

O.S.A.Nos.346 of 2019, 47, 51, 53 to 56, 60 to 64 of 2020
and O.S.A.No. SR 13551 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	16.09.2020
DELIVERED ON	:	23.12.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.Nos.346 of 2019, 47, 51, 53 to 56, 60 to 64 of 2020
and O.S.A.No. SR13551 of 2020

and

C.M.P.Nos.27851 of 2019, 907, 9251, 1612, 1616, 957, 1690, 1693,
1788, 1847, 1848, 1857, 2974, 2062, 2076, 2081, 2174, 2177, 4651,
4481 of 2020

O.S.A.No.346 of 2019:

M/S.Muhurtaam Event Management Pvt. Ltd.,
rep. by its Director,
Anna Arangam Office,
No.14/29, Dr.Gurusamy Road,
Chetpet, Chennai-600 031.

Appellant

Vs

1.Dr.T.K.S.Villalan

2.The Advocate General,
Government of Tamil Nadu,
High Court, Chennai – 600 104.

3.Pachaiyappas Trust Board,
rep. by Interim Administrator Thiru.Justice P.Shanmugam,
Former Judge, High Court of Madras,
Office at Pachaiyappa's College Campus,
No.113, Harrington Road,
Aminjarkarai, Chennai – 600 030.

4.The Administrator General and Official Trustee,
High Court, Chennai – 600 104.

5.Dr.R.Prabaakaran

6.V.Ramanathan,
Pachaiyappas Trust Board,
Pachaiyappas College Campus,
Poonamallee High Road,
Aminjarkarai, Chennai – 600 030.

7.V.Duraimohan ... Respondents

and batch cases

O.S.A.No.346 of 2019:

For Appellant : Mr.M.S.Krishnan
Senior Counsel
for M/s.V.Yashwini

For Respondents : Mr.K.Doraisami
Senior Counsel
for M/s.Muthumani Doraisami
for respondent No.1

: Mr.T.R.Rajagopalan
Senior Counsel
for M/s.K.V.Sundararajan
for respondent No.3

: Mr.G.Murugendran
for respondent No.6

: Mr.V.Raghavachari
for Administrator

O.S.A.No.47 of 2020:

For Appellant : Mr.K.Gowtham Kumar

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.Isaac Chambers
for respondent No.1

O.S.A.Nos.51, 54, 55, 56 of 2020:

For Appellants : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Gandhimathi
in OSA.Nos.51 and 54 of 2020
and
for M/s.Gowtham Kumar
in OSA.Nos.55 and 56 of 2020

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.K.V.Sundararajan
for respondent No.1
in O.S.A.Nos.51, 54 and 55 of
2020

: Mr.R.Vijayanarayan

Advocate General
for respondent No.2
in O.S.A.No.55 of 2020

: Mr.J.Srinivasamohan
for M/s.TVJ Associates
for respondent No.2
in O.S.A.Nos.56 of 2020

O.S.A.No.53 of 2020:

For Appellant : Mr.C.Manishankar
Senior Counsel
for M/s.K.Gowtham Kumar

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.Isaac Chambers
for respondent No.1

O.S.A.Nos.60, 61, 62 of 2020:

For Appellant : Mr.G.Murugendran

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.Isacc Chambers
for respondent No.5
in O.S.A.No.62 of 2020

: Mr.J.Srinivasamohan

O.S.A.Nos.346 of 2019, 47, 51, 53 to 56, 60 to 64 of 2020
and O.S.A.No. SR 13551 of 2020

for M/s.TVJ Associates
for respondent No.1
in O.S.A.Nos.61 of 2020
and
Respondent No.2 in
O.S.A.No.60 of 2020

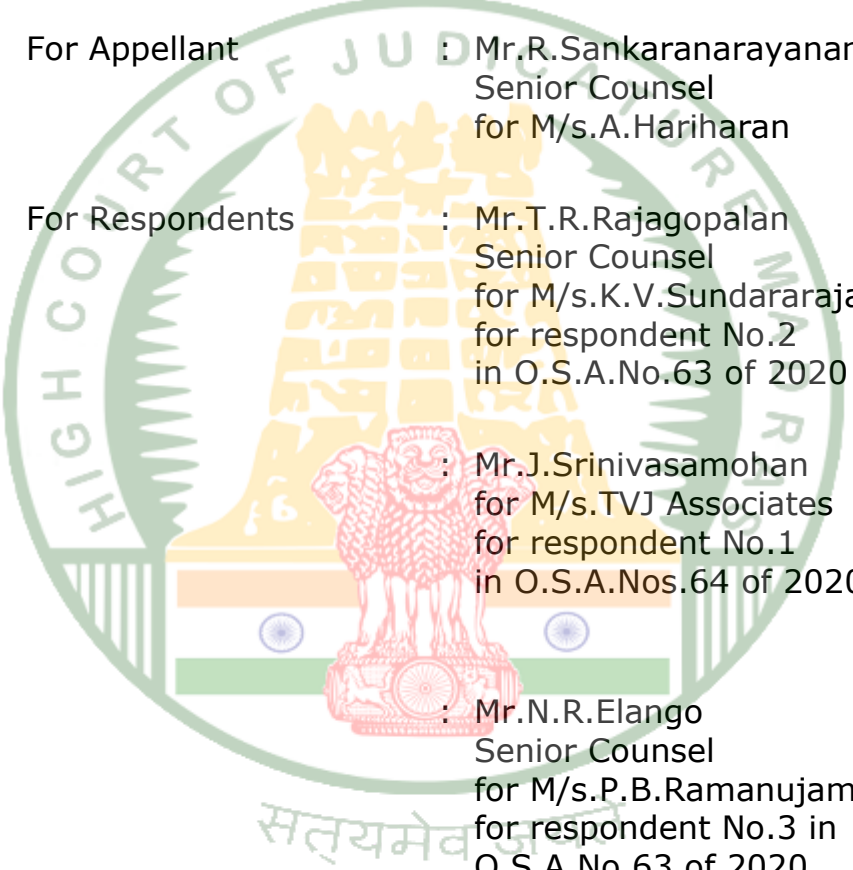
O.S.A.Nos.63 and 64 of 2020:

For Appellant : Mr.R.Sankaranarayanan
Senior Counsel
for M/s.A.Hariharan

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.K.V.Sundararajan
for respondent No.2
in O.S.A.No.63 of 2020

: Mr.J.Srinivasamohan
for M/s.TVJ Associates
for respondent No.1
in O.S.A.Nos.64 of 2020

: Mr.N.R.Elango
Senior Counsel
for M/s.P.B.Ramanujam
for respondent No.3 in
O.S.A.No.63 of 2020



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O.S.A.No.SR 13551 of 2020:

For Appellant : Mr.S.Gomathinayagam
Senior Counsel
for Mr.Soundarajan

COMMON JUDGMENT

The Hon'ble Chief Justice

What had begun as an initial attempt to get the election of the Board of Trustees of the Pachaiyappa Trust concluded turned out to be a huge exercise of churning every possible fact pertaining to the administration of the entire trust that was not the relief prayed for in the Original Application No.283 of 2018 that was moved for the said purpose. We may gainfully extract the relief that was originally prayed for and is as follows:

"O.A.No.283 of 2018 has been filed to grant an order of injunction restraining the respondents 3 to 7 from calling for and conducting elections for the trustees in the second respondent Trust pending disposal of the O.A."

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2. The expansion of the entire litigation into an exercise of organizing, administering and ameliorating the condition of the trust ultimately culminated in the impugned judgment dated 18.12.2019.

3. These appeals arise out of the dispute of a huge charitable endowment which are a combination of the dedications of an eminent personality preserved in the cultural history of this State – Late Pachaiyappa Mudaliar [1754 – 1794 A.D.], who is considered to be a synonym for a philanthropist, of the historical background and the legal status of a charitable trust that evolved around his name and material wealth that was left behind by him, of the legal battles that led to the formation and unrolling of a unique organization in the shape of a trust accomplished in about two and half centuries, of the mystery that is sought to be resolved of a *casus incogitatus* [a situation unthought of by the author of a legal instrument] arising out of a Will said to have been transcribed at Kumbakonam on 22.3.1794 by Pachaiyappa, and the ultimate

culmination of a dispute of holding elections and modification in the scheme of the trust by the learned Single Judge, explaining as to how a ship's journey can be possibly wrecked by the mutiny of its sailors.

4. The appellants before us have raised an united challenge to the impugned judgment dated 18.12.2019 claiming themselves to be the Board of Trustees and beneficiaries of the property of the trust, lamenting and criticizing the impugned judgment of the learned Single Judge of a disproportionate assessment of facts that touches perversity, being incoherent and incongruous in its findings while trying to find a solution, and reflecting a betrayal to procedural law and a profound ignorance of the law of trusts.

5. While, on the other hand, the respondent applicants have raised a variety of objections to the very maintainability of the appeals, but have substantially advanced submissions supporting the real cause for intervention, for informing this Court of the gross

irregularities and illegalities resulting in mismanagement of the trust and for suitably modifying the scheme to the advantage, and only advantage of the trust and its properties, that has been secured for centuries for one and only purpose, namely, public charity.

6. On the one hand, the appellants have cannoned legal arguments to demolish the foundations of the very cause that has been set up, as being preferred on ulterior and malafide motives for scrapping the age-old and tested system of governance of the trust for no valid reason, and have raised hair-splitting arguments relating to the legality, rather unsustainability of the findings recorded by the learned Single Judge in proceeding to interfere and modify the scheme, which according to the appellants, was totally in digression to the initial plea of the restraining of holding of elections that later on got converted to a full scale litigation with regard to the management of the trust. It is also their contention that the issue relating to the holding of the elections or otherwise that was moving on with the aid of the initial orders passed by the learned

Single Judges on various occasions, took a turn, after the Interim Administrator who had been appointed started ushering in reports to support the cause of such of those applicants, who had intervened by moving miscellaneous applications to modify the scheme itself. Learned counsel for the appellants have come down heavily on this departure of role of the Interim Administrator and then the learned Single Judge moving towards the same direction instead of proceeding to accomplish the elections that were the cause for which the litigation had emanated.

7. One of the appeals has been filed by a material benefactor of one of the transactions of a lease and the renting out of a couple of multi-purpose halls situate over the property of the trust/college, as the learned Single Judge has proceeded to cancel the lease under which the said multi-purpose halls had been rented out for being run as marriage and entertainment halls.

8. Mr.V.Raghavachari, who had appeared before the learned

Single Judge for one of the applicants, has handed down a photostat copy of a compilation titled as "Century Commemoration Book (1842-1942)", said to have been edited in 1942 by one V.Thiruvenkataswami, which displays historical facts of the evolution of the institutions that have flourished under the Pachaiyappa Trust with a considerable amount of almost 25 pages dedicated to the life, time and charities of Pachaiyappa himself.

9. He has also provided a photostat copy of a true copy of the document stated to be a Will transcribed in Tamil that is said to have been executed by Pachaiyappa Mudaliar, which we have got roughly translated as follows:

"Sivamayam

Will and Testament made by me on 12th Panguni, Pramdhi (of the Lunar Cyclical years) while I was still indisposed at Kumbakonam. In case of any kind of danger befalling on me, during the course of my sickness, to which I might be succumbing, all of my affairs are to be carried out by M.Ponnu Narayanapillai and his son Ayya Pillai. Do execute

the Shiva Dharma through completion of the Construction of temple tower in the Eastern gate of Sri Sabapathy Temple in Chidambaram. On payment of 20 thousand or 30 thousand towards the said renovation of temple tower besides the one lakh Varagan which I am keeping for the purpose of Shiva Dharma out of my personal estate once the works which has been undergoing under the auspices of puvaloor Ayyanchetty Charities at an estimate of 11,300 varagan and for getting abisheka Neivedhiyangal (offerings) done for all the shrines through setting up an endowment for each of those shrines as specified earlier, located enroute on the pilgrims passage running from Kasi to Rameshwaram out of the interest accrued from the amount of 1 lakh Varagan out of my acquisition till now by giving the said amount to a secured party for interest.

Do pay 1000 Varagan to our priest (Kurugal) to get his residence constructed. Do also pay 1000 Varagan to have in-interest bearing deposit for the purpose of his marriage expenses and his future prosperity. A 1000 Varagan be spared to Vinayamoorthiah Pillai my Secretary (Rayasam) serving me for such long

years with instructions to keep the said amount interest deposit for enabling his well being and Shiva Pooja. A sum of 1500 Varagan be paid in the interest bearing deposit and the monthly interest as derived therefrom shall be used for feeding the mendicants and for meeting out the expenses for conducting Maheswara Pooja. 5000 Sovereigns of Thanjavur Quality gold shall be paid for meeting out the marriage expenses and the cost of Jewels, Vessels etc., Once my daughter born to the girl from Vedharanyam whom I had married as second wife. Once my daughter crosses 6 or 7 years. 5000 Sovereigns may be deposited somewhere for interest and that interest as derived therefrom shall be paid to one Muthaiah Son of my own sister and also a simpleton for his maintenance. **The 4 persons namely Neithayaval Ayyapillai, Amarampedu Kalingaraya Mudaliar, Chokkapillai and Thirumulavoyal Dharmam Masilamani Mudaliar who are all requested by me to execute the object of this Will, that is to conduct the adoration and procession under the Charitable endowment in Shiva and Vishnu Temples indicated by me.** Hereunder through the interest

derived from Government (Treasury bonds) to be held by R.Narayana Pillai. **These four gentlemen are also to be the Custodian of One lakh Six hundred three quarters and one by eighth of the Varagan.** My Children, friends, relatives on my Wife's side and other agnates and cognates shall be exempted from their rights. **Since I am keeping some part of my estate under the custody of Narayanapillai no one other than the 4 gentlemen with whom I place trust empowering them to conduct the Charities utilising the interest derived from one lakh six hundred three quarters and one by eighth of the Varagan** which I have allotted for the Charities, sans detriment to the said principle. **I pray the trustees** that in case of a Settlement of claims over the gem studded jewels pledged by the King of Thanjavur or the Company bonds, the same shall be paid into the credit note of the Company without detriment to the principle and the same on its completion shall be used to perpetual conduct of Charities.

In case of a default in maturity of the bonds (8%

interest) the same amount shall be lent out to a person, with full agreement of all the 4 persons, the interest thereon shall be collected. Loan on promissory note and mortgage need not be resorted to. An accountant required for this purpose shall be appointed and he paid out of the interest accrued. A sum of 1 one lakh six hundred three quarters and one by eighth of the Varagan which I am reserving from the Charity, the gem studded jewels shall be placed in a box which could be given custody to Neithayaval Ayyapillai and two keys shall be made ready for the box, one of which be given to Neithayaval Ayyapillai while the other to the hands of Amarampedu Kalingaraya Mudaliar. Any transactions and accounts whatsoever he conducted in the presence of Vadathur Kanda pillai. He shall be paid from the interest. **In case of demise of anyone of the 4 of the trustees referred to supra, a suitable heir from their family shall be made to take over the Charities in perpetuity. If their capacity proved to be questionable, a suitable person shall be nominated, after deep reflection (careful consideration).** The Schedule of shrines which could be the beneficiaries of the

interest derived out of one lakhs six hundred three quarters and one by eighth of the varagan kept aside for charities as above.

SCHEDULE OF SHRINES

Abhishekam, Neivedhiyam and festivals at Shiva Chidambaram. Endowment Chathiram at Virudhachalam Shrine on the banks of Manimuthar.

Endowment Chathiram at Thiruvannamalai Poovaragan-50/years.

One time pooja for presiding deity of Kasi, poor alms to the Brahmin and mandicants poovaragan 300/year.

Endowment Chathiram at Sri Kalahasthi- 25 year (1 page Not Readable)

Alms for mendicants/Saints at Thirvaduthurai Mutt- 300 Sovereigns.

Alms for mendicants/Saints at Dharmapuram Mutt -200 Sovereigns.

*Alms for mendicants/Saints at Thiruvannamalai Mutt-
200 Sovereigns.*

*Alms for mendicants/Saints at Chidambaram
Gananprahasa Mutt-200 Sovereigns*

*Alms for mendicants/Saints at Thiru Brahmagnani of
Madurai -200 Sovereigns*

*Thus, the amounts required for serving the Charities
and poor feeding including Charities at Shiva and
Vishnu Temples as recited above for one year comes
to poovargan eight thousand eight hundred and ten
of a surplus amounts is noticed in the interest
derived from varagan one lakh six hundred three
quarters and one by eighth of the Varagan the same
shall be used for proportionately increasing each of
the items from the amount now specified at present.
In there is a shortage, the ratios specified above
shall be reduced proportionately. A local caretaker
which we have already appointed in all such places
shall receive these funds once in a year. It is my
confession with you to make the Charities to Shiva
Temple, Vishnu Temple and cow protection,
conducted in conformity with my intention, since I*

repose full confidence on you considering your capacities and qualifications, to my full satisfaction. It is my prayer for realising the Charities in perpetuity with potential for growth through sacrificing your physical and mental labour, since you are exalted.

Witness: by
Narayaner Kancheepuram
Pazhaya Sabapathy Pachaiyappan
Sd/-
Masilamani"

10. Mr.V.Raghavachari has also passed on a paper researched by one Sumathi Ramaswamy, Department of History, Duke University, USA, titled as "*Giving Becomes Him: The posthumous fortune(s) of Pachaiyappa Mudaliar*", that has been published in Modern Asian Studies of the year 2018, printed by the Cambridge University Press. The said paper refers to a rich bibliography that is said to be made the basis of the research paper, and appears to be authentic. With the aid of the said paper, we have also been able to peruse some documents preserved in the Tamil Nadu State Archives

titled as "*Mayor Court Record Series XIV: Records of the Court of Recorder, Volume 3, 1799*".

11. The Will extracted above is stated to have been penned a few days before the death of Pachaiyappa Mudaliar, which is said to have taken place on 31.3.1794, an untimely death at an approximate age of forty years, without leaving behind any male heir.

