

A

CHARU KISHOR MEHTA

v.

JOINT CHARITY COMMISSIONER, GREATER BOMBAY
REGION & ORS.

B

(Civil Appeal No. 2819 OF 2015)

MARCH 12, 2015

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

C

Bombay Public Trust Act, 1950 – s. 41D – Application under – By one of the trustees of the Public Trust – Against the other trustees (respondent Nos. 2 to 9) including a deceased trustee – Seeking their dismissal from trusteeship and alleging nonfeasance and malfeasance – Application dismissed by Joint Charity Commissioner holding that 7 of the trustees are liable to be exonerated as they can be only held negligent in delegating their powers and duties in favour of the deceased trustee (the managing trustee) – The order was affirmed by High Court – On appeal, held: Courts below rightly exonerated the trustees (respondents) in a reasonable and fair manner – Delegation of powers and functions by the respondent-trustees in favour of the Managing Trustee was permissible because the instrument of the Trust provided for that – Trusts – Trusts Act, 1882 – s. 46 and 47.

F

Dismissing the appeal, the Court

G

HELD: 1. Clauses 9 and 11(h) of the Trust Deed of the Trust provide for the delegation of the powers and functions by the trustees of the Trust by appointing one or more of the existing Trustees from among themselves to discharge all such powers and functions of the trustees of the Trust as they may deem fit and proper. By the Resolution dated 30.8.2001, the trustees, respondent nos.2 to 9 including the appellant had

H

CHARU KISHOR MEHTA v. JOINT CHARITY COMMR., 847
GREATER BOMBAY REGION

delegated their powers and functions to the deceased to manage the affairs of the trust. Thus, clauses 9 and 11 (h) of the Trust deed clearly go to show that there is ample scope for such delegation of powers and functions of the Trustees to another Trustee or Trustees of the Trust to act on their behalf. [Paras 17, 18 and 19] [857-F; 858-E; 859-F-G]

J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd. (2005) 1 SCC 172: 2004 (5) Suppl. SCR 648 – relied on.

2. The plea on the basis of Sections 46 and 47 of the Trusts Act, 1882, to the effect that the trustee cannot renounce his office that requires him to discharge his duties and functions and he cannot delegate the same to a co-trustee, is not applicable to the public charitable Trust. [Para 21] [861-E]

Thayammal v. Kanakammal & Ors. (2005) 1 SCC 457: 2004 (6) Suppl. SCR 734 – relied on.

3. The Joint Charity Commissioner has rightly held that the guilt of respondent Nos. 2 to 9 are not proved and has also held that they are negligent for only delegating their powers and functions to the Managing Trustee, but the charges levelled against them are not proved as they are not responsible for the alleged transactions, therefore, there is no complicity on the allegations made against them. The said conclusion of the Commissioner is based on facts and evidence on record, therefore, he has rightly exonerated them from the liability and has not imposed punishment u/s. 41D of the Act, in exercise of his power in a reasonable and fair manner and therefore, the same cannot be said to be arbitrary and unreasonable in nature. [Para 23] [864-E-H]

- A *Sheikh Abdul Kayum & Ors. v. Mulla Alibhai & Ors.* (1963) 3 SCR 623; *J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd.* (2005) 1 SCC 172: 2004 (5) Suppl. SCR 648; *D. Gopalaswami Mudaliar v. Subramanya Pillai & Anr.* (1942) 1 MLJ 272; *Lala Man Mohan Das v. Janki Prasad & Ors.* AIR (32) 1945 Privy Council 23 – distinguished.
- B

Case Law Reference

- | | | | |
|---|-----------------------------------|----------------|---------|
| C | AIR (32) 1945
Privy Council 23 | distinguished. | Para 10 |
| | (1963) 3 SCR 623 | distinguished. | Para 13 |
| | 2004(5) Suppl. SCR 648 | relied on. | Para 19 |
| D | 2004 (6) Suppl. SCR 734 | relied on. | Para 21 |
| | (1942) 1 MLJ 272 | distinguished. | Para 24 |

- E CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2819 of 2015

From the Judgment and Order dated 1.12.2010 of the Division bench of High Court of Bombay in Letters Patent Appeal No. 268 of 2010 in W. P. No. 9501 of 2009

- F V. Giri, Ajay Bhargava, Vanita Bhargava, Raj Patel, Nitin Mishra, (for Khaitan & Co.) for the appellant.

