sharma. Mr. Mahajan, Niti Bagh Welfare Association and other contenders for renting the house. The learned district judge by order dated 11. 8. 81 held that he could not allow the petition to be withdrawn & refused the application under O. 23 rule 1 C P.C. As regards the rival claims of the parties for premises being given on rent to them, he ordered that the first floor of 10 Niti Bagh be given to Mr. J. Mahajan on a license fee of Rs. 3000.00 per month. The second and the top barsati floors, he said, be given to Mr. Satya Dev Sharma as a licensee on a licensee fee of Rs. 3000.00 per month. Since the premises had already been given to another party by Shanti Devi & Sant Singh, the district judge ordered that possession be given to Mr. J. Mahajan and Mr. S.D. Sharma immediately. From the order of the district judge this revision petition has been brought by Shanti Devi & Sant Singh.

(9) The matter in the first instance came before Charanjit Talwar J. The learned judge thought that in view of the importance of the question involved and in view of the fact that there is no case law on the point the matter should be heard by a larger bench. This is how the case has come to us for decision.

(10) We would emphasize what has often been overlooked that the Indian Trusts Act of 1882 does not apply to public trusts and charitable trusts. As the preamble of the Act states it is 'an act to define & amend the law relating to private trusts & trustee.' Section 1 of the Act says that nothing herein contained 'applies to public or private, religious or charitable endowments'. therefore, all charitable trusts are excluded from the operation of the Act. Admittedly, Shri Gopal Singh founded 'an express trust for public purposes of a charitable nature', to use the language of section 92, Civil Procedure Code The object of the trust clearly show that it is a charitable trust. All charitable trusts are public trusts. Public trusts and charitable trusts are synonymous expression. They are essentially different from private trusts in that the beneficiaries are uncertain. at charitable trusts are for the benefit of the public and they are enforceable by the Advocate General suing on behalf of the public or more persons having an interest in the trust with the leave of the court. Section 92 is the special remedy for 'public charities'. In the case of a

breach of trust where the direction of the court is necessary for the administration of a public charity a suit can be instituted in the court of the district judge for one or more of the reliefs mentioned in the section.

(11) The Act applies to private trusts only. The most fundamental distinction between private & public trusts depends upon the character of the person for whose benefit they are created. The essential difference between a private and public trust is that in the former the beneficiaries are defined and ascertained individuals who within a definite time can be definitely ascertained but in the latter the beneficial interest must be vested in an uncertain and fluctuating body of persons either the public at large or some considerable portion of it answering particular description

(12) In *Deoki Nandan v. Murlidhar*, : [1956]1SCR756 it was observed by the Supreme Court:

'THE distinction a private and Public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of being ascertained on the latter they constitute a body which is incapable of ascertainment'.

'THE following statement of law in *Lawin on Trust*, Fifteenth Edition, pp. 15)16 was approved: 'By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expression. In private trusts beneficial interest is vested absolutely in one or more individuals who are, or within certain time may be, definitely ascertained.

(13) A public or charitable trust has for its objects the members of an uncertain and fluctuating body. Such a trust is permanent and indefinite in character and is not confined within the limits prescribed to a settlement upon a private trust.

(Lawin 16th ed. p. 7). A charity once established can never fail : a charity once established does not die, though its nature may be changed. If by a change in social habits and needs or by a change in law, the purpose of an established charity becomes superfluous or illegal, or otherwise cases to be beneficial to the community, it is the duty of the trustees to apply to the court for a cypres scheme (Halsbury 3rd ed. vol. 4 p. 209. See also 4th ed. vol. 5 page 310).

(14) Private trusts are clearly distinguishable from public trusts. It is important to distinguish cases of charitable endowments from those of private trusts and to remember that the Act of 1882 is confined only to private trusts other than religious or charitable endowments. This distinction of capital importance has been overlooked in this case. The proceedings have dragged on and no one brought it to the notice of the learned judge that the application under section 34 of the Act was not maintainable because Shri Gopal Singh created not a private trust but a public charitable trust. Public charitable trusts are outside the scope of the Act. The application ought to have been dismissed on this short ground.