12. From these documents, one gathers that Pachaiyappa Mudaliar was born in a very humble family in 1754, being a posthumous son of one Viswanatha Mudaliar of Conjeevaram [*now known as Kancheepuram*]. His early life drifted in the widowhood of his mother and the patronage of some family friend, who was occupying a high office of Faujdar [*An officer in the Mogul Government, who was invested with the charge of the police, and jurisdiction in all criminal matters. A criminal judge, a magistrate. The chief of a body of troops.*] of Periyapalayam District under the

Nawab of the Carnatic. He came with his mother to the City of Madras, where they came in contact with one Narayana Pillai, an influential personality having contacts with the European Community of the Presidency of Madras. He was close to one Mr.Powney, an important export and import merchant, and it was under the care of Narayana Pillai that Pachaiyappa and his family was sheltered and Pachaiyappa received his early education. He learnt to speak the English language and to make accounts, and then became involved in shrewd bargains of sale and purchase of cloth and grain in exchange for goods from Europe. This earned him the title of "Dubash", which is derivative of the word "Dwibashi", namely, one who speaks two languages. This title, in those contemporary times, was attributed to such of the natives who knew local as well as English language and acted as interpreters in the course of business and were usually in the service of Europeans at Madras. Thus, a dubash was an Indian interpreter or Commissionaire employed in transacting business with the natives, and working as a superior sort of *valet de place*. In essence, they

were a combination of a Commissionaire and a Cicerone, a learned antiquary, who communicated in a polished or classic style and acted as a guide to show strangers things of interest in a place [Sources: *H.H.Wilson's Glossary of Judicial and Revenue Terms; Hobson - Jobson - Glossary of Colloquial Anglo-Indian Words and Phrases by Henry Yule and A.C.Burnell, and the Oxford English Dictionary edited by Sir John Murray, Second Edition, Volume IV*]. The word is also described for agents and brokers attached to a mercantile house in those days in Madras for transacting business with natives.

13. Pachaiyappa then turned his own fortunes into substantial earnings through his deft dealings. His talent and administrative capacity seems to have enhanced his importance and position in public life. He is described in contemporary history in being a political and a revenue collection connect between the then Nawab of Carnatic, the Raja of Tanjore and the English Presidency.

14. From the said excerpts of history, we can also gather that Pachaiyappa applied his meteoric financial earnings to several Hindu religious charities and donated liberally towards the construction of choultries and mandapams, as well as dharmshalas. A choultry is a place for reception of and accommodation of travellers, like an inn, a Caravanserai. The word was also used to describe a place used for public business transactions in the shape of tenements, little better than booths, but it was more a resting place for wayworn travellers. In religious terms, it was a pillared hall or colonnade of a Hindu temple, usually in front of the temple, where the idol reposes.

15. The description of his charities, therefore, appears to be confined mostly towards religious purposes, and neither his written Will nor any other document related directly to him does indicate a specification or usage of his charities created for the pursuit of learning, much less the founding of any modern schools or colleges that now flourish under the trust.

16. To begin with, therefore, at the time of his death and with the tenor of his Will, it is difficult to gather that he was an educational philanthropist, but seems to be a man of methodical habits of life, who wanted to organize and perpetuate Hindu religious activities with a sense of earnestness. He was, therefore, in the true sense a philanthropist, as it appears that he had placed 1,00,000 pagodas, equal to then 3.50 Lakhs of Indian Rupees, into the hands of those in whom he had confidence to spend the said money in a trustworthy manner by applying it to the causes that were wished for in his Will. The contribution, therefore, was to be spent towards the benefit of mankind in general by preserving religious practices, so as to bring about happiness or general wellbeing, which is one of the ways a benevolent person exerts himself and uses his abilities, his wealth to help others or relieve their sufferings.

17. It is apt to quote Robert Ingersoll, who said that "*The hands that help are holier than the lips can pray*". Mencius (Meng

Tzu), a Chinese Confucian Philosopher [371-289 B.C.], said “*Benevolence is the distinguishing characteristic of man. As embodied in man's conduct, it is called the path of duty.*” Thus, this was the path which Pachaiyappa ascribed to himself when he propounded the Will, having faith in Hindu religion and in God. He, therefore, was a true Samaritan, genuinely devoted to charity, that too even after his death to people whom he had neither seen, or will ever see or experience again.

18. The first task of this Court is to unfold the original nature of the endowment made by the propounder of the charities in order to understand as to how the legal history of this case has covered a distance of almost 226 years as of now. A rough translation of a copy of the original Will, which has been extracted herein above, demonstrates that the charities endowed by Pachaiyappa Mudaliar were dedicated to temples, cow protection, and other religious activities like feeding the poor and conducting other activities, apart from private endowments made in favour of the individuals and for

the marriage of his daughter, as well as maintenance of his family members, or other relatives. So far as public charity is concerned, the same appears to be guided towards purely religious charities, or charities akin to it. There is no indication for any amount to be spent out of the funds allocated for any educational purpose or for any academic discourse to be undertaken even for the cause of religious education. It is thus evident that the original propounder had never intended to spend the charities endowed by him for setting up any educational institutions or carrying out any other activity material or commercial, which therefore leads to the conclusion that the endowments were meant only for religious purposes and charities relating thereto, as well as certain individual benefits as per the recital in the Will.

19. The second feature of the Will is that the propounder had nominated four persons, namely Neithayaval Ayyapillai, Amarampedu Kalingaraya Mudaliar, Chokkapillai and Thirumulavoyal Dharmam Masilamani Mudaliar, to execute the

object of the Will relating to the charitable endowment made by him. The treasury bonds were to be held by one R.Narayana Pillai. The aforesaid four persons were also made custodian of One Lakh Six Hundred three quarters and one by eight of the Varagan. From the Glossary compiled by Col. Henry Yule and A.C.Burnell – Hobson Jobson, a gold coin that was described as a Varaha or Hun was called a Pagoda, that was approximately equivalent to 3½ Rupees. This is just by way of reference that we are mentioning the extent of the charity which was entrusted to the custody of the above named four persons.

20. Then there is a recital that part of the estate is being kept under the custody of Narayana Pillai (the treasury bonds), but no one other than the four gentlemen in whom the propounder placed trust were empowered to conduct the charities utilizing the interest derived from the said amount. Thus, what can be gathered is that from the huge amount dedicated, the interest derived thereon was to be utilized, for which the four trustees, referred to in the Will,

were empowered to conduct the charities accordingly.

21. Then there is a recital in the Will that in case of demise of any one of the four of the trustees referred supra, a suitable heir from their family shall be made to take over the charities in perpetuity. It, however, recites that if their capacity proves to be questionable, a suitable person shall be nominated after deep reflection (careful consideration). The charities were endowed in perpetuity accordingly.

22. In the year 1819, Regulations were framed by the Governor in Council of Fort St. George, vesting certain powers relating to the management of the East India Company possessions in the Board of Revenue. Even though the said Regulations were relating to the commercial activities and the management of the British possessions in India, it appears that judicial governance also came to be established for aiding the local administration, and the Mayor's Court had been established that appears to have witnessed

the settlement of the management of the endowment made by Pachaiyappa Mudaliar on account of certain claims made for the execution of the Will of the testator. This can be gathered from the historical documents that have been placed before us, but for the present purposes, it would be apt to begin with the decrees issued by the Supreme Court of Madras, having been initiated in order to apply the endowments appropriately, and which commences with the First Decree dated 3.2.1826. The said decrees appear to have been prepared with the participation of the Board of Revenue and is contained in the booklet that has been placed on record by the appellants, the contents whereof having not been disputed before us. The First Decree dated 3.2.1826 is extracted herein under:

"1st Decree.- The first Decree is dated 3rd February 1826, declaring the validity of the bequests of Pacheapah, to be performed according to a certain list therein set forth, which list specifies the annual sums, the general objects to which they are to be directed, and the places where they are to be expended; and the Decree directs an enquiry and Report by the Master on the details of the mode of

applying those funds, and gives directions for the further collection of funds due to Pacheapah's Estate."

23. The appropriation of the funds and administration by utilizing the surplus funds apart from that was necessary came to be introduced for educational purposes as well. This is evident from the Second Decree dated 23.10.1832. According to the said decree, the following was ordained:

*"2nd Decree.- The second Decree (after several intermediate Decretal orders for confirming the Master's Report as above directed with respect to the details of the Religious Charities to be performed, and monies to be expended thereon, and for the further and better realizing and receiving the funds) is dated 23rd October 1832. **It declares that the Advocate-General should be at liberty to lay before the Master for his Report a Scheme for the appropriation to Educational purposes of the surplus funds realized** beyond the funds necessary for the Charities specified according to the list as well as for the general management of all the*

Charities, whether Educational or otherwise.”

24. The Third Decree followed suit on 30.10.1832, which is extracted herein under:

*"3rd Decree.- The third Decree is dated 30th October 1832; and, after reciting the whole of the Master's Report in which the scheme is set forth in details (and which scheme is incorporated in the directory part of the order of the Revenue Board pp. 13 et. seq.) declares it fit and proper to be carried into execution as regards any additional funds beyond 3,50,000 Rs. It provides that 3,50,000 Rupees should be set apart for the Charities according to the list - out of which sum two separate principal sums should be set apart for Charity (according to the list) to be performed at Triplicane and at Benares respectively - that for Benares being left to accumulate till persons duly authorized should apply for it. **It reserves any direction for the performance of the Educational Charities according to the scheme at Triplicane within its jurisdiction, out of the surplus funds, until the amount of the surplus be ascertained.**"*

25. The Fourth Decree that came to be passed on 6.8.1841 envisages that the same should be under the directions of the Board of Revenue as provided by Regulation VII of 1817, and the same is extracted herein under:

*"4th Decree.- The fourth Decree is dated 6th August 1841; and, after reciting several decretal orders for realizing the further funds and placing them to the credit of the several Charities to be performed at Triplicane, at Benares, and in the Madras Provinces, it directs the interest of all the sums placed to the credit of the Triplicane Charities shall be paid to the Trustees, in order to their applying it to the purposes of the Charities according to the list, and to carrying out the scheme theretofore approved - it also declares that the interest of all the funds set apart for, and placed to the credit of the Charities to be performed in the Provinces (whether to be performed according to the list, or **for Educational purposes** out of surplus funds) should be paid from time to time to the Trustees, and that the performance of all these Charities (**Educational and otherwise**) in **the Provinces should be under the direction of***

the Revenue Board, as provided by Regulation VII of 1817."

26. It is thereafter that the application of the charities towards educational purposes seems to have commenced with the establishment of (1) Pachaiyappa's Preparatory School, Broadway, 1842; (2) Pachaiyappa's Second Grade College, Esplanade 1842; (3) Pachaiyappa's First Grade College, Esplanade 1880; (4) Pachaiyappa's Hostel 1899; (5) Pachaiyappa's College, 1930; (6) Pachaiyappa's College New Building 1940. There are nine other institutions established thereafter.

27. Thus, the setting up of institutions and expending of the amounts endowed for educational charities commenced with the order passed by the Board of Revenue according to the previous decrees of the Supreme Court of Madras, referred to above, on 28.4.1842. This order runs into 33 printed pages, and it transforms the nature of the trust from being an exclusive religious charitable trust to a public trust dedicated to educational charities as well, and

a scheme was drawn on a suit preferred by the Advocate General in the Supreme Court of Madras against the representatives of the executors of the Will, for recovering and securing the sums due to the said charities, and with a view to the performance of the same. Thus, the decree of the Supreme Court dated 3.2.1826 came to be implemented through the said order of the Board of Revenue exercising its powers under Regulation VII, 1817, for the performance of the charities endowed by Pachaiyappa Mudaliar in accordance with the decree of the Supreme Court of Madras as well as for educational purposes.

28. From a perusal of the said order of the Board of Revenue dated 28.4.1842, what can be gathered is the nature of the decrees passed for the management of the trust. The same refers to the decrees of the Supreme Court dated 23.10.1832 and 30.10.1832, where, after having accepted the report of the Master as laid by the then Advocate General, in the order it is mentioned as follows:

"..... and that Iyah Sastry, Streenevassa Pillay, Meenatchee Braminy, Armoogum Moodelly, Ragavah

Chetty, Ramanjooloo Naick, Yagambara Moodelly, Chocapal Chetty and Wootiagara Audenarrain, respectively in the Master's said Report of the Twenty-ninth day of October instant mentioned, were fit and proper persons to have the management and superintendence of the said Charities and to carry the same into execution."

It mentions the names of nine persons to act as executors of the charities.

29. The same document, namely the 1842 order, also recites the declaration of the decree of Supreme Court to the following effect:

"..... the said Court did, declare that the same were subjected to the Regulation of the Governor in Council of Fort Saint George A. D. 1817 Regulation VII. "Entitled a Regulation for the due appropriation of the rents and produce of Land granted for the support of Mosques Hindoo Temples and Colleges, or other public purposes for the maintenance and repair of Bridges Choultries or Chutrums and other public buildings, and for the custody and disposal of

*Escheats," and ought recipetively to be carried into execution under the Provisions of such Regulation and subject thereto; and it was further ordered that (the said Advocate-General then appearing on behalf of the said Governor in Council and consenting for and in the name of the Board of Revenue that the said Iyah Sastry, Steenevassa Pillay, Meenatchee Braminy, Armoogum Moodelly, Ragavah Chetty, Ramanjooloo Naick, Yagambaram Moodelly, Chocapah Chetty and Wootigara Audenarrain **should be appointed Trustees, Managers and Superintendents of the said several last mentioned Charities** the said Sub-Treasurer with the privity of the said Accountant-General do from time to time pay to the said Iyah Sastry, Streenevassa Pillay, Meenatchee Braminy, Armoogum Moodelly, Ragavah Chetty, Ramanjooloo Naick, Yagambaram Moodelly, Chocapah Chetty, and Wootiagara Audenarrain, or other persons, as may be approved and confirmed by the said Board of Revenue as such Trustees, Managers and Superintendents in the room of the said several persons last mentioned*"

30. In the vacancies that occurred in the said Committee of Trustees, further appointments were made, that was also recited in the same order indicating that a decree was passed on 6.8.1841, which is as follows:

"And whereas several vacancies in the said Committee of Trustees, appointed as hereinbefore mentioned to receive the monies as hereinbefore mentioned and perform the said Charities, having occurred by reason of death or otherwise, the said Supreme Court, by a further decree dated the Sixth day of August One thousand eight hundred and forty-one have (amongst other things) appointed Vembaukum Raghav Charryar, Streenevassa Pillay, Armoogum Moodelly, Yagambaram Moodelly, Chocapah Chetty, Venkatasawmy Naidoo, Dasika Charryar, Vencata Ragayah Charryar and Vencatapatty Naidoo to be the Committee of Trustees, who with their successors (to be elected according to the said scheme) should act in the management of the said Charities. And whereas, according to the provisions of the said scheme, C.Teroocaumy Naidoo has been duly elected a Trustee in the place of Dasika Charryar deceased."

31. The Board of Revenue, while passing the order, took into account the aforesaid recitals in the decree and ordered that there should be a Committee consisting of nine members, one of whom was to be the President, with certain qualifications mentioned therein, and also named the nine members, indicating the powers to be exercised by them, and the holding of meetings, which is as follows:

*"That the General management of the said Charities which are to be performed at the places within the provinces subject to the Government of this Presidency and out of the limits of the jurisdiction of the Supreme Court **should be delegated to a Committee, consisting of nine members, one of whom is to be the President**, and all of whom are to be Hindoos and Householders resident within the local limits of the jurisdiction of the Supreme Court of Madras, such management of the said Committee being Subject nevertheless to the general Superintendence of the Board of Revenue of Fort Saint George as provided by the said Regulation VII A.D. 1817, or any future act or Regulation of*

Government to be made in such behalf, and to all and every the Provision of such acts and Regulations.

That the names of the members of the said committee of management are to be as follows--

Vembaukam	Ragavah	Charryar	President,
Streenevasa	Pillay,	Armoogum	Moodelly,
Yagambaram	Moodelly,	Chocopah	Chetty,
Vencatasawmy	Naidoo,	C.Teroocaumy	Naidoo,
Venkata	Ragavah	Charryar	and L.Vencataputty

*Naidoo and that any **Vacancy which may happen from death resignation or otherwise is to be filled up by election and appointment of the remaining members of the said committee, two thirds of whom are for such purpose to be necessary to form a Majority, and that any five or more assembled together are to be a sufficient number to represent and do all acts in the name of the committee, and that a majority of the said committee so assembled are to decide on all questions before them, and that the President when present is to have a casting vote when they shall be equally***

divided.

That the committee are to have **power to make such Regulations and give such directions** as may be necessary from time to time **for conducting and managing the Charities** (such Regulations and **directions being in conformity with the Decrees of the Supreme Court and Regulations of Government respectively** made and to be made respecting the management of the same) and for calling and assembling meeting of such Committee: **provided nevertheless that every standing or General Regulation for such management is to be submitted within one month from its being passed by the Committee to the Board of Revenue,** or any other Board or authority which may be hereafter substituted in such be behalf by any future act or Regulation of Government.

That the Committee should appoint a Secretary to the Committee, and also other Officers and Clerks who may be required for the purposes of assisting them in the management of the duties and business of said Committee, and should allow them adequate

salaries for their trouble and pay the same out of the interest of the surplus Charities fund beyond the Lac of Pagodas, the interest of which Lac is directed to be distributed according to the above recited list in the pleadings setforth.