- G Dr. Rajeev Dhawan, Shankar Chillarge, AGA, Aniruddha P. Mayeee, Balaji Srinivasan, Mihir Mody, Sandeep Gupta, Tushar Gupta, Jesal Shah, (for K Ashar & Co.), Prateek S., Ranjeeta Rohtagi, Gaurav Agrawal for the respondents.

The Judgment of the Court was delivered by

- H V. GOPALA GOWDA, J. 1. Leave granted.

CHARU KISHOR MEHTA v. JOINT CHARITY COMMR., 849
GREATER BOMBAY REGION [V. GOPALA GOWDA, J.]

2. This appeal has been filed by the appellant against the impugned judgment and order dated 01.12.2010 of the High Court of Judicature at Bombay, in Letters Patent Appeal No.268 of 2010 (for short "LPA") in Writ Petition No. 9501 of 2009, whereby the High Court dismissed the LPA filed by the appellant and upheld the judgment and order dated 02.03.2010 passed by the learned single Judge of the High Court.

3. For the purpose of considering the rival legal contentions urged on behalf of the parties in this appeal and with a view to find out whether this Court is required to interfere with the impugned judgment and order of the High Court, the necessary facts are briefly stated hereunder:

The appellant herein is the permanent trustee of the Lilavati Kirtilal Mehta Medical Trust (for short "the Trust") which is a public registered Trust in accordance with the terms of the registered Trust Deed and is governed under the provisions of the Bombay Public Trust Act, 1950 (for short "the Act"). The respondent nos.2 to 9 are the trustees of the aforesaid Trust along with the now deceased Vijay Mehta, who was the Managing Trustee of the Trust during the relevant period of time. The case of the appellant is that respondent Nos.2 to 9 have allegedly continuously neglected their duties and have committed malfeasance by acting in breach of trust with respect to the Trust properties. They have also misappropriated and improperly dealt with the properties of the Trust from the year 2001 to 2006. It has been further alleged by the appellant that they have also squandered the Trust money to the tune of crores of rupees and have committed serious acts of malfeasance.

4. The appellant on coming to know of this fact in the year 2006, filed an application, being Application No. 17 of 2006 under Section 41D of the Act before the Joint Charity Commissioner (for short "JCC"), making various allegations against the aforesaid respondent Nos.2 to 9 including the

- A deceased Vijay Mehta and alleged that they are liable for dismissal from their Trusteeship of the Trust for their acts of nonfeasance and malfeasance, *inter alia*, contending that they have abdicated their functions and duties as provided under the provision of Section 36A of the Act, after their acceptance as trustees in the said Trust as provided under Sections 46 and 47 of the Indian Trust Act, 1882, which is applicable to the fact situation of the present case.

- On the basis of the said application, the JCC, framed 8 grave and serious charges jointly against the respondent Nos. 2 to 9 (original respondent nos. 1 to 8) and the deceased Vijay Mehta (the original respondent no.9).

5. The JCC vide its order dated 25.9.2009, after affording opportunity to the parties in the present case, recorded its findings on the charges and held that the charges against respondent Nos. 2 to 9 except charge No. 4 which was against the deceased Vijay Mehta have been proved. The JCC however, dismissed the application against the respondent Nos. 2 to 9 and exonerated them by holding that they are only negligent in putting blind faith in delegating their powers and duties to be performed as trustees of the Trust in favour of the deceased Vijay Mehta, the Managing Trustee of the Trust. Therefore, the application against them was dismissed by him. The appellant herein being aggrieved by the said findings and reasons recorded by the JCC filed writ petition No. 9501 of 2009 before the learned single Judge of the High Court, whereby the High Court vide its order dated 2.3.2010 dismissed the writ petition.

