M.R.O. 1—77.063—8-3-37.

(1) Number of pages.....

(2) Date of repair.....

(3) Initials of the Reference.....

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No.	1763	Press Mis.
39-41.		
Dated	4-12-1873.	

11/12

Not to be folded or roughly handled

Proceedings of the Madras Government, Financial Department, 4th December 1873.

Read the following papers:—

No. 39. From H. SEWELL, Esq., Acting President of the Local Fund Boards, Cuddapah District, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Cuddapah, 23rd October 1873, No. 412.

At the request of the Cuddapah Local Fund Board,* I have the honour to forward copy of a trust-deed, by which Mr. Barnett, Civil Engineer, vested the sum of Rupees 1,000 in the hands of certain trustees, of whom Mr. Fortey, the Inspector of Schools, is the sole survivor, for the purpose of establishing a scholarship to be given to a boy educated in the Pullempett School in Pullempett Taluq of this Circle. The school has for some time ceased to exist, and the money is, therefore, lying idle in the Accountant-General's hands.

* *Vide* copy of resolution passed at a meeting held on October 16th, 1873.

2. The Board are anxious to know whether the trust-deed could so be altered as to make the money available in some way for the general benefit of educational purposes in that taluq. It is presumed that, if a reasonable proposition for utilizing the money were put forward by the Board, neither the original donor nor the surviving trustee would object to altering the terms of the trust. But the Board would request Government to obtain a legal opinion as to the possibility of altering the trust-deed at all before proceeding to suggest any application of the funds. I have, therefore, the honour to enclose the copy of the trust-deed with a request that it may be returned.

The Government Solicitor will obtain the opinion of the Government Pleader on the question raised.

OOTACAMUND,
28*th October* 1873.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 40. From E. BARCLAY, Esq., Acting Government Solicitor, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 25th November 1873, No. 641, forwarding the following Opinion of the Government Pleader:—

OPINION.

I think that the trusts declared by the deeds of 15th November 1866 and 9th July 1869 cannot legally be altered even with the consent of Mr. Barnett. The latter deed does not vary the trusts declared by the first deed, but only vests the trust fund in the Secretary of State for India as trustee, subject to the trusts of the first deed.

2. It is clear law that a voluntary trust once effectually created, as in the present case, by a transfer of the legal interest and a valid declaration of trust, cannot be revoked or altered by the person creating it, unless a power of revocation is reserved in the trust-deed. Neither of these deeds contains any such power. Power is given by the first deed to the trustees, and by the second to the Secretary of State to alter the regulations laid down in the first deed for the

awarding of the scholarship, but this does not in my opinion authorize a complete change in the destination of the trust funds.

3. Practically, as the school, the scholars of which were the object of the original trust, has ceased to exist, there would probably be little danger in applying the income of the trust fund to other educational purposes, Mr. Barnett's consent being, of course, first obtained. If there is any possibility of the school being revived, the alteration of the trusts might be disputed by any of the object of the original trust. Looking at the matter from a legal point of view, I cannot advise the Secretary of State to consent to any alteration of the original trusts.

4. An application might be made to the High Court, under Section 43 of Act XXVIII. of 1866, stating the difficulty arising from the failure of the object of the original trust, and setting forth the proposed new scheme for the application of the trust funds, and asking for sanction for that scheme or for advice as to how the trustee should act in the matter. The application would be on behalf of the Secretary of State as trustee, and notice should be given to Mr. Barnett and, perhaps, to the Advocate-General, as the proper persons to see to the administration of charities. If the Court should sanction the new scheme for the application of the trust funds, all difficulty would be at an end.

MADRAS,
24th November 1873.

(Signed) J. W. HANDLEY,
Govt. Pleader.

No. 41. ORDER THEREON, 4th December 1873, No. 1763.

The Government Pleader's opinion will be communicated to the President of the Cuddapah Local Fund Boards.

(True Extract.)

Chief Secretary.

To the Board of Revenue.

Exd. J. H. Burns.

Proceedings of the Local Fund Board Cuddapah Circle dated 16th October 1873.

Present

Henry Sewell Esquire Ag Collector & President.
Henry Forbes Esquire M.A. Inspector of Schools.
A.J.B Atkinson Esquire Divl President
Mahomed Syadaway Pillay Sarroo Zillah Surgeon
Mahomed Dhondhoo Sarroo Tahsildar of Cuddapah.
Mahomed Cazee Syed Mounaddeen Sahib Sarroo.

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Para III. Read Proceedings dated 17th September 1873 Read also letter from the Accountant General forwarding the copy of the Trust Deed on account of the Barnett Scholarship Fund of Pullempett School.

Resolved that a letter be addressed to Government requesting them to obtain a legal opinion as to the possibility of altering the Trust Deed with the consent of the Donor and Surviving Trustee.

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/True Extract/

Acting President.

Govt. of {1873} Madras.

FINANCIAL.

To

THE BOARD OF REVENUE.

Dated December, 4th.

Rect.

Encl.

G.O., 4th December 1873, No. 1763.

DECEMBER.
Nos. 39—41.