*That, besides other meetings which may be called and assembled from time to time as occasion shall require, **there should be one regular and stated meeting at Madras in every year for the purposes of Commemorating the foundation of the Charities** by such ceremonies and solemnities as may be deemed by the Committee expedient, and of receiving returns and reports of the due distributions of the Charities, and for auditing all accounts and for passing such Regulations and giving such general directions as may be necessary, and for the purpose of transacting all or any other business connected with the management of the Charities, and that such meeting should be held in each year on the anniversary either of the death or of the birth of Patcheapah.”*

32. Thus, the foundations of establishing educational

institutions came to be laid under the said order of 1842, the recital whereof further sheds light on the scheme that came to be prepared through the decrees of the Supreme Court, on the manner in which and the purpose for which the educational institutions were to be run. The same is extracted herein under:

*"That also, out of the interest of the said residue beyond the said sum of Three Hundred and Twenty-Four Thousand Rupees a sum not exceeding in the whole Four Thousand Four Hundred and Ten Rupees annually should be received by and be paid out to the said Committee in like manner for the purpose of their paying thereout the salaries as hereinafter provided of certain professors and school masters; that certain professorships and schools are accordingly to be established and maintained at the several places in that behalf hereinafter specified, and that the professorships are to be for the purpose and object of **instructing all Hindoos in the Laws custom and Regulations under which Government is conducted and justice administered throughout the Presidency of Madras**, and more particularly in the respective districts in which such professorships shall be*

established, with a view to the better qualifications of such Hindoos to become practitioners in the Native Courts of the Presidency, and that the Schools are to be for the purpose and object of instructing Hindoos Children and youths under the age of fifteen years in the English Language, and also in reading, writing, and accounts in the English Language, and in languages commonly spoken in the respective places where such Schools may happen to be established.

That the Committee are (subject to the provisions of Regulation VII A. D. 1817 or any future Regulation of Government in such behalf) to be visitors and superintendents of both classes of establishments (excepting that at Trevattoor as hereinafter provided for) and as such should (subject to such provisions as aforesaid) direct and regulate what specific course and plan of giving instructions, and who shall be admitted to receive instructions; regard being had to the unreserved admission of all Hindoo applicants as far as may be practicable; but the establishment at Trevattoor is to be under the direction and

Regulation of the Durmakuttah or Churchwarden of that place as visitor, who shall have like authority over such establishments as is hereinbefore delegated to the Committee in respect of the other establishments.

That, the professors should receive stipends at the rate of Thirty-five Rupees per month and the School masters at a rate of Seventeen and a Half Rupees per month, or a greater or less proportionate sum according as the interest or proceeds of the Fund hereinbefore directed for their maintenance, and how producing the interest aforesaid of Four Thousand Four Hundred and Two Rupees per annum, shall increase or diminish.

That the places of which such Professorships and Schools are respectively to be established should be as follows:

- First At Chedumbaram, there should be professorship and also a School.*
- Second At Teroovannee, there should be a professorship and also School.*
- Third At Teruvaloor, there should be a professorship also a School.*

Fourth At Madura, there would be a professorship and also a School.

Fifth At Peria Conjeevaram, there should be a professorship and also a School

Sixth At Trevttore, there should be a professorship and also a School.

Seventh At Trevttamoordoor, there should be a School.

Eighth At Streerangum, there should be a School.

*That the interest of any remaining principal sum of the said residue, beyond the said sum of Three Hundred and Twenty Four Thousand Rupees, or any part of such principal itself as may be necessary, reserving a sufficient principal sum for repairs, should be received by and paid out to the said Committee in like manner for the purpose out of the same of **repairing such religious edifices Choultries and other buildings as may have been erected by the Testator** or by his family **for religious or public purposes**, and of **establishing or reducing other buildings or Choultries** for the **use and comfort of Travellers** of proceeding to any or either of the places mentioned in the list and*

deemed Holy by the Hindoos, and in **erecting maintaining or supplying sufficient houses and other buildings and accommodation for the respective residences of the professor and School Masters, and for the reception of Students** under the direction of the said Committee.

That out of any surplus funds, beyond the sum hereinbefore directed to be set apart and appropriated, the said Committee should from time to time according to circumstances and their best advice and discretion, receive and appropriate any sum or sums for the establishment or support of like institutions for the education and instructions of Hindoos to those hereinbefore provided to be established, or for the increasing or better maintaining any or either of those herein provided to be established, regarding being first had to the full and complete maintenance, as far as may be, of all and every the Charities establishments, and foundations already provided to be established and maintained.

That the Committee should provide and require that

the several and respective persons into whose hands any sums of money shall be placed for the purpose of administering distributing or performing any of the Charities directed to be done or performed in the said Provinces out of the limits of Madras (excepting Teroovatoor and Teroomalavoyel) shall annually certify to the Collector of the District in which Charities or worship shall have to be performed or celebrated a certificate of the sums received, and of the due performance and celebration of the charities or worship, and that such several and respective persons should also account to the said Committee for such due performance and celebration in such manner as the said Committee shall from time to time direct and provide.

That the Committee should require from the Durmakurtah or Churchwardens of Trevuttoor and Trumalavoyel, respectively, that they should annually Certify to them that they have verified the Certificate and acknowledgments returned to them from the head or principal Priest of Bramin of the Pagodas respectively therein Certifying the due appropriation of the funds placed in their hands by

*the said Durmakurtah, and **that they should have such Certificates and acknowledgments ready to be produced when required by the Advocate General or other principal Law Officers of the crown for the time being, or by the Board of Revenue.***

*That all right title and Interest of Patcheapah, in and to the Village of Tinnengudy in the said Report mentioned, is to **belong to the said Committee in trust for such Charitable purposes as they the said Committee**, having regard to the particular form of worship professed or supported by the said Patcheapah in his life time and by his family since his death, and also to the Employment and relief of such class or classes of persons as were employed and relieved by the said Patcheapah in his life time and also to the selection of such poor persons as were deemed, the object of the said Patcheapah's bounty, shall order and direct, and that **the said Committee should expend the said rents and profits of the said Village** to be received and got in by them in and for such Charitable objects and purposes accordingly as they the said Committee shall from time to time*

direct or appoint.

*And, lastly, that the **general account shall be annually prepared and submitted to the Advocate General**, showing what sums have been drawn and received in the course of the current year **by the Committee** under the authority of the said Decrees, and to what objects specifically they have been applied, and certifying that the charities have been duly performed, or the reasons why they may have been left unperformed. In witness whereof we have hereunto set our hands and the Seal of Office this Twenty eighth day of April in the year of our Lord One Thousand Eight Hundred and Forty-Two.*

(Sd.) J. DENT.
" G. D. DRURY.
" WALTER ELLIOT.
Members of the Board of Revenue."

33.1. What cause led to the commencement of this litigation, and the width and sweep that it gathered later on needs to be chronologically recorded, as one of the major contentions raised by the learned counsel for the appellants is that the nature of the

reliefs that have been finally extended by the learned Single Judge under the impugned judgment dated 18.12.2019 were totally outside the scope of the Original Application, namely O.A.No.283 of 2018, that was filed by S.Arunagiri claiming himself to be an old student of the Pachaiyappa's College and a voter in the Registered Graduates Constituency that elects the Board of Trustees. He came up with allegations narrating the instances of previous elections in which the private respondents arrayed therein were elected against five vacancies in the Board of Trustees. It has been stated in paragraph (9) of the Original Application that Mr.S.Jayachandran, Mr.V.Ramanathan, Mr.K.Hemanath, Mr.R.Prabhaakaran and Mr.R.Prathap Kumar were elected as Trustees against the five vacancies in the Board, which has nine members. It is further stated that R.Prathap Kumar resigned on 15.2.2016 and Mr.V.Durai Mohan was elected on 15.2.2016 in the said vacancy. Paragraph (9) of the Original Application is reproduced herein under:

"9. The said Interim Administrator conducted the election and elected respondents 3 to 6 as Trustees. One Mr.R.Prathap Kumar as Trustees for the 5

vacancies in the Board of Trustees. The said R.Prathap Kumar resigned on 15.2.2016 and the 7th Respondents was said to have been elected on 15.2.2016. Though this Hon'ble Court directed the interim Administrator to take up the task of filling up posts, it was not carried out."

33.2. It is also alleged that there were four vacancies, but the same were not filled up, and no steps were taken by the existing Trustees to conduct the elections. The grievance of the applicant was that the elections now should be held in respect of all the nine posts of the Members of the Board of Trustees and, therefore, the Trustees are guilty of misconduct and further they are not eligible to conduct the elections.

33.3. The applicant then goes on to explain about the irregularities in appointments in the Pachaiyappas College and C.Kandasamy Naidu College. It was also pleaded that the leasing out land of the Trust beyond 20 years was incorrect, and that the construction of a Kalyana Mandapam in the College premises was in

violation of law. On the basis of these allegations, the applicant prayed for restraining the private respondents from conducting elections and to pass directions for appointing a retired Judge of the High Court as a Commissioner to conduct the elections for all the nine posts of Trustees, commencing from the preparation of voter list. This application dated 23.9.2018 has been filed with the typed set of papers on behalf of the appellant in O.S.A.No.53 of 2020. We are extracting the prayer made in the application herein under:

"In the above circumstances it is prayed that this Hon'ble Court may be pleased to appoint a retired Judge of this Hon'ble Court as a Commissioner to conduct the election for all the nine trustees right from preparing the Voter's list and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

In the above circumstances it is also prayed that this Hon'ble Court may be pleased to grant an order of interim injunction restraining the respondents 3 to 7

from calling for and conducting elections for the trustees in the Second respondent Trust pending disposal of the above O.A. and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

34. An application, being A.No.2624 of 2018, was also filed separately for appointing a retired Judge as a Commissioner to conduct the election for all the Trustees, as mentioned above. The Original Application and the said Application came up for consideration before a learned Single Judge, where the Board of Trustees filed a counter affidavit, and a rejoinder to the same was also filed, whereafter upon hearing the parties, a detailed order was passed on 14.6.2018, which is extracted herein under:

"O.A.No.283 of 2018 has been filed to grant an order of injunction restraining the respondents 3 to 7 from calling for and conducting elections for the trustees in the second respondent Trust pending disposal of the O.A. and Application No.2624 of 2018 has been filed to appoint a retired Judge of this Court as a

Commissioner to conduct the election for all the trustees right from preparing the voters list.

2. The applicant is an old student of Pachaiappa's College and he has voter I.D. in the Registered Graduates Constituency. It is the case of the applicant that the second respondent is the Trust Board controlling several institutions including (1) Pachaiyappas College, Chennai-30 (2) C.Kandaswami Naidu College for Men, Anna Nagar, Chennai-102, (3) Chellammal College for Women, Guindy, Chennai-32, (4) Pachaiyappas College for Men, Kancheepuram, (5) Pachaiyappas College for Women; and (6) C. Kandaswami Naidu College for Women, Cuddalore, and the Trust thus formed was administered by a scheme formulated by this Court for the management of Pachaiyappa's Charities.

3. The Trust thus formed as per the existing scheme, the Board of Trustees are to be elected for a period of 5 years and the constitution of the Board is as follows:-

"The Board of Trustees shall consist of nine members who shall eventually be appointed in manner

following:

* Two, to be elected by the Hindu members of the Senate of the University of Madras

* Three, to be elected by the Graduates/Post Graduates and Research Scholars from all the six colleges now being run by the Pachaiyappa's Trust as on date of not less than ten years standing.

* Two, to be elected by the Pachaiyappa's Trust Board College Council hereinafter referred to

* Two, to be elected from amongst the electoral college consisting of all the approved teachers from all the colleges of Pachaiyappa's Charities. The Scheme provides the electorates and also the holding of elections:

(C) Elections Defined:

"The expression "Graduates of Pachaiyappa's College" shall mean *1-All persons who shall have Graduated/Post Graduated and Research Scholars from all the six Colleges now being run by the Pachaiyappa's Trust as

on date and taken their degree as aforesaid in any faculty and any other equivalent or Higher degree of the University of Madras/ *2- Thiruvalluvar University and who shall have paid into the office of the Board of Trustees, a registration fee of Rs.5/- (Rupees five only) and registered their names in a list to be maintained for the purpose in the said office at least six months before the date of election."

(F) The Holding Elections:

"Within a month of the occurrence of any vacancy on the Board of Trustees, intimation of the occurrence of the vacancy shall be given, by post, to the electors concerned and *1- each of the eligible electors shall be given an identity card. As soon as vacancy arises in the Trust Board, written intimation shall be sent to the electors about the date of election and polling within a month. Eligible electors shall appear in person on the date of election, collect the ballot papers and then poll it in the ballot box/boxes arranged

at each college. The identity of the voters shall be verified by the polling officers with the records made available to him by the Trust Board."

4. In the year 2011-2012 out of 9 trustees only four trustees were functioning and as per the scheme there was no quorum for the Board to function. By an application in A.Nos.4062, 4129,4497 and 4498 of 2012 this Court appointed Mr.T.N.Seshan, retired I.A.S. Officer as an Interim Administrator with several directions. The said Interim Administrator conducted election and elected respondents 3 to 6 and Mr.R.Prathap Kumar as Trustees for the 5 vacancies in the Board of Trustees. The said Mr.R.Prathap Kumar resigned on 15.02.2016 and 7th respondent was said to have been elected on 15.02.2016. Even though there are 4 vacancies as on 04.03.2015 they have not been filled up by respondents 3 to 6. As on date there are 4 vacancies to be filled up and no steps were taken by the existing trustees i.e., respondents 3 to 6 to conduct election and to fill up the vacancies. As per the scheme, election ought to have been conducted by

the Board of Trustees and it was not done by the respondents.

5. It is the further contention of the applicant that the term of present respondents 3 to 6 has been expired on 25.05.2018. Therefore, election for the Board of Trust, 8 trustees have to be conducted for the proper and smooth functioning of the board. No intimation was made to the Advocate General as per the Scheme about the filling of the vacancies and to take steps to conduct election. For the past three years or so, the respondents had wantonly and willfully did not take any steps to conduct the election to fill up the vacancies. Respondent Nos.3 to 7 acted against the interest of the Trust. During the tenure of the respondents, there were irregular appointments of Assistant Professors which is also subject matter of the writ petition No.19939 of 2014. There is massive corruption in making appointments. Respondents 3 to 7 have not acted in good faith as has been pointed out in O.S.A.No.11 of 2012 in the judgment dated 08.09.2017 that the properties have been leased out for more than 20 years without getting permission. The Division Bench of this Court

by order dated 8.9.2017 appointed an Interim Management Committee to administer the Govindu Naicker Trust and the properties belonging to the said Trust. Now it is learnt that without conducting election for the entire 9 trustees the respondents 3 to 7 are contemplating to conduct election for the post of 4 trustees alone which fell vacant as early as 04.03.2015. They have not even intimated about the vacancy to the Advocate General as required under the Scheme. They are guilty of misconduct coupled with the fact that they are not eligible to conduct elections.

6. In the rejoinder affidavit it is submitted by the applicant that though the vacancies have arisen for 4 Trustees as early as from 4.3.2015, no steps were taken to fill up those vacancies. One of the Trustees Mr.R.Prathap Kumar resigned on 15.2.2016 and the 7th respondent has been elected on 15.2.2016 itself, which on the face of it, cannot be proper. Though 15 nominations were submitted for the post of Trustee from the Pachaiyappas Trust Board College Council Constituency from which Mr.R Prathap Kumar resigned. Except the 7th respondent's nomination,

the other nominations were rejected and the 7th respondent was declared to be elected unopposed. There was no proper calling for the nominations and no voting process was done. The election of the 7th respondent was a stage managed one. On 15.2.2016, the quorum of the Trust Board was reduced to 4 trustees on the resignation of Mr.Prathap Kumar. It is a matter of record that there should be a minimum of 5 trustees in the Trust Board to administer the Trust. Only to avoid such a predicament the respondents 3 to 6 appeared to have selected 7th respondent contrary to the rules.

7. It is further stated by the applicant that paper publications dated 12.2.2016 and 25.5.2016 were made inviting applications from the eligible voters to register as voters, which was not done as per the scheme. Contemplating any vacancy in the Trust Board, the process ought to have been started six months prior to such vacancies. It is also further stated that though in the counter it is averred that there are 3,263 eligible voters in the list, the website uploaded by the second respondent, list of voters was shown only as 2,952 as on 14.05.2018. The

numbers of voters given in the counter affidavit does not tally with the numbers of voters uploaded on the website. It is also stated by the applicant that different persons' names also found in the voters list and the photographs affixed in the voters list also did not match to the persons and there is no photographs affixed for several voters. There is no photographs affixed for 239 persons and therefore, the identity of the said persons cannot be ascertained. Similarly voters list of Chennai contained names of voters list of Kancheepuram and Cuddalore and other region voters also found in some other region voters list. Above mistakes have been made by the present Trustees to suit their convenience, more particularly, to impersonate persons and to poll bogus votes. The respondent Trust board is allowed to conduct the elections, the very same type of tactics in electing 7th respondent will be adopted. Hence the applicant sought relief of restraining the respondents 3 to 7 from calling for and conducting elections for the trustees in the second respondent Trust pending disposal of the O.A. and to appoint a retired Judge of this Court as a Commissioner to conduct the election for all the

trustees right from preparing the voters list.

8. It is the contention of the 2nd respondent in the counter affidavit that the respondents 3 to 7 were elected in the year 2013 and they assumed office in the month of June 2013. At the time of assuming office, the financial condition of the Trust Board was very bad and the respondents 3 to 7 have taken care to run the Trust by following legal proceedings. It is the contention of the 2nd respondent that Mr.R. Prathap Kumar was elected from the Hindu Senate Member of Madras University Constituency and Mr.V. Durai Mohan was elected as Trustee of the Pachayappa's Trust Board College Council Constituency. Subsequent to the election of the 7th respondent still there are 4 vacancies in the Board. Even though Clause 11(F) of the scheme specifically provides that necessary arrangements have to be made to elect a candidate within a month of the occurrence of any vacancy in the board of trustees, the same has not been able to be conducted in view of the order dated 06.02.2015 in O.A.No.196 of 2015 and Application No.1300 of 2015 filed by three trustees viz., Mr.S. Paramasivam, Mr.Kattoor

Sampath and Mr.P.Sekar. The above trustees sought relief for continuing as trustees for a further period of 10 months from 05.03.2015 to 04.01.2016 and this Court passed order of status quo.