6. Thereafter, the appellant filed LPA No.268 of 2010 before the High Court, which was also dismissed by the Division Bench on the basis of the findings recorded by the learned single Judge and held that the charges framed against the respondent Nos. 2 to 9 by the JCC were established.

However, as there was no evidence against respondent Nos. 2 to 9 to hold them responsible for the transactions from the year 2001 to 2006, except on charge No.4, it has held that there is culpability of the deceased Vijay Mehta and further, the JCC has held that the charges against respondent Nos. 2 to 9 in delegating their powers and functions to the deceased Vijay Mehta as per clauses 9 and 11(h) of the Trust Deed vide the Resolution of the Trust dated 30.8.2001 stood established and proved against them but they cannot be held guilty for the same as the appellant herself was a signatory to the above Resolution. The Division Bench of the High Court vide order dated 1.12.2010 declined to interfere with the order dated 2.3.2010 passed by the learned single Judge and found that the same is justified after considering that the appellant herself was a party to the above mentioned Resolution that has appointed the deceased Vijay Mehta as the Managing Trustee of the Trust. Further, no steps were taken for the cancellation of the Resolution by her as she did not even enter into the witness box before the JCC to justify her conduct that she is not a signatory to the Resolution wherein the deceased Vijay Mehta was appointed as the Managing Trustee by other Trustees who are respondent nos.2 to 9 in the present appeal. Further, the High Court held that the appellant did not object to his functioning as a Managing Trustee at the time when all the powers were being delegated to him and found that the petition was not seriously contested before the learned single Judge and rejected the appeal of the appellant.

7. Aggrieved by the said judgment and order of the Division Bench of the High Court, the present appeal is filed by the appellant with a prayer to set aside the judgments and orders of the JCC and the High Court by quashing the same and requested to pass such orders as this Court may deem fit and proper in the facts and circumstances of the case by urging various facts and legal contentions.

A 8. Mr. V. Giri, the learned senior counsel on behalf of
the appellant has contended that the appellant was not present
in any of the meetings during the relevant period, i.e. 30.3.2002
and 1.4.2007 and in particular the meetings held on 30.8.2001
and 19.7.2002 which fact has been deposed by Mr. Kishor K.
B Mehta (the original respondent No.10 before the JCC), the
husband of the appellant in the proceedings before the JCC.
The JCC however, has erroneously exonerated respondent
Nos. 2 to 9 and has imposed punishment for the removal of
C the deceased Vijay Mehta only, in exercise of its discretionary
power under the provision of Section 41D of the Act even
though respondent Nos. 2 to 9 were also found guilty of
nonfeasance and misfeasance charges in respect of the Trust
properties. Therefore, the exercise of the discretionary power
D under the provision of Section 41D of the Act by the JCC is
erroneous in law as he has failed to impose any penalty against
them as provided under the above provision of the Act.

 9. Further, it is contended by the learned senior counsel
for the appellant that the appointment of the deceased Vijay
E Mehta as the Managing Trustee of the Trust on behalf of
respondent nos. 2 to 9 cannot be construed as the abdication
of the core functions of the Trust as the trustees have to
prudentially manage the affairs of the Trust in such a manner
F as a man of ordinary prudence would do. He has placed strong
reliance upon Section 36A of the Act in support of the above
legal contentions and has further contended that the provision
under Section 15 of the Indian Trust Act, 1882, which provision
reiterates that a trustee is bound to deal with the Trust
G properties as carefully as a man of ordinary prudence would
deal with such property, as if it were his own. Sections 46 and
47 of the Indian Trust Act, 1882, state that the trustee cannot
renounce his office that requires him to discharge his duties
and functions and he cannot delegate the same to a co-trustee
H unless the instrument of trust so provides.