Cuddapah Circle.—Government Pleader's opinion relative to the possibility of altering the trust-deed of the Barnett Scholarship Fund of Pullempett School, communicated to the President, Cuddapah Local Fund Boards.

Encl No 1
to a letter from the
Acting President Local
Fund Boards Cuddapah
No 412 dated 23d Octr
1873.

No 39
Pub Dept

Pub 5/11/73

No 412 Local Fund Boards Office
Cuddapah
23th October 1873.

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From Henry Sewell Esquire
Acting President
Local Fund Boards
Cuddapah District

To
The Honorable W Hudleston
Chief Secretary to
Government
Fort Saint George

Sir,

At the request of the Cuddapah Local Fund Board + I have the honour to forward copy of a Trust Deed by which Dr Barnett Civil Engineer vested the sum of Rs 1000 in the hands of certain Trustees, of whom Dr Forley the Inspector of Schools is the sole survivor, for the purpose of establishing a scholarship to be given to a boy Educated in the Pullampett School in Pullampett Taluq of this Circle. The School has for some time ceased to exist, and the money is therefore lying idle in the Accountant Generals hands.

+ Vide copy of Resolution passed at a meeting held on Oct. 16th 1873

2. The Board are anxious to know whether the Trust Deed could so be altered as to make the money available in some way for the general benefit of Educational

Educational purposes in that Taluq. It is presumed that if a reasonable proposition for utilising the money were put forward by the Board, neither the original Donor nor the surviving Trustee would object to altering the terms of the Trust. But the Board would request Government to obtain a legal opinion as to the possibility of altering the Trust Deed at all, before proceeding to suggest any application of the funds. I have therefore the honour to enclose the copy of the Trust Deed with a request that it may be returned

I have the honour to be

Sir

Your Most obedt Servant

Acting President

Exd. Parvathiswara

Clerk

Opinion.

I think that the trusts declared by the deeds of 15th November 1866 and 9th July 1869 cannot legally be altered even with the consent of Mrs Barnett. The latter deed does not vary the trusts declared by the 1st deed, but only vests the trust fund in the Secretary of State for India as trustee, subject to the trusts of the first deed.

It is clear law that a voluntary trust once effectually created, as in the present case, by a transfer of the legal interest and a valid declaration of trust, cannot be revoked or altered by the person creating it unless a power of revocation is reserved in the trust deed. Neither of these deeds contains any such power. Power is given by the first deed to the trustees and by the second to the Secretary of State to alter the regulations laid down in the first deed for the awarding of the Scholarship, but this does not in my opinion authorize a complete change in the destination of the trust funds.

Practically as the School, the Scholars of which were the object of the original trust, has ceased to exist, there would probably be little danger in applying the income of the trust fund to other educational purposes, if Mrs Barnett's consent being of course first obtained. If there is any possibility of the School being revived the alteration of the trusts might be disputed by any of the object of the original trust. Looking at the matter from a legal point of view I cannot advise the Secretary of State to consent to any alteration of the original trusts.

An

An application might be made to the High Court under Section XLIII of Act XXVIII of 1866 stating the difficulty arising from the failure of the object of the original trust and setting forth the proposed new scheme for the application of the trust funds and asking for sanction for that scheme or for advice as to how the trustee should act in the matter. The application would be on behalf of the Secretary of State as trustee and notice should be given to Mr. Barnett and perhaps to the Advocate General as the proper persons to see to the administration of charities. If the Court should sanction the new scheme for the application of the trust funds, all difficulty would be at an end.

/Signed/ J. W. Handley.

Madras
24th Nov. 1873.

(A True Copy)

James Maclay

Acting Government Solicitor

No. 641.

Madras 25th November 1873.

From

Ernest J Barclay -
Acting Government Solicitor, Madras

To

The Honorable W. Huddleston
Chief Secretary to Government
Fort St. George.

Sir,

I have the honor to acknowledge receipt of the Order of Government dated 28th October 1873, made on letter from the Acting President, Local Fund Board to Government dated 23rd October 1873, No. 412, together with its enclosures, requesting to obtain the opinion of the Government Pleader relative to the possibility of altering the Trust Deed of the Barnett Scholarship Fund of Pullempett School. -

2.

Read 27 Nov 1873

G.O. No. 1191 Dated 28th Oct 1873

Enclosure in Letter from the Secretary Board of Revenue, dated 25th Nov 1873, No. 641.

2. I submitted the matter for the consideration of the Government Pleader and I now forward herewith a Copy of his opinion and return the Enclosures which accompanied the above Order of Government. -

I have the honor to be,
Sir,
Your most Obedient Servt

Ernest Waeles

Actg Govt Solr

Govt. of {1873} Madras.

Financial

To,

The Board of Revenue.

Dated 4th Decr.
Read. Encl.

G.O. 4th Decr. 1873, No. 1763.

Nos. 39-41.

Cuddapah Circle - Govt. Pleaders opinion relative to the possibility of altering the Trust Deed of the Barnett Scholarship Fund of Bullempett school, communicated to the Presidt. Cuddapah L. F. Board.