9. The trust board has started the election preparatory work as early as 2016 i.e., immediately after the above said four vacancies arose. 2nd respondent trust issued paper publication on 12.02.2016 inviting applications from the eligible voters for the Graduates Constituency. They issued 541 applications out of which 235 applications were received back. After scrutinizing the 235 applications, 21 applications were rejected as not eligible as prescribed in the notification. There are 214 applications accepted by the 2nd respondent. After scrutinizing verifying and cross checking, the final eligible voters, now there are 3,263 eligible voters list was prepared. 2nd respondent Trust Board sent communications to the Registrar, University of Madras on various dates viz., 02.05.2016, 07.11.2016, 27.03.2017 and 28.11.2017, requesting to send the list of Hindu Members of the Senate of University of Madras. As there was no Vice

Chancellor in the University of Madras at that time, the Registrar, University of Madras has furnished a list of Senate Members of the Madras University on 3.4.2018. Therefore, there was no violation or breach of the Scheme by the respondents 3 to 7. Therefore, the allegations, that the respondents 3 to 7 have committed misconduct is totally false and incorrect.

10. It is also to be noted that as per Clause 11(F) of the new Scheme, it is the duty of the Board of Trustees to conduct all elections by appointing committee consisting of three persons of whom the Principal of the Pachaiyappa's College shall if possible be one. By following the said clause, the Trust had already started the election preparatory work to conduct the elections. Knowing well that the election process has already been started the applicant has suppressed the fact and filed the present application to stall the election. Further it is the case of the second respondent that the tenure of the respondents 3 to 6 would expire only on 26.06.2018, as they have assumed office on 26.6.2013 as per the order of this Court. As of now

there are only 4 vacancies in the Trust. As the existing Board of Trustees, the respondents 3 to 7 are entitled to appoint the committee to conduct the election. Notification for updated all voters list has already been issued on 28.11.2017. The allegation that the electoral list of voters more particularly have the electorates as said in Clause 11(C) of the Scheme and the list was not made is totally false and baseless. Hence, prayed for dismissal of the applications.

11. 7th respondent also supported the counter filed by the second respondent reiterated the same.

12. Heard both sides. The learned Senior Counsel Mr. G. Masilamani vehemently submitted that the respondents 3 to 7 are making hectic appointments to fill up the vacancies without following the procedure as contemplated in the Scheme framed by this Court. Despite four vacancies in the Trusteeship arose in the year 2015, they have not taken any steps to fill the vacancies as per the Scheme. However, in the year 2016 one Mr.Prathap Kumar, one of the Trustees resigned, in the name of election

they elected the 7th respondent to make it appear, there is a quaram in the Trust Board to continue in the trust. It is the contention of the learned Senior Counsel that detailed list of electoral roll for each constituency to be prepared and such electoral rolls will be ready six months prior to the vacancies arose. The second respondent Trust Board is managing six colleges; each college having one polling booth. The so called voters list now published as per the order of this Court on 27.4.2018 contains serious discrepancies. Names of dead persons also included and there are discrepancies in the photographs. As per their counter 213 voters were inducted for election and no photographs were shown for 48 persons. As per the scheme Clause 'G' in default of an appointment being made to any vacancy within three months of the occurrence thereof, it shall be competent to the Advocate General of Madras, the Board of Revenue, Madras or to any Hindu resident of Madras to apply to the Court. The applicant being old student and Hindu resident of Madras, has moved this Court to fill up the vacancy. The present trustees have violated the very scheme itself. They have not prepared voters list as per the Scheme.

Process have to be started six months prior to the date of such vacancies. After this court has seized of the matter the respondents have come with certain list said to be voters list. Even there are several discrepancies found between the voters list and also published list in the website. All these facts clearly show that the respondents have committed default in holding election to the breach of the scheme and rules.

13. It is the further contention of the learned Senior Counsel that every Trustee will hold office for a period of five years from the date of election. Election for the respondents 3 to 6 conducted on 25.05.2013. So their term expired on 25.05.2018. Hence, the contention of the learned Counsel for the respondents that the term will expire on 25.06.2018 has no legs to stand. Hence, the learned Senior Counsel submitted that the respondents have played last minute drama in the name of preparatory work and tried to induct their own persons which would go against very object and scheme of the Trust. Further, the term of the respondents 3 to 6 also expired. Therefore, election should be conducted for

8 trustees and not four. Hence, he prayed for appointing a retired judge of this Court to conduct election for all the trustees right from preparing the voters list.

14. Mr.T.V.Ramanujam, learned Senior Counsel and Mr.AR.L.Sundaresan, learned senior counsel appearing for the respondents 7 and 2 respectively submitted that admittedly there is a quorum for trust Board. Though election for respondents 3 to 6 was conducted on 25.05.2013 by the then Interim Administrator appointed by this court, results were declared by the Court on 26.06.2013 and the respondents 3 to 6 assumed office only on 26.06.2013. Even though the scheme provided that the tenure would be for five years from the date of election, election includes the declaration of results. The five year term will be reckoned only after the results declared and the persons are elected. Hence it is the contention of the learned Senior Counsel that as of today there is no vacancy as to respondents 3 to 6 position and the 7th respondent was elected in the place of Mr.Sivasubramaniam whose term expired in the year 2014. 7th

respondent was not elected in the place of one Mr.Prathap Kumar as alleged by the applicant. It is the contention of the learned Senior Counsel that one Mr.Prathap Kumar was elected in the year 2013 and he has resigned on 25.05.2016. His vacancy still continues.

15. It is the further condition of the learned Senior Counsels that three of other trustees filed O.A.No.196 of 2015 for extension for a period of one year. Status quo was ordered by this Court till 4.1.2016. Thereafter present Trustees, they made preparatory work. They also published notification for election and also sought list from the University of Madras immediately. However, the University has furnished list on 3.4.2018. The respondents have taken effective steps immediately after the vacancies arose in the year 2016. Therefore, they cannot be called as defaulter. They have also issued applications and received only 235 applications and after scrutinizing the same they have accepted only 214 applications. After scrutinizing, verifying and cross checking, the final eligible voters list were prepared and maintained properly and they are

ready to conduct the election. It is further contention of the learned senior counsel Mr.AR.L.Sundaresan that admittedly the Trust has proper quorum and therefore no individual has right to file suit. Till the expiry of the term of respondents 3 to 6 they can manage the Trust and conduct elections. Hence he submitted that the applications are to be rejected. Further the learned Senior Counsel submitted that the election for four members may be allowed to be conducted by the present Trust Board even appointing any retired Judge as observer to monitor the election process.

16. The issue arises in the application pertaining to the conduct of election to the second respondent Trust. It is undisputed fact that second respondent is old and larger Trust. It has a control over six colleges in Tamil Nadu. The trust is administered by the Scheme framed by this Court. Though there were several earlier schemes, the Scheme was modified on several occasions and lastly the Scheme was modified by order made in O.S.A.Nos.47 and 58 of 2007 dated 24.09.2008. As per the Scheme, Board of Trustees have to be elected for a period of

five years and the constitution of Board is as follows:

"Clause 11(B) of the scheme makes it clear that the Board of Trustees shall consist of 9 members elected in the manner prescribed therein. As per Clause 11(D), the vacancies arising on the Board of Trustees on the date of passing of the scheme and all subsequent vacancies caused by the death, resignation or retirement of the trustees who shall be in office on the date of the passing of the amended scheme will have to be filled up by the electorates in the order prescribed therein. It is also stated that any vacancy on the board caused either by death, resignation or retirement of any member appointed under the amended scheme should be filled up by the electoral body which originally elected.

13. Under the Clause 11(E), the occurrence of any vacancy in the board of trustees shall within 15 days of such occurrence be communicated by the borad of trustees to the Advocate General of Madras and to the

Board of Revenue, Madras. Under Clause 11(F), it shall be duty of the board of trustees to make necessary arrangements for having the various elections, made within a month of the occurrence of any vacancy on the board of trustees. All the elections shall be conducted and the votes polled and the results of the election shall be declared by a committee to be appointed by the board of trustees.

14. Clause 11(G), providing for default in the holding of elections, reads as follows:

"(G) Default in the Holding of Elections:

In default of an appointment being made to any vacancy within three months of the occurrence thereof, it shall be competent to the Advocate-General of Madras, the Board of Revenue, Madras or to any Hindu resident of Madras to apply, by Judge's summons entitled in this matter, to any Judge sitting on the Original Side of the High Court of Judicature at Madras, to fill up the vacancy, and it shall be competent to such Judge on

such application and after directing the issue of publication of such notice as may be deemed necessary to appoint to the vacancy person qualified to be appointed as member of the Board of Trustees”

17. Scheme 'B' viz., the Constitution of Board makes it clear that there must be a large number of voters and separate rolls has to be drawn for every category since the Board of Trustees themselves are to be elected from each category. Scheme 'D' order of election is as follows:

(D) ORDER OF ELECTIONS:-

The vacancies arising on the Board of Trustees on the date of the passing of the scheme and all subsequent vacancies caused by the death, resignation or retirement of the Trustees who shall be in Office on the date of the passing of the amended scheme, shall be filled up by the electorates in the order of the following:

- (a) The Hindu Members of the Senate
- (b) The Graduates/Post Graduates/Research Scholars of the Pachaiyappa's Trust Colleges.

- (c) Pachaiyappa's Trust Board College Council (d) Pachaiyappa's Trust Board College Council (e) Electoral college of all approved teachers from all the colleges of Pachaiyappa's Charities (f) The Graduates / Post Graduates / Research Scholars of the Pachaiyappa's Trust Colleges (g) The Hindu Members of the Senate (h) Electoral college of all approved teachers from all the colleges of Pachaiyappa's Charities (i) The Graduates / Post Graduates / Research Scholars of the Pachaiyappa's Trust Colleges."

18. Similarly any vacancy arises in the Board of Trustees, the same shall be intimated within 15 days to the Advocate General, Madras, and the Board of Trustees as per the Scheme 'E'. Scheme 'F' is dealing with the duty of the trustees holding of elections. The same makes it very clear that as soon as vacancy arises in the Trust Board written intimation shall be sent to the electors about the date of election and polling within a month. Eligible electors

shall appear in person on the date of the election, collect the ballot papers and then poll it in the ballot box/boxes arranged at each college. The identity of the voters shall be verified by the polling officers with the records made available to him by the Trust Board. Election normally shall be conducted by a Committee to be appointed by the Board of Trustees consisting of three persons of whom the Principal of Pachaiyappa's college for the time being shall if possible, be one.

19. It is undisputed by both sides that one Mr.S.Paramasivam, Mr.G.Sampath and Mr.P.Sekar were elected as Trustees on 05.03.2010. Their period was completed as early as 4.3.2015 and one Mr.R.Sivasubramanian another trustee, his period was ended on 28.09.2014. Immediately those vacancies have not been filled from the year 2015. The fact remains that one Mr.Parmasivem Mr.Sampath and Mr.Sekar has moved a case before this Court in O.A.No.196 of 2015 in A.No.1300 of 2015 for filling up the vacancies which fell vacant on 05.03.2015. In the above matter status quo was ordered and it appears that it was extended upto

04.01.2016. thereafter, the order has not been extended.

20. Even though the period was ended as early as 4.3.2015, in view of the satus quo order passed by this Court and the Trustees continued till 04.01.2016. Thereafter, no order has been passed. Thereafter, respondents appears to have issued notification for updating the voters list on 12.02.2016. Similarly they issued publication on May 15, 2016 and extended the date of receipt of application upto 12.08.2016. Thereafter, it appears they have requested the Registrar of University to send the list of Hindu Members of the Senate of University of Madras. Thereafter reminder has been sent on 7.11.2016, 27.03.2017 and 28.11.2017. Finally they said to have received list on 3.4.2018. Though some efforts have been made by Respondents 3 to 7, the Trust Board by issuing a notification inviting voters list in the year 2016, they have not made sincere efforts to complete the process in the real sense. In fact, Clause 11(C) of the scheme which mandates that such a list to be maintained for the purpose in the said office at least

six months before the date of the election. Though the publication said to have been issued by the respondent would indicate that they issued publication only with regard to the Graduates / Post Graduates / Research Scholars, other voters list in respect of the College Council, approved teachers from all the colleges of Pachaiyappa's Charities have not been made ready. Be that as it may. As per the Scheme, the voters list should be ready atleast within six months before the election. But the respondents have not shown any keen interest in that aspect. Only when the matter was seized of by this Court when the court directed to furnish the voters list, first time they have published the list in the website.

21. Learned Senior Counsel appearing for the applicant also pointed out serious discrepancies with regard to the photographs affixed as against the voters which has not been tallied. Whereas the learned counsel for the respondent would submit that such mistake has occurred while uploading the list in the website. Further, communication by the Registrar of the University of Madras for seeking the

list of the Hindu Members of the Senate of University of Madras, the respondent could get the list only on 3.4.2018 after the suit has been filed. Above facts clearly indicate that respondents have not made sincere efforts even to get the syndicate trusteeship list in time. Further it is to be noted that it is undisputed fact that respondent No.7 was said to have been elected in the place of one of the Trustee who was resigned as early as 15.02.2016. However, there were three other vacancies much prior to 15.2.2016. Though the other vacancies arose in the year 2016 even assuming that their period was extended in view of status quo order in O.A.No.196 of 2015 and Application No.1300 of 2015, even then no attempts were made to fill the vacancies. Further, 7th respondent was elected as one of the Trustees, by virtue of his selection Board got quorum to run the Trust. These facts clearly show that after got the quorum of 5 trustees, the Board has not taken sincere and effective steps to fill the remaining vacancies by holding election in terms of the scheme. The action of respondents show that only to have quorum of the Trust, elected 7th respondent and allowed other vacancies to continue. Their

conduct show that they are not interested in really conducting the elections in fair manner. Similarly the 3 vacancies created in the year 2016 has not been intimated to the Advocate General.

22. *Though the learned Senior Counsel Mr.T.V.Ramanujam appearing for the respondents would contend that they have intimated about the vacancy to the Advocate General on 16.2.2016. But on the perusal of the letter which placed reliance same indicate that they said to have intimated only with regard to the resignation of Mr.R.Prathap Kumar not in respect of other vacancies. Further, even to infer the Trust Board has made sincere efforts to conduct elections, there is no iota of evidence to show that they constituted any committee which is mandatory as per Scheme 11 (F). All these facts clearly show that they committed default in holding the election in strict compliance of the scheme. The Court is custodian of the Trust property, there cannot be any willful or deliberate violations of the scheme by the trustees. Even a slightest deviation of the scheme by the Trustees who have been elected to administer the Trust, with its vowed object to*

serve the people, the very scheme would be defeated. Hence, this Court is not satisfied with the respondents who have not shown any interest to hold election, though their conduct may not amount to wilful default in holding of election.

23. It is further to be noted that it is the contention of the applicant that except 7th respondent other Trustees period was over. Whereas it is the contention of the respondents that though the election was held on 25.5.2013 results were declared on 26.06.2013 only at the instance of the Court and the respondents 3 to 6 assumed charge on 26.06.2013. Therefore, the term will expire only on 25.06.2018. Clause 'H' of the scheme stipulates that every Trustee appointed under this scheme shall hold office for a period of five years from the date of his election. Clause 'H' reads as follows:

"(H) TENURE OF OFFICE:

Save as hereunder provided, every Trustee appointed under this Scheme shall hold office for five years to be completed from the date of his election but may resign earlier."

24. It is not disputed that the election of respondents 3 to 6 held on 25.05.2013 by the Interim Administrator appointed by this Court. In this regard, it is the contention of the learned Senior Counsel for the respondents that the date of election includes date of results. Admittedly, in this case, though election was held on 25.05.2013, two applications in A.No.2178 and 2179 of 2013 and O.A.No.290 of 2013 were filed for various reliefs and the election results were not declared on the date of election. Hence, this Court by its order dated 26.06.2013 directed the Interim Administrator to declare the results on the same day, the results were declared. The election was held on 25.05.2013 and the results were declared only on 26.06.2013. Though the scheme stipulates that the tenure is for a period of five years from the date of election, this Court is of the view that the election includes the declaration of the results. Only on declaration of results, election deemed to have concluded. Admittedly, in this case the declaration of election results were on 26.06.2013 as referred above. In view of the same, the election shall be deemed to have completed only when the results were declared.