Therefore, it is contended by the learned senior counsel that A
non exercise of the discretionary powers by the JCC properly
and not imposing penalty as provided under Section 41D of
the Act upon the respondent nos. 2 to 9 is erroneous in law
which order of him has been erroneously approved by the B
High Court in the impugned judgment and order and therefore,
the learned senior counsel for the appellant has prayed for
setting aside the same. Further, during the course of
submission, the learned senior counsel had produced an
affidavit dated 06.01.2015 on behalf of the appellant, wherein C
the Minutes Book of the Trust, for the period 2000-2007 was
produced before this Court in support of his contention, the
said Minutes Book is produced by him to highlight the facts
that if they are read as they stand, the same would
unequivocally and predominantly demonstrate that the original D
respondent Nos. 1 to 8 before the JCC were positively aware
about the *mala fide* acts of the deceased Managing Trustee
Vijay Mehta for which he had been dismissed from the
trusteeship of the Trust.

10. Further, the Minutes of the Meetings of the Trust E
during the relevant period would point out that all the major
decisions of the deceased Vijay Mehta were conveyed by him
to the other trustees and the findings recorded by the JCC on
this aspect in his judgment and order are enough to show that F
the respondent Nos. 2 to 9 in the present case and other
trustees were very much aware of the various transactions and
functions of the Trust. In these circumstances, the JCC could
not have exonerated respondent Nos. 2 to 9 by holding that
they were unaware of the misdeeds of the deceased Vijay G
Mehta in the affairs of the Trust as they could have interfered
and taken corrective steps to save the Trust from any further
losses. The learned senior counsel for the appellant has placed
strong reliance upon the decision of the Privy Council in the
case of *Lala Man Mohan Das v. Janki Prasad & Ors.*¹ in H

¹ AIR (32) 1945 Privy Council 23

A support of his legal contention to show that the law does not
permit delegation of the powers and functions by the Trustee
in favour of another Trustee except in cases of necessity or
with the consent of the beneficiary or the authority of the Trust
Deed itself and also to show that there is delegation of some
B functions only. However, the delegation of all functions and all
powers is nothing short of the abdication of the same in favour
of a new body of men and also to further show that the act of
one trustee done with the sanction and approval of a co-trustee
C may be regarded as an act of both. Therefore, the non exercise
of his discretionary powers and the non imposition of penalty
by the JCC on respondent nos. 2 to 9 as provided under
Section 41D of the Act is erroneous in law which has further
been erroneously upheld by the High Court in the impugned
D judgment and order.

11. On the other hand, it has been contended by Dr.
Rajeev Dhawan, the learned senior counsel appearing for the
respondent nos. 2 to 9 that both the JCC as well as the High
Court took into consideration the fact that they cannot be held
E responsible because they had completely delegated their
powers and functions to the deceased Vijay Mehta and
therefore, they are not responsible for any acts of omission
and commission committed by the Managing Trustee and
F hence no action could be taken against them under the provision
of Section 41D of the Act by the JCC.

12. He has further vehemently sought to justify the
findings and reasons recorded in the judgment and order in
not imposing penalty upon them by the JCC which has been
G concurred with by the High Court based on clauses 9 and 11(h)
of the Trust Deed which permit the trustees of the Trust to
delegate their powers and duties to the Managing Trustee as
has been delegated by respondent nos. 2 to 9 in favour of the
deceased Vijay Mehta, who was the Managing Trustee of the
H

Trust, by passing the Resolution of the Trust dated 30.8.2001, to which Resolution, the appellant is also the signatory. He has also placed strong reliance upon clauses 9 and 11(h) of the Trust Deed, which enables the Trustees to delegate their powers and duties in favour of another trustee.

13. The learned senior counsel also placed reliance upon the decision of this Court in *Sheikh Abdul Kayum & Ors. v. Mulla Alibhai & Ors.*² to substantiate his legal submission that the aforesaid clause of the Trust Deed enables respondent nos. 2 to 9 to delegate their powers and duties to the Managing Trustee of the Trust. Further, he has submitted that as is clear from the minutes of the Resolution of the Trust held on 30.8.2001, the appellant was present in the meeting of the Resolution. On the basis of the same, the JCC has rightly held that the appellant was present in the meeting and the Resolution was valid. He has further placed reliance upon the findings recorded by the JCC and the High Court in the impugned judgment and orders wherein they have held that the delegation of powers and duties by respondent nos. 2 to 9 in favour of the deceased Vijay Mehta is proper and non imposition of punishment upon them by both the JCC and the High Court for the reason that their culpability on the charges has not been proved by the appellant and therefore, it is urged by him that they are legal and valid and the same cannot be interfered with by this Court in exercise of its jurisdiction.