(15) There is one other point, Shanti Davi Claims that she was adopted by Shri Gopal Singh and that as a legal representative of the settler she is entitled to act as trustee. She says that she is the successor in office on whom the trust property has devolved. This is the foundation of her claim This claim is baseless. In the trust deed the founder declared that he was a bachelor and had no issue. To his properties, investments and assets which were fettered on trust, he declared in the trust deed that, none of his heirs-in-interest shall be entitled to raise any claim thereto'. Shanti Devi is not legal representative of the founder in view of the express provision in the trust deed. Nor can she found her claim on section 73 of the Act which applies to private trusts. Section 73 of the Act does not extend to charitable trusts. (See Gopu Kalandavelu Chetty v. Semi Royer, 28 Mad 517.

(16) In our opinion, no application can be made under section 34 of the case of a charitable trust such as was created by Shri Gopal Singh. Shanti Devi has no right 'to seek opinion, advice or direction of the court' under section 34 because she is not a trustee appointed under the trust deed. She has appointed herself as the trustee on the specious ground that she is the legal representative of the

deceased founder. In respect of a charitable trust no one can appoint himself or herself as a trustee in the manner Shanti Devi has done unless the trust deed so provides. Under section 92, G.P.C. the court can settle a scheme, appoint new trustee, authorise the whole or any part of the trust property to be let, sold, mortgaged or exchanged. Under section 34 of the Act the court will not give opinion, advice and direction in the case of a charitable trust to a person who cannot be better described than as a trustee de son tort. Courts do not give advice to intermeddlers, officious bystanders or self-styled trustees. Shanti Devi is 'doing all that the claims wrongly and without any title. 'A person who without title, chooses to take upon himself the character of a trustee becomes a trustee de son tort. He is liable to account for what he has done or what he has received while so acting and cannot be heard to say that he had no right to act as trustee. Budres Das Mukim v. CL. Jehurry, 33 Cal 789 per Woodreffe. J. See Mukharjee. 'Hindu Law of Religious and Charitable Trust' 4th ed. p. 471-472). A trustee de son tort cannot say to the court, 'give me advice'.

(17) The concept of trust posits a useful division between responsibility and benefit. The trustee is recognised as the owner at law. But on him is imposed the equitable duty of carrying out the terms of the trust. The use Maitland's phrase, this division takes place. But no trustee can make a profit from his trust. To those who stand in a fiducisry position the only advice that can be given is the hallowed orison, 'lead us not into temptation'. (Wormley v. Wormley 21 U.S. 421 per Johnson, J.).

(18) That the settler did not appoint trustees has never prevented courts of equity from enforcing a trust. A trust will not fall for want of a trustee. This is the principle on which courts have acted. Under section 92 G.P.C. the court can appoint new trustees for the administration of the trust, what had made the trust so effective is the co-operation of the court may be asked to supervise the execution of the trust deed. If the directions of the court are necessary for the administration of the trust a suit can be brought under section 92, G.P.C. The directions such as are necessary for carrying out the trust can be given to a trustee, either the existing trustee where is there one, or the new trustee, where one is to be appointed. (Sudree Das v. Chunni Lal supra at p. 809). In a sub under section 92 the court

can remove a trustee de son tort and appoint a new trustee. (Ramdas Bhagat v. Krishna Prasad : AIR1940 Pat425 .

(19) In our opinion the application under section 34 was misconceived and ought to have been dismissed in limine. Section 92 G.P.C. is the answer.

(20) There is some money in the trust account in the bank. The parties have agreed before us that they will not operate the account for a month to enable proper proceedings to be brought for the administration of Gopal Singh Trust.

(21) For these reasons we allow the revision petition and hold that the application under section 34 of the Act is incompetent and not maintainable and dismiss the same but without costs.

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