In view of the same, the tenure of the respondents 3 to 6 would expire only on 25.06.2018. **In view of the discrepancies found by this Court in the electoral rolls and the delay in preparatory work by the existing trustees to fill the vacancies, this Court is of the view that an election should be conducted for electing 8 Trustees including respondents 3 to 6 vacancies which will occur on 25.06.2018.** The court being the custodian of the trust properties, is of the view that **election should be conducted for trustees without any further delay.** Though the respondents made some efforts in preparing electoral roll as discussed above, in view of the delay and also discrepancies in the voters list further entire list for the constituencies were not made ready, this Court is of the view that **the Interim Administrator shall be appointed to administer the Trust and also conduct the election for eight Trustees as per the scheme.**

25. For carrying out the same, this Court deem fit to appoint **Honourable Mr. Justice P. Shanmugam (Retired) as Interim Administrator and also to**

conduct election. Though respondents 3 to 6 with respondent 7 constitute quorum. At present, the period of respondents 3 to 6 would expire very shortly i.e., on 25.06.2018 they shall not take any major decision especially on the finance and other major decision in respect of the Trust Properties. Interim Administrator should administer the Trust and conduct the election for 8 Trustees posts including 4 vacancies already fell and others will be vacated on 25.06.2018 as per the scheme. It is ordered as follows:

i. That the Honourable **Mr.Justice P. Shanmugam** (Retired Judge, High Court, Madras), residing at New No.204, T.T.K. Road, Teynampet, Chennai 600018, be and **is hereby appointed as Interim Administrator.**

ii. That the Interim Administrator appointed herein shall take charge of the management of the Pachaiyappa's Trust on 25.06.2018 at 4.00 p.m. iii. That the Interim Administrator shall administer the Board till the elections are over and the new Board of Trustees take charge.

iv. That the Judge Commissioner appointed herein shall be paid a sum of Rs.1,00,000/- per month (Rupees One Lakh only per month) and the said sum shall be drawn from the funds of the Trust Board.

v. That the Judge Commissioner shall also entitled for car allowance of Rs.1,00,000/- (Rupees one lakh only) to defray the expenditure towards travelling.

vi. **That after assuming charge, the Interim Administrator appointed herein shall make necessary preparation for conducting election for 8 vacancies as per the Scheme by preparing voters list fresh. Every endeavour should be made by the Interim Administrator to complete election expeditiously in terms of the object and scheme of the Trust.**

vii. That the Interim Administrator appointed herein shall take the assistance of any person he thinks proper for conducting election and shall draw funds towards the expenditure for conducting election.

viii. That the Judge Commissioner appointed

herein be and is hereby empowered to hire a personal secretary to assist him in his work and also entitled working space, personal staff and communication facilities and also draw assistance from the existing staff of the Trust as he shall deem fit as necessary.

ix. That the existing trustees shall not take any major decision touching upon the financial matter, payments and other aspects including any decision over immovable properties, appointments, etc.,

x. That the existing Trustees and other officials of Trust shall co-operate with the Interim Administrator for smooth administration of Trust.

26. The O.A.No.283 of 2018 and A.No.2624 of 2018 are ordered with the above terms."

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35. A retired Judge of the High Court, Hon'ble Mr.Justice P.Shanmugam, came to be appointed as an Interim Administrator for administering the work of the Trust on behalf of the Board till the elections are over and the new Board of Trustees take charge.

Thus, the management was handed over with a clear direction to set up his own secretariat in the manner indicated therein with certain restraints on the Trustees, with the main direction to the Interim Administrator to conduct the elections.

36. The Interim Administrator after having been appointed under the order dated 14.6.2018, during the course of his administration, submitted an interim report dated 27.7.2018, where the irregularities and infirmities with regard to the management of the Trust properties and the activities of the institutions was pointed out. The Interim Administrator in paragraphs (8) to (10) indicated the steps taken by him in respect of the elections that were to be conducted. The said paragraphs are reproduced herein under:

"8. The Pachaiyapp's Trust is managed by a committee of 9 Trustees elected for a term of five years. The Board of Trustees elect a President. The term of last four trustees came to an end on 25/6/2018. There is one elected trustee from the constituency of College Council. At this stage the election process initiated by the erstwhile trustees

were found to be faulty and that there was mismanagement of Pachaiyapp's Trust and hence this Hon'ble Court appointed the Interim Administrator.

9. As per the Amended Supplemental scheme framed by this Hon'ble Court in O.A.Nos.47 and 58 of 2007 and M.P.No.2 of 2007 in O.S.A.No.58 of 2007 the Board of Trustees shall consists of nine members who shall be elected in the following manner:

S.No.	Name of the Constituency	Number of Members to be elected
1	Hindu members of the Senate of the University of Madras	2
2	Graduates/Post Graduates and Research Scholars from all six colleges now being run by Pachaiyappa's Trust as on date of not less than 10 years standing	3
3	Pachaiyappa's Trust Board College council	2
4	Approved Teachers from the College of Pachaiyappa's Charities	2

As on date in the vacancy earmarked from

Pachaiyappa's Trust Board College Council one member had been elected for a period of five years with effect from 15.2.2016. With the result there are now 8 vacancies in the Board for which elections have to be held. There may be changes in the number of voters in the constituency other than graduates since list from the respective authorities had been called for. However, the list from graduate constituency is an existing list from 2009. With the old list of graduates there is a possibility of formation of vested Interest among the voters and trustees. The then trustees ought to have notified for the enlistment of graduates six months prior to their period of office so that the newly enrolled graduates could get opportunity to vote. In the present set of notification dated 24.7.2018 fresh enlistment and updating of existing voters are called for. Application has been filed before this Hon'ble Court dated 24.7.2018 for permitting to hold the election after six months so as to enable the newly enrolled graduates to participate in the election.

10. The Interim Administrator on assuming charge on 25/6/2018 initiated steps to commence the

*election process starting from the intimation of vacancy to the Advocate General, High Court of Madras and to the Board of Revenue. Names of candidates from the University of Madras, from the Colleges for the names of College council as required were called for. Paper publication dated 24/7/2018 was made notifying vacancies for Graduate constituencies. **Thus notification part is complete and the verification, issue of ID's, and notification of election date remains.**"*

37. The process appears to have been undertaken by the Interim Administrator, but on account of paucity of time, some extension was sought to complete the election process within six months. The same learned Judge on 30.7.2018 in Application No.5829 of 2018 filed by the Interim Administrator passed the following order:

"This application has been filed to extend and grant time till 25.01.2019 to complete the process of election of 8 members to the Trustees of Pachaiyappas Trust Board.

2.The first respondent has no objection. The learned counsel appearing for the second respondent objected for the extension of time.

3.In view of the fact that this Court by its order dated 14.06.2018 appointed Honourable Mr.Justice P.Shanmugam (Retired) as Interim Administrator for the Trust and also to administer the Trust and conduct elections, the Interim Administrator had already taken steps to complete the election as per the Scheme. He requires further time of six (6) months to complete the process of election.

4.Taking into consideration, some of the Registers are not maintained properly and the election to be held strictly as per the Scheme, I am of the view that further period of six (6) months sought to be extended. Accordingly, this application is allowed.”

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38. After the said order was passed, it appears two other applications were filed, namely, A.Nos.7376 and 8104 of 2018. Application No.7376 of 2018 was filed by one V.Ramamurthy and Application No.8104 of 2018 was filed by the Interim Administrator.

39. The second interim report dated 9.10.2018 of the Interim Administrator stated that a decision was taken to appoint an Internal Auditor and in pursuance of such a decision, M/s.P.S.Morthi Associates was appointed as Internal Auditor on 5.7.2018. The Internal Auditor submitted his own findings that have been indicated in the said report. This second report made suggestions for better management of the Trust Board by introducing amendments in the respective constituencies that elect the Board of Trustees. Paragraphs (25) to (27) of the said report are extracted herein under to indicate as to the steps taken by the Interim Administrator for holding of the elections:

"25. As per the New Scheme (hereinafter referred as Scheme) framed elections have to be held within a month of occurrence of any vacancy. The vacancy for the 4 members of the Trust were in existence and subsequently the remaining four members vacancy arose on 25.6.2018. The interim Administrator was appointed to take charge of the management of the Trust by 25.6.2018 to hold the election and

administer the Trust till that time. Since it was practically not possible to conduct the election by 26.7.2018, this Hon'ble Court in A.No.5829 of 2018 and A.No.2624 of 2018 dated 14.6.2018 granted further period of six months to hold the election. This will mean six months from 25.7.2018, (i.e) on or before 25.1.2019. This Hon'ble Court directed in para 25(vi) to prepare of voters list fresh. I submit that his Hon'ble Court observed in the order in O.A. No. 283/2018 dated 14.6.2018 that the voters list would have to be ready at least six months before the election.

26. As on date the voters list is not complete. The following table would show the actual numbers of voters:-

S.No.	Constituency	Total Voters	Response Received	Pending Finalisation
1	Senate	107	60	47
2	College Council	62	62	Clarification awaited on inclusion of some.
3	Approved Teachers	312+ 350	about 312	Further list awaited
4	Graduate	Old - 3165	Updated - 700	2565 voters to be verified

S.No.	Constituency	Total Voters	Response Received	Pending Finalisation
	Graduate	New registered online 525		6 months wait as per clause 11(c)
	Graduate	Online - 120		

27. The steps for holding of election commenced with intimation of vacancy to the authorities mentioned in the trust deed and notifying the vacancy. The various dates of those steps are set out below:

S.No.	Date	Particulars of Action Taken
1	14.6.2018	The order of Hon'ble High Court appointing Interim Administrator to hold the election to the Trust Board and to Administer till such time.
2	25.6.2018	The date on which last of four vacancies in the Trust Board arose.
3	25.6.2018	The Interim Administrator taking charge of the Trust Board.
4	4.7.2018	Intimation to the Advocate General of Tamil Nadu, High Court of eight vacancies in the Pachaiyappa's Trust Board.
5	6.7.2018	Intimation to the Secretary, Board of Revenue of the intimation of eight vacancies.
6	18.7.2018	Calling for the list of approved teachers (for the Pachaiyappa's Charities approved teachers constituency) from the institutions under the Management of Pachaiyappa's

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and O.S.A.No. SR 13551 of 2020

S.No.	Date	Particulars of Action Taken
		Trust.
7	18.7.2018	Calling for the list of members from Pachaiyappa's Trust Board College Council and approved teachers from the institutions under the Management of Pachaiyappa's of Trust.
8	18.7.2018	Calling for list of Hindu members from the Registrar, University of Madras from the Senate.
9	24.7.2018	Paper Publication notifying vacancies for the Graduate Constituency (Daily Thanthi and Times of India).
10	27.7.2018	Reply from the Pachaiyappa's College for Women, Kanchipuram sending the list of College Council and Approved Teacher Members.
11	30.7.2018	Reply from Pachaiyappa's College for Men, Kanchipuram and C.Kandaswamy Naidu College for Men, Chennai sending the list of College Council Members and approved teachers.
12	2.8.2018	Reply from the Pachaiyappa's College, Chennai sending the list of College Council Members and list of approved teachers.
13	7.8.2018	Reply from Chellammal Womens College, Chennai sending list of College Council Members and approved teachers.
14	9.8.2018	Reply from the Registrar University of Madras enclosing the list of Hindu Members of the Senate.
15	13.8.2018	List of Governing Council from C.Kandaswamy Naidu College for Women, Cuddalore.
16	14.8.2018	Reply from C.Kandaswamy College for Women, Cuddalore enclosing the list of

O.S.A.Nos.346 of 2019, 47, 51, 53 to 56, 60 to 64 of 2020
and O.S.A.No. SR 13551 of 2020

<i>S.No.</i>	<i>Date</i>	<i>Particulars of Action Taken</i>
		<i>College Council Members and approved teachers.</i>
<i>17</i>	<i>16.8.2018</i>	<i>Verification notices sent to 3175 Registered Graduates by certificate of posting.</i>
<i>18</i>	<i>21.8.2018</i>	<i>Verification notices sent to members of the Hindu Senate and to the six colleges regarding College Council Members and approved teachers.</i>
<i>19</i>	<i>21.8.2018</i>	<i>Computer Programme done for the purpose of downloading and uploading applications online.</i>
<i>20</i>	<i>21.8.2018</i>	<i>Notice to all colleges to display the list of Governing Members on the notice board for any corrections.</i>
<i>21</i>	<i>22.8.2018</i>	<i>News Paper notification, Daily Thanthi and Times of India intimating provisions for downloading and uploading applications online.</i>
<i>22</i>	<i>23.8.2018</i>	<i>Direct and Fresh applications received from 89 applicants for the Graduate Constituency.</i>
<i>23</i>	<i>24.8.2018</i>	<i>Clarification sought an erroneous inclusion of Head of Junior College Council or Junior Council Member and inclusion Retired re-employed.</i>
<i>24</i>	<i>01.10.2018</i>	<i>Order to include teachers from Unaided Colleges in the approved teachers category.</i>
<i>25</i>	<i>05.10.2018</i>	<i>Publication requesting Graduates to update their particulars by 15/10/2018.</i>
<i>26</i>	<i>05.10.2018</i>	<i>Further clarification regarding approved teachers.</i>

However, in paragraph (55) of the said report, the Interim Administrator made suggestions for re-framing the constituencies for the better management of the Trust Board, which is extracted herein under:

"55. The Interim Administrator has functioned within the parameters prescribes in the New Scheme framed for the Management of Pachaiyappa's Charities by the Hon'ble Division Bench of Madras High Court dated 24.9.2018 in O.S.A. Nos 47 and 58 of 2007 for the past three months. During this short period the Interim Administrator found scope for improvement in the Scheme and the following suggestions are given for better management of PTB.

i) The Constitution of the Trust Board consists of 9 members to manage the Pachaiyappa's Charities consisting of Colleges Schools, Charities. Endowment, Lands and Buildings. There are lakhs beneficiaries and public from the Pachaiyappa's Trust and properties and its Management The Pachaiyappa's College are only a pa of Pachaiyappa's Charities. The control given to only Pachaiyappa's

College to elect the trust appears to be not fair. The other beneficiaries may have interest to say in the formation of the Board.

ii) Voters from the category of "Graduates" (11(B)) requires 10 years standing for registration. Further after registration they have to wait for six months from the date of registration. While other categories of voters and the contestants for trust no such qualification is prescribed. This may be suitably modified.

iii) A voter can technically being member of the Senate may happen to be a Graduate College Council Member, Approved Teacher and thus he can exercise 9 votes to elect the Trustees. This leads to imbalance and restriction the value of the votes can be prescribed.

iv) A Trustee to contest should have paid property tax of not less than ten thousands rupees and therefore only wealthy people can contest. The wealth of a person as a condition can be dispensed with.

v) While Senate members of University of Madras can be a voter the Senate members of Thiruvalluvar University if any are not voters.

vi) The disqualifications clause 11(J) prescribes imprisonment and absences for trust meetings as stated but there is no consequence for failure to conduct Commemoration Day, failure to prepare budget, audit, non filing of I.T. returns, E.S.I., P.F. returns and mismanagement of funds and trust having serious financial commitments. Such misleads and mismanagement can be included as disqualifying factors for a Trustee to contest and hold the position of the Trustee.

vii) The Pachaiyappa's Trust Board Council constituted under Clause 12 of the Scheme has to be in accordance with Private Colleges and Schools (Regulation) Act."

40. The application of Mr.V.Ramamurthy was to direct the Interim Administrator to frame a schedule and fix a date for conduct

of elections in terms of Clause 11(F) of the Scheme. The application filed by the Interim Administrator prayed for further extension of time till 25.4.2019, where the Interim Administrator had recommended a larger electoral college for the Public Trust with a wider choice of eligible candidates to be elected as Trustees, as that would be more democratic. The same was accepted by the learned Single Judge who heard the two applications and an order was passed on 31.10.2018 to the following effect:

"This Court by order dated 14.06.2018 in Original Application No. 283 of 2018 and Application No. 2624 of 2018 after considering the elaborate submissions made on behalf of the various parties relating to the conduct of election to the posts of Trustees of the Pachaiyappa's Trust Board held in para 24 and 25 as follows:-

"24. In view of the discrepancies found by this Court in the electoral rolls and the delay in preparatory work by the existing trustees to fill the vacancies, this Court is of the view that an election should be conducted for electing 8 Trustees including respondents 3 to 6 vacancies which will

occur on 25.06.2018. The court being the custodian of the trust properties, is of the view that election should be conducted for trustees without any further delay. Though the respondents made some efforts in preparing electoral roll as discussed above, in view of the delay and also discrepancies in the voters list further entire list for the constituencies were not made ready, this Court is of the view that the Interim Administrator shall be appointed to administer the Trust and also conduct the election for eight Trustees as per the scheme.

25. For carrying out the same, this Court deem fit to appoint the Honourable Mr. Justice P. Shanmugam (Retired) as Interim Administrator and also to conduct election. Though respondents 3 to 6 with respondent 7 constitute quorum. At present, the period of respondents 3 to 6 would expire very shortly i.e., on 25.06.2018 they shall not take any major decision especially on the

finance and other major decision in respect of the Trust Properties. Interim Administrator should administer the Trust and conduct the election for 8 Trustees posts including 4 vacancies already fell and others will be vacated on 25.06.2018 as per the scheme."

In the summary of the conclusions, clause (vi) provides as follows:-

"(vi) That after assuming charge, the Interim Administrator appointed herein shall make necessary preparation for conducting election for 8 vacancies as per the Scheme by preparing voters list fresh. Every endeavour should be made by the Interim Administrator to complete election expeditiously in terms of the object and scheme of the Trust."

Thereafter, this Court by order dated 30.07.2018 in Application No. 5829 of 2018 in Application No. 2624 of 2018 held as follows:-

"This application has been filed to extend and grant time till 25.01.2019 to complete

the process of election of 8 members to the Trustees of Pachaiyappas Trust Board.

2.The first respondent has no objection. The learned counsel appearing for the second respondent objected for the extension of time.

3.In view of the fact that this Court by its order dated 14.06.2018 appointed Honourable Mr.Justice P.Shanmugam (Retired) as Interim Administrator for the Trust and also to administer the Trust and conduct elections, the Interim Administrator had already taken steps to complete the election as per the Scheme. He requires further time of six (6) months to complete the process of election.

4.Taking into consideration, some of the Registers are not maintained properly and the election to be held strictly as per the Scheme, I am of the view that further period of six (6) months sought to be extended. Accordingly, this application is allowed.”

2. *The Applicant in Application No.7376 of 2018,*

who is an old student and voter of the Graduate Constituency of the Pachaiyappas College, has filed that application to issue direction to the Interim Administrator to frame a schedule and **fix a date for conduct of election to the 8 vacancies in the post of Trustees of the Pachaiyappas Trust Board in compliance with the Scheme framed by this Court, particularly Clause 11(F) thereof.**

3. In **Application No. 8104 of 2018, the Pachiyappa's Trust Board represented by the Interim Administrator has sought for extension of time till 25.04.2019 to complete the process of election of 8 members to the Board of Trustees of Pachaiyappa's Trust.**

4. Heard Mr.N.R.Chandran, Learned Senior Counsel for M/s.Giridhar and Sai, Counsel for the Applicant in Application No. 7376 of 2019 and Mr. T.R. Rajagopalan, Learned Senior Counsel for Mr.K.V. Sundararajan, Learned Counsel for the Applicant in Application No. 8104 of 2018.