14. The learned senior counsel for the respondent nos. 2 to 9 has also placed strong reliance on the findings of the JCC in his judgment and order and upon the provisions of Section 41D of the Act, contending that the JCC has rightly exercised his discretionary power in not imposing penalty upon respondent nos. 2 to 9, which has also been noted by the High Court stating that the findings recorded by the JCC against

² (1963) 3 SCR 623

A the said respondents did not warrant interference by the High Court to impose penalty as provided under Section 41D of the Act. Alternatively, he has also submitted that the charges made against the above respondents do not warrant exercise of power by the JCC under Section 41D of the Act to impose
B penalty upon the above respondents, as the said provisions would have serious consequence by imposing punishment upon the respondent Nos. 2 to 9 and therefore, the same shall not be strictly adhered to.

C 15. Further it has been contended by him that the appellant was also one of the trustees of the Trust at the meeting on 30.8.2001, who had also delegated her powers and functions in favour of the Managing Trustee and she did not even enter into the witness box before the JCC to refute her
D participation in the meeting and her signature on the Resolution passed on the date referred to above, wherein she has delegated her powers and functions in favour of the deceased Vijay Mehta. Further, she did not produce the Trust records when asked by the JCC to do so, for this reason alone the
E JCC should have rejected the application of the appellant filed against respondent nos. 2 to 9.

F 16. It is further vehemently contended by the learned senior counsel for the above respondents that the appellant has indulged in the abuse of process of the Authority of the JCC by filing a complaint before him when she herself was complicit in the delegation of powers and functions to the deceased Vijay Mehta. Thus, she cannot contend that the delegation of powers and duties to the said Vijay Mehta by
G the trustees-respondent nos. 2 to 9, vide the Resolution of the Trust dated 30.8.2001 is an invalid delegation. Therefore, the learned senior counsel for the respondents submits that the view of the JCC which has been rightly concurred with by the
H High Court is legal and valid. Hence, no substantial question

CHARU KISHOR MEHTA v. JOINT CHARITY COMMR., 857
GREATER BOMBAY REGION [V. GOPALA GOWDA, J.]

of law is involved in this case for the consideration and A
interference by this Court in exercise of its appellate jurisdiction
against the impugned judgment and order. The other learned
counsels on behalf of the other respondents have also adopted
the submission of the learned senior counsel who has argued
on behalf of the respondent Nos. 2 to 9. B

17. With reference to the abovementioned rival legal
contentions urged on behalf of the parties, we have examined
the impugned judgements and orders of the JCC as well as C
the High Court to find out whether any substantial question of
law would arise in exercise of the appellate jurisdiction of this
Court. After careful examination of the documents produced
by the appellant before this Court and on a careful perusal of
the judgments and orders of the JCC and the High Court, we D
are of the view that no substantial question of law would arise
in this case as there is no miscarriage of justice for our
interference. In support of the above said conclusions arrived
at by us, we record our reasons as hereunder:-

It is an undisputed fact that the Lilavati Kirtilal Mehta E
Medical Trust is a public registered Trust under the provisions
of the Act. The clauses 9 and 11(h) of the Trust Deed of the
Trust which are extracted below provide for the delegation of
the powers and functions by the trustees of the Trust by
appointing one or more of the existing Trustees from among F
themselves to discharge all such powers and functions of the
trustees of the Trust as they may deem fit and proper. The
relevant clauses of the Trust Deed read thus:-

"9. The trustees for the time being of these presents may G
appoint one or more of the trustees from among them as
the Managing Trustee or Managing Trustees, with all or
such of the powers and authorities of the Trustees as the
Trustees may think fit, and may from time to time withdraw H

A any such powers and authorities.

