

(2003) 04 JH CK 0004

Jharkhand High Court

Case No: LPA No. 50 of 2002

Ramakrishna Math

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: April 17, 2003

Acts Referred:

- Charitable and Religious Trusts Act, 1920 - Section 7
- Civil Procedure Code, 1908 (CPC) - Section 92
- Constitution of India, 1950 - Article 226
- Trusts Act, 1882 - Section 34

Citation: (2003) 2 JCR 672

Hon'ble Judges: P.K. Balasubramanyan, C.J; Ramesh Kumar Merathia, J

Bench: Division Bench

Advocate: P.K. Sinha, Rajeev Ranjan and Pandey Neeraj Rai, for the Appellant; Sameer Saurav and Nilesh Kumar, JC to AG, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Balasubramanyan, C.J.

An application u/s 7 of the Charitable and Religious Trusts Act, 1920 read with Section 34 of the Indian Trust Act was filed by Swami Prajnananda praying for an order transferring the assets and properties belonging to Ramakrishna Vivekanand Ashram, Ghatshila in favour of Ramakrishna Math, Belur, Howrah, West Bengal and for vesting of all the properties in Ramakrishna Math, Belur to be utilized for the objects and purposes as decided by the trustees of Ramakrishna Math, Belur as they think best and proper without any condition, restriction, obligation or charge and on such transfer, the trust created by one Sushila Bala Ghosh be dissolved and the applicant, alleged to be the sole trustee of Ramakrishna Vivekanand Ashram, be discharged free from all acts, duties and obligations under the deed of trust executed by Sushila Bala Ghosh and to pass other

appropriate orders as deemed fit. The District Judge, East Singhbhum at Jam-shedpur by order dated 29.7.1999 took the view that the prayers were made by a person who claimed to be the trustee and the question whether he was the trustee appeared to be a complicated one not capable of being decided in a proceeding u/s 7 of Charitable and Religious Trusts Act, 1920 read with Section 34 of the Indian Trust Act and the prayers made in the application also required to be tried elaborately and decided and hence, the application was not maintainable. In short, that Court took the view that the questions that had to be decided could not be decided in a summary way in a proceeding u/s 7 of the Charitable and Religious Trusts Act, 1920. Thus, the application was dismissed. Challenging the said dismissal, Swami Prajanananda filed the Writ Petition, CWJC No. 2027 of 2000 before this Court. The Ramakrishna Math, Belur was im-pleaded as respondent No. 3 in the Writ Petition, Pending the Writ Petition, Swami Prajanananda died. Thereupon Ramakrishna Math, Belur (respondent No. 3 in the Writ Petition) was transposed as the petitioner. At the subsequent hearing of the Writ Petition, the learned Single Judge after a consideration of the relevant aspects, came to the conclusion that the District Judge was justified in holding that the questions to be decided could not satisfactorily be decided in an application u/s 7 of the Charitable and Religious Trusts Act and that the question could not also be satisfactorily decided in a proceeding under Article 226 of the Constitution of India and in that situation, the petitioner had to approach the appropriate Court for relief, if the petitioner is so inclined. Thus, the Writ Petition was dismissed. The dismissal of the Writ Petition thus, is challenged in this Appeal.

2. Learned counsel appearing for the appellant took us elaborately through the various provisions of the Indian Trusts Act, with special emphasis on Section 71, 73 and 74 thereof to contend that in a proceeding u/s 34 of the Indian Trusts Act, which is in part materiel with Section 7 of the Charitable and Religious Trusts Act, the questions sought to be raised could be decided and even an order for sale of the trust properties could be made. Counsel relied on the decisions of the Calcutta High Court in [Smt. Nilima Ghosh and Another Vs. Prakriti Bhusan Mitter](#), and that of the Andhra Pradesh High Court in [Muffakham Jah Bahadur and Others Vs. H.E.H. Nawab Mir Barkat Ali Khan Bahadur, Mukarram Jah and Others](#), . In addition to these decisions, we have also to notice the decision of the Supreme Court in [Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another](#), which clearly indicates the restrictions on the power of the Court when it is moved u/s 34 of the Indian Trusts Act and which is authority for the proposition that in a proceeding under that section, there were certain orders that could not be passed and that restriction was inherent in the section itself.

3. On a scrutiny of Section 7 of the Charitable and Religious Trusts Act and, Section 34 of the Indian Trust Act (which may not strictly apply since the trust involved is a public trust or charity and the Indian Trusts Act governs only private trusts) in the light of the decision of the Supreme Court, it is clear that the jurisdiction of the Court is more or less advisory, of course, with a power to issue certain directions for carrying forward the trust or for fulfilling the wishes of the author of the trust. But such a power is different from permitting

the extinguishing of a trust and from permitting transfer of the assets of the trust in favour of another entity with a further declaration that the other entity in whom the properties are to vest, has no liability regarding or obligation to the trust. The questions sought to be raised obviously have to be decided in a properly constituted suit in terms of Section 92 of the CPC or by resorting to any other provision of law that may be available for getting a decree or order binding on those who are parties to it. It must be noted that the applicant Swami Prajnanananda was not an original trustee appointed by the author of the trust under Annexure-1, the deed of trust but he claimed to have been appointed a trustee by virtue of an epistle said to have been written by Sushila Bala Ghosh. The trial Court felt that it could not straight way proceed on the basis that a trustee had moved the application u/s 7 of the Charitable and Religious Trust Act so as to pass an order as permitted by that provision. That also is a question that has to be decided in a properly constituted suit or other proceeding initiated by the beneficiaries or the Ramakrishna Math, Belur. We may incidentally notice that the Writ Petition and the present appeal are being pursued by the Ramakrishna Math, Belur which cannot be said to be the beneficiary under the deed of trust Annexure-1, dated 27.1.1941.

4. Thus, on a consideration of the relevant aspects, without going into it in too much detail lest we prejudice any fresh proceeding that may be initiated, we are inclined to agree with the trial Court and the learned Single Judge that the questions sought to be raised cannot be decided in this proceeding and the relief sought for could not be granted in such an application or in exercise of a jurisdiction which is seen to be only advisory. Suffice it to say that, we see no reason to interfere with the decision of the learned Single Judge. We therefore, confirm that decision and dismiss this appeal but without prejudice to rights of those, who are entitled to do so, to initiate any other appropriate proceeding or to file a suit for the reliefs now claimed.

R.K. Merathia, J.

5. I agree.