5. When these Applications were taken up for

hearing, it is submitted by the **Learned Senior Counsel** appearing on behalf of the Pachaiyappa's Trust **represented by the Interim Administrator, that the Schedule of Programme of Election has been prepared and the same has been produced along with a supporting affidavit dated 26.10.2018** filed by the Secretary of the Pachaiyappa's Trust. The Schedule of Programme of Election placed before this Court, is extracted below:-

Schedule of Programme of Election - April 2019

Sl. No.	Particulars	Date	Time & Day
(i)	Proposed Draft Voter List published on	13.02.2019	Wednesday
(ia)	Objection if any	23.02.2019	Saturday
(ii)	Final Voter List Published on	01.03.2019	Friday
(iii)	Voter I.D. card issued from	06.03.2019	Wednesday
(iv)	Date of issue of nomination forms by the Secretary (Election) of Pachaiyappa's Trust on receipt of return requisition from the candidates	06.03.2019	10.00 a.m. - Wednesday
(v)	Last date for filing of nomination papers with relevant documents	14.03.2019	05.00 p.m. - Thursday

Sl. No.	Particulars	Date	Time & Day
(vi)	<i>Scrutiny of nomination paper filed in the presence of candidates or their authorized representative. (one only)</i>	15.03.2019	11.00 p.m. to 05.00 p.m. - Friday
(vii)	<i>Date and time for publication of valid list of nomination papers after scrutiny of nomination papers in the Notice Board of Pachaiyappa's Trust.</i>	16.03.2019	10.30 a.m. - Saturday
(viii)	<i>Date and time of withdrawal of nomination.</i>	20.03.2019	05.00 p.m. - Wednesday
(ix)	<i>Date and time for publication of final list of valid nominations published in the Notice Board of Pachaiyappa's Trust</i>	21.03.2019	10.00 a.m. - Thursday
(x)	<i>Intimation to Electors about the date of polling venue and time of polling and also intimating about the Name and details of candidates.</i>	29.03.2019	Friday
(xi)	<i>Date of polling</i>	21.04.2019	10.00 a.m. to 05.00 p.m. - Sunday
(xii)	<i>Date and place of counting</i>	22.04.2019	Monday at Thiruvalluvar Hall - Pachaiyappa's College, Chennai - 30.

Sl. No.	Particulars	Date	Time & Day
(xiii)	Date of declaration of results	22.04.2019	Monday - Results will be announced immediately after counting of votes.

6. In justification of the need for extending the time for conduct of the election till 25.04.2019, it is explained that Clause 11(C) of the Scheme requires six months time after registration for voting for the newly registered graduates, who are a reckonable figure of 420 persons. Learned Senior Counsel for the Applicant in Application No.7376 of 2018 vociferously objects to the extension of time for that purpose by contending that the democratic functioning of the Trust by an elected body cannot brooke any delay and as such, the election could be conducted with the eligible voters as on date instead of waiting for the newly registered graduates to acquire eligibility. In this context, it ought not to be lost sight of the fact that the previous Board of Trustees of Pachaiyappa's Trust had not taken timely efforts for effectively updating the voters' list, which had necessitated this Court to appoint the Interim Administrator to conduct the election in a proper

manner. Hence, **the recommendation of the Interim Administrator that provides for a larger electoral college for the Public Trust with a wider choice of eligible candidates to be elected as Trustees would be more democratic and** in the better interests of the Institution, and certainly deserves acceptance.

7. Accordingly, **the time for completing the election process is extended till 25.04.2019, and the Interim Administrator shall proceed to carry out all measures that are necessary for the conduct of the elections to the 8 posts of the Trustees of the Pachaiyappa's Trust in accordance with the Schedule of the Programme of Election, which is approved by this Court, and the compliance report for the same shall be filed by that date.**

The Applications are ordered on the aforesaid terms."

41. The Interim Administrator submitted his third interim report dated 14.12.2018. In continuance of his previous two reports, the Interim Administrator again came up with requests in

the report itself to bring the administration and management under the control of independent authorities. It again detailed the infirmities in the management of the Trust properties and the colleges, and also suggested that in terms of Section 91(h) of the Civil Procedure Code, the Court can grant further or other reliefs, as the circumstances may require. The Interim Administrator then referred to three applications filed by (i) Mr.G.Anbazhagan for amendment of the scheme for better management; (ii) Mr.Cheran and others for direction to recover the Trust properties; and (iii) V.Ramamurthy to issue directions to the Interim Administrator to frame a scheme. This has been referred to in paragraph (11.1) of the third interim report, along with a reference to other petitions having been filed with regard to the management of the colleges and the Trust properties. With regard to elections, this third interim report dated 14.12.2018 of the Interim Administrator in paragraphs 12.1 to 12.4 recites as under:

"12.1 Vacancies to fill up Eight Trustees to the Pachaiyappa's Board arose on 25.6.2018. As per the scheme election should be conducted within a month

of occurrence of vacancy. As the same could not be completed the time to hold the election was extended till 25.1.2019 and further till 25.4.2019 by the order of this Hon'ble Court in Application Nos.7376 and 8104 of 2018 dated 31.10.2018. His Lordship approved the schedule of programme of election commencing from publication of draft voters list on 13.2.2019 and various other stages like issue of final list, issue of voters I.D. and dates of nomination and dates of polling and finally to the declaration of election on 24.4.2019.

12.2. As Interim Administrator is empowered to conduct the elections as per the scheme decided to include certain categories of eligible voters like approved teachers from the Unaided Section of the colleges and voters who have registered by November 2018

12.3 As per the scheme elections are to be held within a month of occurrence of vacancies. A proper election requires preparation of eligible voters list before issuing notification for election. In this case the Hon'ble High Court directed to prepare a fresh

list of eligible voters and hold election. Since this process required time on application this Hon'ble Court in A No.5829 of 2018 and A.No.2624 of 2018 dated 14.6.2018 granted further period of six months to hold election. This meant that the election has to be held on or before 25.1.2019. A fresh list of eligible voters and verification of existing voters had to be done to prepare voters I.D. and the registration of voters list. Since the scheme requires six months time as waiting period before newly registered voters become eligible and that the particulars of approved teachers are to be prepared further time was sought before this Hon'ble Court in Application Nos.7376 of 2018 and 8104 of 2018 after furnishing schedule of dates for election. This Hon'ble Court by order dated 31.10.2018 granted extension of time to hold the election on or before 22.4.2019 so as to include the freshly registered and approved teacher.

12.4. The preparation of fresh voters list and the inclusion of approved teachers from the evening colleges were strongly opposed. However this Hon'ble Court allowed the extension by holding that

for a larger electoral college for the public trust with a wider choice of eligible candidates as Trustee would be more democratic and in the better interest of the institution. However excepting two colleges out of these are disobeying the directions to furnish the approved teachers list as defined and directed by the Administrator. Individual notices were sent for those approved teachers and further directions to the colleges to forward the list to finalise the voters list. Replies are awaited from the voters and the Principals. The teachers working in the aided section of the Pachaiyappa's College and their Association and four Principals are opposing the inclusion of teachers working in the evening colleges stating that they are not approved teachers. However two colleges have furnished the list of approved teachers and few individual teachers also given their particulars to be included in the voters list and now they are included in the voters list. **It is hoped that the draft voters list will be published on 13.2.2019 and final voters list on 1.3.2019 and the date of polling on 21.4.2019 and after counting the results would be declared on 22.4.2019."**

42. In the penultimate paragraph quoted above, it is stated that the results would be declared by 22.4.2019, and it tallies with the request that was made, which had been accepted by the learned Single Judge earlier to that in the order dated 31.10.2018.

43. At this stage, we may simultaneously now trace the chronology of the various applications filed that now joined this entire procession of litigation for getting the elections conducted in a particular way and to bring about amendments in the scheme of administration before holding of elections. In so far as the elections are concerned, this begins with A.Nos.10093, 10094 and 10095 of 2018 moved by the Interim Administrator. These applications were disposed of by order dated 31.10.2018, which had referred to the interim reports filed earlier. These applications were with regard to the management of the Trust properties and the colleges, but the said applications did not make any prayer for change in the scheme of administration or the constituency for the elections.

44. Application No.10096 of 2018 was filed in December, 2018 itself by a Former Judge of the High Court, Justice K.P.Sivasubramaniam, stating therein that certain changes in the scheme were required, for which suggestions were made, including changing the eligibility of the electors in the different constituencies and the constitution of an empowered authority over and above the Board of Trustees.

45. A counter affidavit dated 24.12.2018 was filed by the Interim Administrator to the above said application, supporting the modifications suggested by Justice K.P.Sivasubramaniam in his application, and in paragraphs 15 to 15.9, the proposed amendments were stated to be reasonable and necessary, and the same are extracted herein under:

"15. The amendments proposed are reasonable and are necessary for the proper management of Pachaiyappa's Trust. The reasons for such a view is are as follows:

15.1. The Constitution of the Truth Board consists of 9 members to manage the Pachaiyappa's Charities consisting of Colleges, Schools, Charities, Endowment, Lands and Buildings. There are lakhs beneficiaries and public from the Pachaiyappa's Trust and properties and its Management. The Pachaiyappa's Colleges are only a part of Pachaiyappa's Charities. The control given to only Pachaiyappa's Colleges to elect the trust appears to be not fair. The other beneficiaries may have interest to say in the formation of the Board.

15.2. Voters from the category of "Graduates (11(B)) requires 10 years standing for registration. Further after registration they have to wait for six months from the date of registration. While for other categories of voters and the contestants for trust no such qualification is prescribed. This may be suitably modified.

15.3. A voter can technically being member of the Senate may happen to be a Graduate, a College Council Member, Approved Teacher and thus he can

exercise 9 votes to elect the Trustees. This leads to Imbalance and restriction on the value of the votes can be prescribed.

15.4. A Trustee to contest should have paid property tax of not less than ten thousands rupees and therefore only wealthy people can contest. The criteria of wealth of a person as a condition to contest is discriminatory and is to be modified reasonably.

15.5. While Senate members of University of Madras can be a voter the Senate members of Thiruvalluvar University if any are not voters.

15.6. The disqualifications clause 11(J) bars persons who are sentenced for imprisonment and absences for trust meetings as stated but there is no consequence for failure to conduct Commemoration Day, failure to prepare budget, audit, non filing of I.T. returns, E.S.I., P.F. returns and mismanagement of funds and trust having serious financial commitments. Such misleads and mismanagement can be included as disqualifying

factors for a Trustee to contest and hold the position of the Trustee.

15.7. The Pachaiyappa's Trust Board Council constituted under Clause 12 of the Scheme has to be in accordance with Private Colleges and Private Schools (Regulation) Act.

15.8. The Tamil Nadu Private Colleges (Regulation) Act, 1976 read with Rule 8 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 govern the constitution of the college and school committees. Both these acts and rules also provide for the functions and responsibilities of the College and School Committees. These statutory provisions will override the regulations/rules/clauses made in the New Scheme.

15.9. Clause 13 of the New Scheme gives liberty to all parties or any person interested to seek further or other directions or modifications in the scheme as

necessity or occasion requires. The Division Bench of the Hon'ble High Court while framing the new scheme was aware that during the operation of the said scheme occasions may arise for modifications. Accordingly, specific provisions made under Clause 13 is made for modification. In the functioning of the new scheme it is noticed that there are number of deficiencies require to be corrected."

46. The aforesaid developments were also coupled with two applications that came to be filed being A.No.1802 of 2019 by one Mr.L.Chenkuttuvan, who in his application stated about the above mentioned three successive interim reports of the Interim Administrator, and with specific reference to the final voters list, the said applicant prayed that large number of voters have been left out and even otherwise, the scheme framed has become outdated and does not meet the present day requirement and, therefore, an amended scheme should be framed to achieve the object and purpose of the Trust. He also pointed out the eligibility of the trustees and qualifications need a re-look in order to remove the

anomalies as pointed out in the said application, and also suggesting the "One person one vote" concept. The prayer made in the application was to virtually stall the election proceedings and not to declare the elections and the proposed amendment in the scheme should be accepted before the conduct of election. This application dated 4.3.2019 is on record.

47. The said application was seriously objected to by Mr.S.Jayachandran, who filed his affidavit in response to his application later on.

48. Another application, being A.No.1803 of 2019, to the same effect, for forestalling the elections and for accepting the proposed amendment was filed by L.Chenkuttuvan. It is at this stage that the proceedings for impeding the election process commenced and Application No.1802 of 2019 was taken up on the very next day, i.e., 5.3.2019 and the following order was passed by another learned Single Judge restraining from issuing any

notification for the election of trustees in any category.

"Considering all these aspects, if the respondent is proceeded to issue election notification and proceed with the electoral process and if this Court comes to the conclusion that the modification as has been sought for in the welfare of the trust and its beneficiaries are to be accepted and if ultimately this modifications are permitted, it will be a case of fait accompli, as by that time, the new trust board would have been elected by virtue of the election process. Therefore this Court is of the view that, there is a prima facie case and the balance of convenience also is in favour of the applicant as well as thousands of similarly placed beneficiaries or interested persons of the trust concerned.

2. In view of the above, this Court is inclined to pass the following order :

"There shall be an order of injunction restraining the respondents from issuing any notification for the Election of Trustees of the Trust Board of the Pachaiyappas Trust in any category including the Post Graduate, Graduate and Research Scholars Electoral

college category, to elect the members for the Trust Board."

Notice to the respondents returnable in two weeks. Private Notice is also permitted. The applicant shall also comply with the provisions of Order 39 Rule 3 CPC."

49. The said order came to be served on the Interim Administrator on 6.3.2019, on which date the notification for the holding of the election was also simultaneously issued. As the Interim Administrator had issued a communication to the counsel for the said applicant expressing concerns about taking careful steps for continuing the elections as per the directions of this Court and stating that the election process has already commenced, taking shelter of this letter, Application No.1927 of 2019 was filed by Mr.L.Chenkuttuvan seeking clarification, and all the three applications, i.e., A.Nos.1802, 1803 and 1927 of 2019 were simultaneously heard and disposed of on 20.3.2019 by the following order:

"The prayer sought for herein is to direct the respondents not to proceed any further proceedings for elections for electing the Board of Trustee of Pachaiyappa's Trust Board.

2. This Court by order dated 05.03.2019 passed an order granting the order of interim injunction restraining the respondents from issuing any notification for the election of Trustees of the Trust Board of the Pachaiyappas Trust in any category including the Post Graduate, Graduate and Research Scholars Electoral college category, to elect the members for the Trust Board.

3. The said order was passed on 05.03.2019 and the operative portion of the order was issued on that day itself.

4. When the certified copy of the order dated 05.03.2019 passed by this Court was produced before the respondent Administrator on 06.03.2019, the learned Administrator, having receipt of the order of this Court, has issued a communication to the counsel for the applicant, on 06.03.2019, where,

the following contents has been made by the learned Administrator.

"In this context, kind notice of the counsel is drawn to the following matter.

Election notification, dated 05.03.2019 has been issued by the interim Administrator and published in the Daily Thanthi, dated 06.03.2019 at page 22 and the Times of India at Page 8. In other words, it is our humble view that the notification has already been issued. It is also pertinent to point out that the Hon'ble High Court in Application No.7376 and 8104 of 2018, dated 31.01.2018 has issued positive direction and Schedule of program of election commencing from application of draft of Voter's List on 13.02.2019 and declaration of results on 22.04.2019. The Interim Administrator and his Secretaries are scrupulously adhering to the Schedule given by the Hon'ble High Court.

It was also explained to the Learned Counsel that he can always move the Hon'ble High

Court to stop further proceedings of election by specific order, so that both the orders of the Hon'ble High Court be given effect to. As there is already complaints from persons that the Interim Administrator is not seriously pursuing the election, we have to take careful steps before stopping any process of election which has already commenced."

5. Pursuant to the said stand taken by the respondent Administrator, the applicant has moved this application for modifying the order dated 05.03.2019 stating that in view of the notification dated 05.03.2019 having been published on 06.03.2019, the order passed by this Court on 05.03.2019 requires suitable modifications.

6. Heard Mr.V.R.Kamalanathan, learned counsel appearing for the applicant and Mr.K.V.Sundararajan, learned counsel for the Administrator.

7. Even though a schedule has been given by the

order of this Court earlier to conduct the election and accordingly, a notification dated 05.03.2019 has been published on 06.03.2019, this Court, before publication of the election notification on 06.03.2019 has passed the aforesaid order on 05.03.2019 itself.

8. *The said order dated 05.03.2019 has been passed by this Court after prima facie satisfaction of the issue raised before this Court in the main application where, a detailed order has been passed taking into account the report filed by the Administrator in this regard.*

9. *Therefore, the prima facie reasons cited by this Court in passing the order on 05.03.2019 still holds good, therefore, this Court is convinced that the order dated 05.03.2019, shall be given effect to in letter and spirit.*

10. *However, in view of the stand taken by the learned Administrator in his letter dated 06.03.2019 as has been extracted above, that the notification dated 05.03.2019 has been published to the public on 06.03.2019 and since the order of this Court as*

well as the date of notification carries the same date, i.e., 05.03.2019, this Court is inclined to pass the following clarificatory order, in this application:-

That in continuation of the earlier order of this Court dated 05.03.2019, it is further ordered that, the respondents, including the Administrator, shall not proceed any further in conducting the election process pursuant to the notification dated 05.03.2019 published on 06.03.2019, until further orders.

11. One of the learned Senior Counsel and some of the learned counsel on record have made submissions before this Court claiming that, they are interested parties and they have filed the impleading petitions, however, those applications have not been listed before this Court. Hence, they want their impleading petitions to be heard at the earliest and after deciding the same, the issue raised in this application as well as the connected issues raised by the respective parties, can comprehensively be heard and decided.