11. For the accomplishment of the Trustees of these presents and without prejudice to the generality of any powers hereby or by law conferred or implied or vested in the Trustees the following powers and authorities are hereby expressly conferred on the Trustees, that is to say

B

:-

C

(h). To delegate by Power of Authority or otherwise to any Trustee or Trustees or other persons whomsoever any power implied by law or conferred by statute or vested in the Trustees by these presents but the Trustees shall not be held liable or responsible for the acts or defaults of any persons or person but only for their own respective acts and defaults;"

D

E

18. The findings of the JCC are based on the pleadings and the material evidence produced on record by the parties and the Resolution dated 30.8.2001, wherein the trustees, respondent nos.2 to 9 including the appellant of the Trust had delegated their powers and functions to the deceased Vijay Mehta to manage the affairs of the trust. The relevant paragraphs 1 to 4 and 9 of the Resolution dated 30.08.2001 regarding the delegation of powers given to the delegatee deceased Vijay Mehta read thus:-

F

G

"Resolved that Shri Vijay K. Mehta be and is hereby appointed as Managing Trustee of the Trust with absolute and sole powers and authority in respect of the management of the Trust and all the activities of the Trust subject to provisions of the law applicable to a Charitable Trust including the following :-

H

1. To manage the affairs of Lilavati Hospital & Research Centre, Mumbai in all respects viz. Financial, Technical, Administrative and Management of the Hospital.

2. To manage the affairs of Lilavati Kirtilal Mehta Charitable Hospital, Palanpur in all respects viz. Financial, Technical Administrative and Management of the Hospital. A

3. To appoint and authorise any agency and/or bankers and/or any executives to execute the functions and/or any work of the activities of the Trust and to appoint any Trustees to execute any agreements, documents or any deeds on behalf of the Trust. B

4. To accept donations of money and/or property movable or immovable on such terms and conditions as the Trustees may think fit not being inconsistent with these presents of the Trust hereby established. No donation however, will be accepted with a condition requiring change in the name of the Trust and its present activities. C
D

XXX XXX XXX

9. To give donations or subscriptions out of the Trust Fund or income thereof to such public charitable institutions funds for their all or any of the objects or purposes." E

19. Thus, a careful perusal of the clauses 9 and 11 (h) of the Trust deed would clearly go to show that there is ample scope for such delegation of powers and functions of the Trustees to another Trustee or Trustees of the Trust to act on their behalf. In support of the same, the learned senior counsel on behalf of the respondents has rightly placed reliance upon the judgment of this Court in the case of *J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd.*³, which reads thus:- F
G

"29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is

³ (2005) 1 SCC 172

A subject to the following exceptions when one trustee may
act for all (1) where the trust deed allows the trusts to be
executed by one or more or by a majority of trustees; (2)
where there is express sanction or approval of the act by
B the co-trustees; (3) where the delegation of power is
necessary; (4) where the beneficiaries competent to
contract consent to the delegation; (5) where the
delegation to a co-trustee is in the regular course of the
business; (6) where the co-trustee merely gives effect to
C a decision taken by the trustees jointly.”

(emphasis laid by this Court)

20. The JCC has rightly recorded his finding of fact on
the basis of the Resolution dated 30.8.2001 of the Trust, holding
D that the appellant was also one of the signatories to the said
Resolution and the learned senior counsel on behalf of
respondent nos. 2 to 9 has rightly pointed out to us that the
appellant was present in the meeting on 30.8.2001 as is clear
from the Minutes of the Meeting, which fact has also been
E recorded by the JCC in his order dated 25.9.2009. The fact
that the signature of the appellant in the Resolution is seriously
disputed before this Court, cannot be accepted by us in view
of the finding of fact recorded by the JCC based on record
which has been rightly concurred with by the High Court and
F the said finding cannot be said to be erroneous in this appeal
for the reason that the appellant did not enter into the witness
box before the JCC to refute the correctness of her signature
and the Minutes Book of the Resolution. Further, the husband
of the appellant, original respondent No.10 before the JCC
G had entered into the witness box, to support the charges made
by the appellant against the respondent nos. 2 to 9, however,
he has not deposed any other evidence except filing affidavit
evidence before the JCC. The Minutes Book of the Trust as
H well as the Resolution from the year 2000 to 2007 and the