12. In view of the said submissions made by the learned Senior Counsel as well as the other counsel on record appearing for the third parties, who claimed to have filed impleading petitions, their respective impleading applications if any filed by any third party, if it is in order, can be processed and numbered and posted before this Court on 27.03.2019."

50. Thus, the process of election which had already commenced under the directions of the Court dated 14.6.2018, 30.7.2018 and 31.10.2018 was stalled by the orders dated 5.3.2019 and 20.3.2019 extracted above. These orders were in direct conflict with the previous orders which have neither been challenged, nor have been set aside, nor were vacated by the learned Single Judge while passing the orders on 5.3.2019 and 20.3.2019.

51. What had happened during this period was that the election had commenced, but the aforesaid development in the

above background led to a different turn in the entire litigation.

52. The Interim Administrator moved Application No.2416 of 2019 supported by an affidavit dated 23.3.2019 praying for bringing about amendments in the new scheme of the Trust, and this, therefore, became the turning point of the case, as through this application, the Interim Administrator also prayed for cancellation of his own election notification dated 5.3.2019. The said application is reproduced herein under:

"AFFIDAVIT OF JUSTICE P.SHANMUGAM

I, P.Shanmugam, son of S.Palanisamy, Hindu, aged 76 years, residing at No.204, T.T.K.Road, Teynampet, Chennai-600 018 do hereby sincerely and solemnly state as follows

1. I was appointed an Interim Administrator of Pachaiyappa's Trust hereinafter referred to as I.A. by this Hon'ble Court in O.A.No.283 of 2018 and A.No.2624 of 2018 dated 14.6.2018 to the conduct the election to the Board of Trustees and administer the Trust till the elections are over

2. *The Pachaiyappa's Trust manages 11 Educational Institutions and about 25 other Trusts, Charities and Endowments. There is vast extent landed and building properties both within the City Chennai and outside belonging to Pachaiyappa's Trust. The Pachaiyappa's Trust was managed by elected Board of Trustees and presently is under the Management of Interim Administrator appointed by the Hon'ble High Court.*

3. *Late Thiru. Pachaiyappa Mudaliar had a humble beginning and had a brief period of life between 1754 and 1794. He was a self made person and had a remarkable career. He became a Dubas (Translator) between foreign companies, Government and then Rulers of the State He was also very successful businessman, Within a short period he became richest man of his time. He died at the young age of 40 years. He left behind a will bequeathing most of his properties for Charities and Educations.*

4. *Sir Herbert Crompton the then Advocate General*

Government of Madras took interest in the Estate of Pachaiyappa's and got the Will probated before the then Supreme Court of Madras. Sir George Norton who succeeded as next Advocate General after consolidating the large funds of Pachaiyappa's Estate moved the then Supreme Court of Madras and obtained a Scheme and decree in the year 1841 whereby apart from carrying out religious charities set up part funds for educational purposes

5. As per the decree framed by the Hon'ble Supreme Court and after Board of Revenue to control of the Management of Pachaiyappa's Trust delegated the management to a committee consisting of 9 members of Board of Management. From the beginning the Board of Management of the Pachaiyappa's Trust consists of the most eminent men and leading citizens of Tamil Nadu. The New Scheme framed by Division Bench of this Hon'ble Court dated 24.9.2008 provided for the election to the Board of Management.

6. In view of the faith and trust reposed on Pachaiyappa's 25 other trusts were entrusted

through Will and Endowments under the care of Pachaiyappa's Trust. Thus Pachaiyappa's Trust is now managing about 11 Educational Institutions, various trusts like Chellammal Trust, Kandaswamy Naidu Trust and so on besides administering innumerable charities and endowments.

7. As per the New Scheme hereinafter referred to as the Scheme all the properties belongs to Pachaiyappa's Charities vests in the Board of Trustees. The Board of Trustees were elected as per Clause 11 of the Scheme which is as follows:

(A) Clause 11(A) requires a person to be a Trustee payment of Municipal Tax not less than Rupees Ten thousand While the staff of the election to the Board, the members of Political Parties are not.

(B) CONSTITUTION OF THE BOARD:

The Board of Trustees shall consist of nine members who shall eventually be appointed in manner following:-

Two, to be elected by the Hindu members of the Senate of the University of Madras.

*3 - Three to be elected by the Graduates/Post Graduates and Research Scholars from all the six colleges now being run by the Pachaiyappa's Trust as on date of not less than ten years standing.

*4 - Two, to be elected by the Pachaiyappa's Trust Board College Council hereinafter referred to.

*5 - Two, to be elected from amongst the electoral college consisting of all the approved teachers from all the colleges of Pachaiyappa's Charities.

8. The above Clause 11(B) suffers from following defects:

a) This Clause does not bar trustees to contest in more than one constituency.

b) This Clause does not provide one person one vote concept.

c) Another aspect discouraging persons from contesting is the weightage given to the voters. Instead of one person one vote concept the value of the votes vary from 9 to 1. For Instance:

The Principal of the Pachaiyappa's Trust Colleges will have the following votes:

1. If he is a Senate member - 2 Votes

2. As a governing council Member - 2 Votes
3. As an Approved Teacher - 2 Votes
4. As a Graduate - 3 Votes

Thus it is possible that one person can have maximum 9 votes. Many of the council members are also Approved Teachers and Graduates. This creates clear imbalance in the voting pattern for the Trustees. It so happened this time that there was no opposition for the Trusteeship excepting in the Graduates Constituency with the result 5 Trustees forming majority, election to Graduates Constituency has become meaningless. Therefore, the clause 11 (B) should state that no person can apply and hold more than one office of Trusteeship. Again clause 11 (B) should state that a person can exercise their vote only in one of the 4 constituencies.

d) Thus there is inequality in the weightage of votes to electorates.

e) The words "Approved Teachers" is not defined in the Scheme. Consequently the teachers working under the Management are not permitted to vote on

the plea that they are not approved teachers. The TNPC (R) Act 1976 section 2(10) defines a Teacher. Therefore the Clause approved teachers has to be specifically defined.

f) Clause 11(B)(c) insists that a Graduate/Post Graduate and Research Scholar should have ten years standing to be eligible to vote. This condition in effect bars Graduates and divides voters on the basis of standing.

g) Under Clause 11(C) a Degree holder should register his name in the office of the Trustees and wait for six months before becoming eligible for election. This condition is unreasonable and as no reason as to why a registered Graduate should wait for six months before exercising his vote. For the present election about 300 Graduates who have registered cannot vote because they have not registered before six months of election.

h) Clause 12 dealing with Pachaiyappa's Trust Board College Council provides for a representative of the Board of Trustee to be member. However, if the

Board is managed by an Administrator or AG & OT, in the absence of specific clarification the representatives are not permitted to vote.

i) Similarly, as per Clause 12 the College Staffs from evening college are not allowed to vote. Hence this Clause also requires modification.

9. In the light of above deficiencies noticed in the implementation it is imperative that important changes, modifications and directions are needed for proper election of Board of Trustees and for the welfare of the Pachaiyappa's Trust. The Division Bench of the Hon'ble High Court in the New Scheme made provisions by giving liberty to persons interested to apply for directions or modifications of the scheme under Clause 13 conscious of changes and the requirements that may demand. The following modifications are proposed:

Clause	Existing Scheme	Proposed Amendment
11(A)	THE BOARD OF TRUSTEES:- A) QUALIFICATIONS OF TRUSTEES: *1 - No person shall be eligible	The clause 11(A) to replaced as THE BOARD OF TRUSTEES: 1. "No person shall be eligible to be a trustee unless he is a

Clause	Existing Scheme	Proposed Amendment
	<p>to be a Trustee unless he is a Hindu and unless he had paid for the year preceding that in which the election takes place Municipal taxes under the Madras Municipal Act IV of 1919 and due in respect of such year to the aggregate amount of *2 – not less than Ten Thousand Rupees.</p> <p>No one who is on the staff of any institutions under the Management of Board of Trustees shall be eligible to be elected or nominated as a Trustee</p>	<p>Hindu and unless he had paid for the year proceeding that in which election takes place Municipal Property Tax under the Madras Municipal Act IV of 1919 and property tax in any of the local bodies in Tamil Nadu and dues in respect of such year to the aggregate amount of not less than Three Thousand rupees.”</p> <p>No persons shall be eligible to be a Trustee if he is associated with any political party or organisation which takes part in political party or shall subscribe to or assist in any political movement. No trustee shall engaged directly or indirectly maintained Educational Institutions in such a way to create a conflict of interest.</p>
11(B)	<p>The Board of Trustees shall consist of nine members who shall eventually be appointed in manner following:-</p> <p>Two, to be elected by the Hindu members of the Senate of the University of Madras.</p> <p>*3 – Three to be elected by the Graduates/Post graduates from all the six colleges now being run by the Pachaiyappa's Trust as on date of not less than ten years standing.</p> <p>*4 – Two, to be elected by the Pachaiyappa Trust Board College Council hereinafter referred to.</p>	<p>The Applicant to the Board of Trustees cannot apply and hold more than one office of Trusteeship at the same time in Pachaiyappa's Trust Board.</p> <p>Clause 11(B)(3): The expression “as on date of not less than ten years standing” is deleted.</p> <p>Clause 11(B)(5) – The following words are inserted after the word “all” “teachers from aided and unaided evening colleges from all the colleges of Pachaiyappa's Charities.</p> <p>Clause 11(B)(6): The</p>

Clause	Existing Scheme	Proposed Amendment
	*5 - Two, to be elected from amongst the electoral college consisting of all the approved teachers from all the colleges of Pachaiyappa's Charities.	electorates can exercise vote only in any one of the constituencies.
11(C)	<p>ELECTORATES DEFINED:</p> <p>The expression "Graduates of Pachaiyappa's college" shall mean</p> <p>*1 - "all persons who shall have Graduated/Post Graduated & Research Scholars from all the six colleges now being run by the Pachaiyappa's Trust as on date and their Degree as aforesaid in any faculty and any other equivalent or Higher Degree of the University of Madras/*2 - Thiruvalluvar University and who shall have paid into the Office of the Board of Trustees, a registration fee of Rs.5/- (Rupees Five only) and registered their names in a list to be maintained for the purpose in the said Office at least six months before the date of the election"</p>	Words "atleast six months before the date of election" is deleted.
1-12	<p>PACHAIYAPPA'S TRUST BOARD COLLEGE COUNCIL:</p> <p>a)</p> <p>b) The College council should consist of the following members:-</p> <ul style="list-style-type: none"> ■ ■ 	<p>b) One member who shall be elected annually by the Board of Trustees or by the Administrator appointed by the Hon'ble High Court or by the AG & OT of the High Court shall be eligible for re-election.</p> <ul style="list-style-type: none"> ■ One Member of the Day and Evening College Staff who shall be

Clause	Existing Scheme	Proposed Amendment
	<ul style="list-style-type: none">■ One Member who shall be elected annually by the Board of Trustees shall be eligible for re-election.■ One Member of the College Staff who shall be elected annually by the Members of College Staffs who are not ex-officio members of that council shall be eligible for election.	elected annually by the members of the Day and Evening College Staff who are not ex-officio members of the Council shall be eligible for re-election.

10. The proposed modifications and amendments set out above are absolutely necessary for conducting proper election of Members of the Trustees and for better management of Pachaiyappa's Charities.

11. For this election to the Member of the Board of Trustees commenced from 5.3.2019, the date of notifying/inviting nominations. It is seen that very limited nominations namely 25 for election of Trustees were received. Besides it is seen that the applicants have received more than one application and applied for more than one constituency at the same time. It is also seen that out of the 25 contestants 20 of them are members belong to either of the political parties, holding and were

holding positions in the political parties. This has an indirect effect among the General Public to come forward to contest the post of Trusteeship. This Hon'ble Court in Application Nos.4224 of 2005, 4884, 4846, 4847, and 4780 of 2016 dated 4.1.2007 took the view that the 10 existing provisions electing two Trustees from the Hindu Councillors of Corporation of Madras would create political colour and not in the interest of betterment of trust and consequently refuse to allow two trustees represented from Councillors from Corporation of Madras.

12. The code of conduct for teachers and other persons employed In a college framed under sub rule 1 of rule 12 of the Tamil Nadu Private Colleges (Regulation) Rules 1976, under clause 7 states as follows:

"No teacher or other persons employed in a college shall engage himself in any political activity. He shall not associate with any political party or any organization which takes part in politics or shall subscribe to, or assist in any other manner any political movement"

Similar provisions are framed under Tamil Nadu Recognised Private Schools (Regulation) Rules 1974 prohibiting Teachers and Employees from being member of the Political Party and involving in any political activity. The clause 3 of the said rules is as follows: "No Teacher or other persons employed in a college shall engaged directly or indirectly any trade or business". While, a teacher or an employee of the colleges and schools are prohibited from doing any business or involve in any political activity or contest or participate or canvas any election, it impliedly follows that the Trustees who appoints and controls the teachers and the staffs should also be barred from being a member of political party either directly or Indirectly. It is reliably understood that the most of the Trustees now contesting excepting few are members of political parties, holding political office, former members of legislative body, contestant of political posts.

13. I submit that the Trustees function by majority and the President of the Trust wields unlimited powers with reference to management of Charities

and Its Institutions. The President of the Board of Trustees invariably presided as Chairman of the Selection Committee as well as appointment Committees for the selection and appointment of Assistant Professors, Principals and Staff. The Trustees effectively controls appointments of staff, teachers and disciplinary matters. There are nearly 400 teachers in the Evening College and about 150 staff under the management besides, about 700 teachers and staffs in the aided section. There are about 20,000 students studying in the various college and the admission policies including fixation of fees for the evening Colleges under Self Finance Stream, are decided by the Trustees. That apart there are 100 Kattalais and Endowments and Management of funds allotted to them. In these background any political persons occupying the position of control could not be in the better interest of Pachaiyappa's Charities.

14. It is humbly submitted when directions were issued by this Hon'ble court to hold the election it impliedly followed that election should be conducted in a fair and proper manner. For all the reasons

stated above it is found that the election to the Board of Trustees cannot be conducted in a fair and proper manner. Unless and until the deficiencies noted above are corrected and rectified any election with the existing provisions will lead to improper selection of Trustees which will be unfair and violative of principles of natural justice,

15. The deferring of the election until the Clauses are modified will not affect the functioning of the Pachaiyappa's Charities seriously. On the other hand if the Trustees are to occupy the post as per the present existing scheme it will seriously prejudice and will be detrimental to the objects and purpose for which Pachaiyappa's Charities are created. If political influence either directly or indirectly allowed in the holding of post of Trusteeship the consequence will be reflecting in education, appointment and management of properties under the control of Pachaiyappa's Charities.

16. This Hon'ble Court being entrusted with the authority on public charities it is just and necessary that this Hon'ble Court must come to the rescue of

Pachaiyappa's Charities for proper management. The Interim Administrator has already filed applications praying for the appointment of three independent Authorities to look after (a) Educational Institutions, (b) Properties (c) Pachaiyappa's Trust and supervising authority over and above the Trustees to function under the supervision of this Hon'ble Court and the same is pending.

17. It is humbly submitted that the I.A. has come across serious infirmities in the clauses of the New Scheme relating to the process of election to the Board of Trustees which have made it impossible to conduct a fair and proper election due to (a) onerous conditions for registration and application of voters and nomination, (b) unequal weightage to four categories, (c) against one vote for one person concept, (d) nominating for more than one constituency at a time, (e) contesting with political background and colour with conflict of interest and (f) undefined clauses.

In the above circumstances most humbly prayed that this Hon'ble Court may be pleased to permit the

Interim Administer to cancel the Election Notification dated 5.3.2019 inviting nominations and all further proceedings and steps taken in pursuance to the election notifications pending disposal of the Scheme Amendment application in the interest of justice.

It is therefore humbly prayed that this Hon'ble Court may be pleased to accept the above mentioned amendments and Clause 11(A) 11(B), 11(C) and 1-12 of the New Scheme for the Management of Pachaiyappa's Charities and direct suitable amendments to be made in the New Scheme framed by this Hon'ble Court for the Management of Pachaiyappa's Trust and pass such further or other directions in the interest of justice."

53. The aforesaid recital is necessary as the appellants have contended that after the order dated 31.10.2018 passed by the learned Single Judge, and quoted herein above, the same had become final in so far as the holding of elections is concerned. The same also contained the entire election programme and neither any appeal was filed against the said order, nor any application to

vacate the order had been filed.

54. It is the contention of the learned counsel for the appellants that a judicial order had become final and, therefore, the Interim Administrator could not have prayed for cancellation of the election notification dated 5.3.2019 without there being any modification in the earlier order dated 31.10.2018 passed by the learned Single Judge. It is also the argument of the appellants that this fact has been completely overlooked by the learned Single Judge while passing the impugned orders and thereby impeding the very process of election, which has already been set into motion. It is submitted that the ultimate order passed by the learned Single Judge is, therefore, directly in conflict with the order dated 31.10.2018, which still continues to hold the field.

55. A common counter affidavit was filed on behalf of the appellants/respondents to the aforesaid application moved by the Interim Administrator. The same is extracted hererin under:

"I, Mr.V.Ramanathan, son of M.Varadaraja Perumal aged about 66 years, residing at AH21(new no. 123), Shanthi Colony, Anna Nagar, Chennai – 40 do hereby solemnly affirm and sincerely state as follows:-

1. I have been arrayed as the 4th Respondent in the above Applications and as such, the instant common counter affidavit is filed in these applications on behalf of myself as well as Respondents 3 to 5.

2. I have perused the affidavit filed by the Learned Interim Administrator and, at the outset, I state that the Learned Interim Administrator, who is an officer of this Court with a designated purpose, has filed the above applications with the intention to delay the very purpose for which he was appointed. The above applications taken out by the Learned Interim Administrator are not maintainable on the following amongst other preliminary grounds alone.