additional compilation paper book produced in this case are not taken on record by this Court as the same have been rightly opposed by Dr. Rajeev Dhawan, the learned senior counsel, on behalf of the respondent Nos. 2 to 9 contending that the same had not been placed as evidence on record before the JCC and therefore, the same cannot be looked into in this appeal. By a bare perusal of the Minutes Book of the Resolution, wherein the Resolution of the Trust dated 30.8.2001 was recorded, the JCC has held on the facts and evidence on record that there was mismanagement of Trust by the Managing Trustee, deceased Vijay Mehta. Further, it is pointed out by the learned senior counsel on behalf of the respondent Nos. 2 to 9 that Mr. Kishor Mehta, the original respondent No.10 before the JCC, had no knowledge of the transactions in respect of which charges have been framed against them as the financial transactions were handled solely by deceased Vijay Mehta.

21. Further, the reliance placed upon Sections 46 and 47 of the Act of 1882, by the learned senior counsel on behalf of the appellant is not applicable to the public charitable Trust as held by this Court in the case of *Thayarammal v. Kanakammal & Ors.*⁴, which reads thus:-

“15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as “Dharamchatra” meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict legal sense is neither a “gift” as understood in the Transfer of Property Act which requires an acceptance by the donee of the property donated nor is it a “trust”. The Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts. A dedication by a Hindu for religious or

⁴ (2005) 1 SCC 457

A charitable purposes is neither a “gift” nor a “trust” in the strict legal sense....”

Therefore, the delegation of all the powers and functions by respondent nos. 2 to 9 and also the appellant in favour of the Managing Trustee of the Trust deceased Vijay Mehta, is permissible in law as the instrument of the Trust provides for that.

22. The findings of facts are recorded in the judgment and order by the JCC at para 255 which reads thus:-

“255. In the application, allegations are made against all the trustees. However, specific allegations with regard to all the charges are against only respondent No.9. The tenor of paragraph numbers 10,27, 2 etc. of the application is that he is mismanaging the affairs of the trust. He is trying to carry out the activities of the trust single handedly. Names of Mr. Dushyant Mehta and Mr. Suresh Motwani are repeatedly mentioned as associates, or cohorts of respondent No.9. The allegations against rest of the trustees are that of collusions and connivance. But the allegations are general in nature. They are vague. No specific allegations are levelled against the respondent Nos. 1 to 8.”

The typed copy of the order of the JCC was produced in this case is not a correct one. The learned senior counsel for the respondent Nos. 2 to 9 has produced the certified copy of the order of the JCC, which reads thus:

“265. To sum, I hold that the charges 1 to 8 are established against respondent No.9. However, there is no evidence against respondent Nos.1 to 8 to hold them responsible for the charged transaction.”

By a careful reading of the above extracted paragraphs

from the order of the JCC makes it clear that no complicity is proved against respondent Nos. 2 to 9, for the reason that the JCC found that there is no evidence against them to hold them responsible for the charged transaction, which means that the JCC has held that the culpability against respondent Nos. 2 to 9 are not established. Further, the JCC has rightly exercised his discretionary power under Section 41D of the Act in a responsible way and not in an arbitrary manner, as could be seen from the reading of paragraphs 261 and 262 of his finding which read thus:-

“261. To conclude, I do not find anything against respondent Nos. 1 to 8 to connect them directly with the alleged transactions. The respondents No. 2,3,4 and 7 admittedly joined board of trustees much later i.e. in the year 2004. It would be wrong to blame them for the acts done in past, before they joined as trustees.

262. These respondents may be negligent in putting blind faith in respondent No.9. It was wrong to give free hand trust affairs to him. They were over dependent on respondent No.9. Probably the facts that he is the eldest member of Mehta family, and since he took over as the Managing Trustee, the hospital earned both fortune and fame might have weighed much in their minds, for which they put total faith and reliance on him. They are certainly to be criticized for that. However, their overdependence on respondent No.9, in action, negligence and lack of interest, would not warrant their dismissal.”

The said findings and observations of the JCC are affirmed by the Division Bench of the High Court in its judgment, which reads thus:-

“...The Joint Charity Commission has given reasons for making the order for removal of respondent No.9 only.

A The reasons given by the Joint Charity Commissioner
can by no stretch of imagination be said to be perverse
or impossible. In our opinion, therefore considering that
the order is within the jurisdiction of the Joint Charity
Commissioner and the reasons given by him for making
B the order are also possible and plausible reasons. The
learned Single Judge was justified in not interfering with
the order. We have also been informed that when the
learned Single Judge was considering the validity of the
order in the Writ Petition, the finding recorded in the order
C against respondent No.9 were stayed in the appeal filed
against that order by him before the Competent Court.”

23. Thus, in view of the fact that the appellant did not
enter into the witness box and also the fact that similar charges
D as levelled against the respondent nos. 2 to 9 were also
pending against her before the JCC for being the signatory to
the Resolution dated 30.8.2001 in delegating her powers and
functions to the deceased Vijay Mehta, the JCC should not
E have accepted the evidence of the original respondent No.10
before the JCC and recorded the findings on charges in his
order. Further, he has rightly held that the guilt of respondent
Nos. 2 to 9 are not proved and has also held that they are
negligent for only delegating their powers and functions to the
F Managing Trustee, deceased Vijay Mehta but the charges
levelled against them are not proved as they are not responsible
for the alleged transactions, therefore, there is no complicity
on the allegations made against them. The said conclusion of
the JCC is based on facts and evidence on record, therefore,
G he has rightly exonerated them from the liability and has not
imposed punishment under Section 41D of the Act, upon
respondent nos. 2 to 9, in exercise of his power in a reasonable
and fair manner and therefore, the same cannot be said to be
arbitrary and unreasonable in nature. Therefore, the High Court
H has rightly concurred with the findings of the JCC in exonerating

the respondent nos. 2 to 9 from the charges levelled against them by passing a well reasoned judgment and order. A

24. The cases relied upon by the learned senior counsel for the appellant, i.e. **Sheikh Abdul Kayum & Ors. v. Mulla Alibhai & Ors.**(supra), **J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd.**(supra) and **D. Gopalaswami Mudaliar v. Subramanya Pillai & Anr.**⁵, have no relevance to the fact situation of the present case, as they do not support the case of the appellant. The learned senior counsel for the appellant has strongly placed reliance on the case of **Lala Man Mohan Das v. Janki Prasad & Ors.**(supra), the relevant extract of the judgment of the Privy Council reads thus :- B C

"In the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon to hear one of several trustees spoken of as the acting trustee, but the Court knows no such distinction; all who accept the office are in the eyes of the law] acting trustees. If anyone refuse or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved." D E F

However, the said decision cannot be applied to the fact situation of this case in view of the facts and the evidence placed on record. G

25. For the aforesaid reasons, we hold that the impugned judgment and orders of the High Court and the order

⁵ (1942) 1 MLJ 272

A of the JCC are legal and valid and the same cannot be interfered with by this Court in exercise of its appellate jurisdiction. The appeal is dismissed.

26. Since the appeal against the findings and penalties imposed against the deceased Vijay Mehta is pending before the Civil Court which is being pursued by his legal representatives and therefore, the Civil Court is required to examine the said case independently without being influenced by the observations and reasons assigned by us in this judgment. We would like to make it very clear that the said appeal is required to be examined in the backdrop of the legal grounds and contentions urged therein independently and dispose the same in accordance with law.

D Kalpana K. Tripathy

Appeal dismissed.