3. The Applicant is the Interim Administrator, who was appointed by an order of this Hon'ble Court dated 14-06-2018 to conduct the elections to the

Board of Trustees and administer the Trust till the elections are concluded. The Learned Interim Administrator draws the remuneration as fixed by this Hon'ble Court. The Learned Interim Administrator, as mentioned above, was primarily appointed only to conduct the elections. It is pertinent to mention that the basis for this Hon'ble Court to appoint an Interim Administrator was that, this Hon'ble Court was not happy with the preparation of electoral rolls and the term of the Trustees was coming to an end. The Learned Interim Administrator, who took charge to conduct the elections, has admittedly carried out the mandate of revising the electoral rolls and then called for the elections. In such circumstances, the Learned Interim Administrator, being an officer of this Hon'ble Court, who is a third party to the interests of the Trust, has now sought for amendments to the Scheme framed by this Hon'ble Court, when, in fact and in law, the Learned Interim Administrator had already acted as per the mandate of the order dated 14-06-2018 as well as the Scheme itself. The Learned Interim Administrator has sought to file the present applications in his official capacity thereby

clearly creating a conflict in his functioning as per the orders of this Hon'ble Court and that of an Applicant seeking for amendment to the Scheme. Therefore, the present applications are liable to be dismissed on this ground alone.

4. As mentioned above, the Learned Interim Administrator was appointed with a clear and specific direction to conduct the elections as per the Scheme. In fact, it was only on allegations that, the electoral rolls have not been drawn, as per the Scheme, the Interim Administrator itself was appointed vide order dated 14.06.2018. Thereafter, the Learned Interim Administrator has filed an application in Appln No.8104 of 2018 wherein, by order dated 31.10.2018, this Hon'ble Court was pleased to extend the time period for conducting the elections. Thereupon, in his reply to Application, the learned Interim Administrator had specifically stated that he is in the process conducting the elections and had also given a detailed schedule of events, which was approved by this Hon'ble Court by its order dated 31.10.2018. Even in his counter to Application No 1802 of 2019, the Learned Interim Administrator had

stated that he is conducting the elections as per the orders of this Hon'ble Court. In fact, the learned Interim Administrator has so far filed 3 Reports and atleast 3 other applications before this Hon'ble Court and in none of those applications, as he sought for any delay in the conduct of the elections. Having carried out the mandate of revising the electoral rolls to conduct the elections, as per the orders of this Hon'ble Court and the Scheme governing the Pachaiyappa's Trust Board, the Learned Interim Administrator is now seeking to delay the elections by claiming that certain amendments to the Scheme are required, which are in any case completely contrary to the true interest and welfare of the Trust itself. After having repeatedly affirmed before this Hon'ble Court regarding the conduct of the elections on various occasions, the Learned Interim Administrator has now sought to file the above applications for cancelling the Notification already issued and also for amendments to the Scheme, which clearly goes to show that the Learned Interim Administrator is seeking to achieve other objects than what was set out in the order of this Hon'ble Court dated 14-06-2018. The above applications are

also liable to be dismissed on the ground that the Applicant has been making self-contradictory submissions before this Hon'ble Court.

5. It is submitted that this Hon'ble Court, by an order dated 20.03.2019, had clarified its order dated 05.03.2019, and the said order dated 20.03.2019 was passed only on the letter issued by the Learned Interim Administrator seeking for a specific order for stay of further proceedings in the electoral process. Having issued such a letter, the present Applications smacks of malafide and is clearly an attempt to overreach the orders of this Hon'ble Court dated 14.06.2018 as well as 31.10.2018. The present applications are, therefore, nothing but an attempt by the Learned Interim Administrator to delay the very object of his appointment and delay the election to the Trust Board itself.

6. Without prejudice to the above preliminary objections, which have been raised, I state that, the allegations made in the above applications in support of the prayers made therein are also completely false and each of these allegations are contrary to the

established facts and therefore, are denied.

7. The allegations in Paras 7 and 8 of the affidavit regarding Clause 11 of the Scheme and the alleged defect of the said clause are completely baseless. It is submitted that, Pachaiyappa's Charities Trust has been governed by the Scheme formulated by this Hon'ble which has seen its last of the amendments in 2007-08. The orders passed by this Hon'ble Court were also upheld by the Hon'ble Supreme Court. Most of the objections, which are raised now, are the very same objections which were raised and the same were dealt with by this Hon'ble Court while passing Orders in relation to the amending the scheme in 2007. In any case, to quell the apprehensions raised by the Learned Interim Administrator, each and every one of the alleged defects of his are explained in the following paragraphs:

A. Reply to Para 8(a): The Scheme does not bar a trustee to contest in more than one constituency. However, it specifically holds that, if a person is elected as a trustee from more than one

constituency, he has to give up his trusteeships so as to hold only one trusteeship at a given point of time. This is completely in line with the democratic principles in any Trust.

B. Reply to Para 8 (b) to (d): The Scheme does not provide for one person one vote concept inasmuch as the voting depends on the office held by the concerned voter as well as the role the voter has amongst the electorates and the Institutions. A person is privileged by way of his role in the functioning of the Trust itself. Therefore, a person with higher participation in the Trust/ Institution affairs, is entitled to a greater say in the election of trustees. This is a well thought out clause so as to provide a wider representation to a person having larger interest in the affairs of the Trust. This does not lead to inequality in weightage of votes to electorates and does not create any imbalance, as sought to be projected by the Learned Interim Administrator

C. Reply to Para 8 (e): As regards allegations in Para (e), the reference in the scheme is to Permanent

Teachers, who have a larger interest in the affairs of the Trust and the institutions. The temporary teachers are appointed for a period at 11 months and even though their presence and participation in the institution are vital, they do not have a larger stake in the affairs of the Trust as that of the Permanent Teachers, who have been referred to as "Approved Teachers in the Scheme.

D. Reply to Para 8(f): The allegation that the condition regarding "standing of graduates" should be removed is again against logic. The Trust, being a Public Charitable one and persons who are elected as Trustees having access to public properties, the framers of the Scheme thought it fit to provide for maturity in terms of age and attachment to the institution to be linked to the electorate. Therefore, the condition regarding "standing of graduates" is also not a defect, but a well reasoned condition.

E. Reply to Para 8 (g): As regards the allegation on the registration being compulsory for a period of six months for the voters in graduate constituency, it is submitted that the same was made with a sole

reason to protect the integrity of the post of the trustee. The framers of the Scheme did not want the existing trustees to misuse their office by framing electoral rolls to suit their re-election. It was with this noble idea that a cooling period of six months for eligibility was framed. The allegation regarding 300 Graduates, who have registered and yet cannot vote, is again based on this cooling period, which would alone ensure transparency on the list of voters.

F. Reply to Para 8 (h): The allegations are denied, inasmuch the present Scheme dearly provides for how and what manner the persons to the College Council are to be elected. This does not require any specific clarification inasmuch as the orders of this Hon'ble Court would itself clearly guide such an event. In fact the Learned Interim Administrator without even consulting the other Trustee, has been calling for Council meetings and been taking positions regarding the Council that are directly against the Act as well as the Orders of this Hon'ble Court.

G. Reply to Para 8 (i): Even though till the last elections, the College staff from evening colleges were not allowed to vote, the Applicant/Learned Interim Administrator for the present election, has interpreted that, "Approved Teachers would include staff from Evening Colleges and has given them the right to vote, which has not been objected to as well. Therefore, this also does not amount to any defect, as sought be projected.

8. I state that in paragraph 9, the Applicant has sought for amendments to the existing schemes and each of these amendments are impractical, against the previous orders of this Hon'ble Court and against the law governing the Charities itself.

S.No	Proposed Amendment	Clause	Reasons for objection
1	Reduction of eligibility limit of the candidates in relation to property	11(A)	As admitted by the Applicant it is only in the year 2008 that this Hon'ble Court has fixed Rs.10,000/- towards payment of property tax as a qualification for the candidate and there is no necessity for any change thereto.
2	Disqualification of persons associated with Political Parties from contesting	11(A)	No basis whatsoever and the reasoning given is untenable. Politicians have always been active part of the trust since time immemorial. Disqualifying them would be arbitrary. Trustees being a public office

S.No	Proposed Amendment	Clause	Reasons for objection
			cannot create such discrimination without a rationale. The same would apply to prohibiting any person running other educational institutions from participating in Trust.
3	Minimum eligibility of 10 year standing for graduates and research scholars to be removed	11(B)	No reasons to change the same since the framers of the scheme thought fit to have only persons experience to be trustees as it involves management of several schools, colleges and properties.
4	One vote for the electorates in any one of the constituencies	11(B)	The concept of one person one vote is against the scheme itself since the scheme contemplates vote only for a post and not a specific person. In the structure of university senate and the other voter colleges, it is common for one person to be representing two different voter colleges. Therefore, this proposed amendment would create issues to the functioning of scheme itself and result in reduction of the Electorate.
5	Registration of names in graduate constituency at least 6 months before the date of election	11(C)	The registration prerequisite made with a sole reason to protect the integrity of the post of the trustee in order to prevent misuse of office. Only for this reason that a cooling period of six months for eligibility was framed.
6	Revamp of College council to include a member elected by board or by Administrator appointed by High Court or the AG	1-12	There no reasons whatsoever to effect his change in as much as the fact that the changes sought for are arbitrary and

S.No	Proposed Amendment	Clause	Reasons for objection
	& OT and one member of day and evening college staff elected by themselves		the scheme modified by this Hon'ble Court itself is clear as to why the council is constituted in the present manner.

9. I state that the averments in paragraph 10 are vehemently denied. The Applicant has stated that that the above proposed amendments are absolutely necessary for conducting elections without any reason or basis whatsoever. It is pertinent to note that when the tenure of the erstwhile trustees was coming to an end, this Hon'ble Court was pleased to appoint an administrator only for the purpose of conducting the election and managing the trust meanwhile. Therefore the Applicants herein are seeking to introduce arbitrary amendments to the scheme only to delay the electoral process.

10. I state that the averments of the Applicant in paragraph 11 are denied. It is submitted that it is pertinent to note that following the publication of election notification on 13.02.2019 by the Interim Administrator, nomination of candidates for the posts of Trustees in all 4 constituencies were accepted on

06.03.2019. Further, nominations were filed between 06.03.2019 to 14.03.2019. On 15.03.2019 nominations were scrutinised and the list of valid nominations was published on 16.03.2019. 20.03.2019 was fixed as the last date for withdrawal of nominations. In fact due to the withdrawals in some constituencies all that is left is announcement of results. As such, the Interim Administrator accepted the nominations as stipulated under the scheme and the election process have reached the final state. To state that the contestants belonging to political parties have an indirect effect among the general public is preposterous. Political affiliations have no effect on the functioning of the trustees and as such the Applicant has not stated as to how there are any correlation between Political Affiliations and mismanagement of the trust, which would affect the affairs of the Trust,

11. I state that the averments in paragraph 12 and 13 are false and therefore denied. The Applicant is seeking to draw comparisons with the Private College Regulation Act and the management of Trust which is logical. The said act was enacted to regulate the

functioning of the Private Colleges and has nothing to do with the management of the Trust. As already stated political affiliation has no effect on the management of the trust. Almost every public trust has trustees who are politicians and as such it was never the intention of the framers of the scheme or this Hon'ble Court to exclude persons who are affiliated to any political parties. Further apart from educational activities the Trust also does charitable & religious activities as well.

12. I state that the averments in paragraph 14 are false and thereby denied. The Applicant is seeking to interpret the order passed by this Hon'ble Court in a manner to suit his contention. I state that this Hon'ble Court has appointed the Learned Interim Administrator to conduct the election and as such there was no direction to amend scheme or even a discussion as to the need for the same. Further to state that the election cannot be conducted in a fair and proper manner unless the scheme is modified is a statement which is contempt of this Hon'ble Court since the scheme in its present form was formulated by this Hon'ble after taking into consideration all the

relevant parameters.

13. I state that the averments of the Applicants in paragraph 15-17 are false and thereby denied. The averments in the said paragraphs clearly bring out the mala fide intention of the Applicant which is only to delay the election process. As already stated, the election has already reached an advanced stage and as such there's no reason to stop the same. It is submitted that the amendments which are sought to be introduced are with keeping in mind their own vested interest."

56. Similar counter affidavits were filed on 9.4.2019 and 12.4.2019 by Mr.R.Prabhaakaran and Mr.R.M.Jagannathan respectively clearly disputing the stand taken and in informing that the election process had already commenced and the respondents had been elected unopposed, about which details were given in paragraph (6) of the counter affidavit of Mr.R.M.Jagannathan dated 12.4.2019.

57. The counter affidavit also discloses certain expenditures incurred by the Interim Administrator from 25.6.2018 onwards, which is to the following effect:

I. Salary: Interim Administrator/Secretary/Addl Secretary / Estate Officer / Account Assistant. 2,00,000 + 55,000 + 40,000 + 40,000 + 25000=Rs.3,60,000 per month. Salary Expenses: July 2018 to March 2019 = 9x3,60,000 = Rs.32,40,000
II. <u>Advocate Fees</u> – Rs.4,50,000 (Sr.Adv) <u>Advocate Fees</u> – Rs.4,00,000 (Panel Adv)
III. Auditor Fees: Internal – Concurrent Audit – Balachandran & Co. - Rs.18,74,000 External – Statutory Audit – Moorthy Associates - Rs. 7,50,000 Totall: Rs.67,14,400
Before the appointment of Interim Administrator the trust had paid Professional Fee to the Auditor around Rs.9,00,000 (Nine lakhs) for the period from 2011 to 2017.

58. The Interim Administrator filed a reply affidavit dated 15.4.2019, and in paragraphs (10) to (18) stated as under:

"10. The eighth respondent in his counter refers to the expenses of "the Interim Administrator and his associates" without making any grounds to sustain same. As a

matter of fact identical allegations were made by Thiru S.Jayachandran in paras 19 and 34 of his counter affidavit dated 28.2.2019 in the Application Nos. 10093, 10094 and 10095 of 2018. In reply to this allegation I had submitted as follows:

'18.

The Interim Administrator by virtue of this order has appointed the following personnel (1) Thiru A.Natarajan, son of Alagarsamy, formerly as Assistant Commissioner for Commercial Taxes a Secretary (Election), (2) Thiru P.Seshadri, son of P.S.Sundaraja Iyengar, formerly Bursar District Institute of Education and Training Tamil Nadu Government, Chennai-5 was appointed an Additional Secretary Education of Pachaiyappa's Trust, (3) Thiru G.Ramakrishnan, son of late Thiru V.Govindan formerly Personal Assistant Collector (LA) as Estate Officer (4) Tmt.N.Maheswari, M.Com. wife of Thiru Vaitheswaran, Accounts Assistant of Pachaiyappa's Trust temporarily w.e.f.

7.9.2018 at a consolidated pay of Rs.25,000/-. All these appointments are temporary and are on consolidated pay.

19. Considering the volume of work relating to colleges, schools, properties, legal matters, teachers and professors and staffs, the three Secretaries are engaged to assist I.A. All these Secretaries are empowered and permitted to represent and file affidavit as and when necessary depending on the facts and circumstances of the case. The interpretation of the 3rd respondent that there can be only personal secretary and not additional secretary is hyper technical overlooking the real purpose and intention of having personal staffs to perform the job of administration. The remuneration by the Secretary on consolidated basis of Rs.30,000/- + Rs.10,000/- allowance is very moderate compared to their competence and Volume of work they are turning out. They sincerely attended the PTB offer from 10.00 AM to 6 P.M. and do their work on their own

*without much assistance or co-operation
from Pachaiyappa's Trust Board Office."*

11. Again in reference to similar allegation made by Thiru Jayachandran in his common counter affidavit dated 28.2.2019 in para 55 I.A. has filed a reply in paragraph 37 as follows:

'37. Regarding the allegations made in paragraph 55 regarding the fees paid to the I.A. and the Secretaries it is submitted that the fee to fixed by the Hon'ble High Court as far as the I.A. Is concerned. He was given liberty to appoint his own Secretary and Staffs and draw salaries for them. Accordingly, for all establishment including I.A. the total salary commitment comes to Re.3.25 lakhs. Considering the competency and qualifications of the Secretaries the salary fixed at the rate of Rs.40,000/- is quite moderate. Similarly the fee fixed by the statutory auditors is fixed by the Hon'ble High Court. As far as the fee for the External Auditors M/s.P.S. Moorthy Associates it was based on the work entrusted to them. As per

the bill dated 2.11.2018 they have charged Rs.30,000/- per month for 12 months for Colleges for Chellammal College, C.Kandaswami Naidu College for Men, Pachaiyappa's College for Men, Kanchipuram, Pachaiyappa's College (Men), Chennai and C.Kandaswami Naidu College for Women, Cuddalore and Pachaiyappa's Trust Board. The fees charged as per the invoice dated 2.11.2018 came to Rs.14,16,000/-. Considering the work turned out by internal auditor the fees cannot be held to be on the higher side. On the other hand but for the timely auditing and finding out the real financial conditions and account system of the various units of Pachaiyappa's Trust would not have come to light. But for their sincere efforts audit reports of all these trusts and entities would not have been possible within the short time. Their Reports formed part of the Annual Report - 2019. The real financial conditions of Pachaiyappa's Trust and its units came to light only ter the Commemoration Day. The fees paid to the

Secretaries and the Auditors cannot be measured in terms of money."

12. Thiru R.Prabhakaran one of the former Trustees Pachaiyappa's Trust, sixth respondent in A.No. 10093, 10094, 10095 of 2019 has also filed an affidavit alleging that the remunerations given to the Secretaries and Auditors that too high have given reply in I.As affidavit dated 11.3.2019 to the said allegation as follows:

'8. I.A. has taken a decision to clear the bills to the professionals like Auditors and Advocates only after the completion of works entrusted to them and records are furnished. Both the auditors were paid only after elaborate auditing and reports running to several volumes and filing of Income tax returns then only bills were cleared. In so far as the statutory auditor is concerned the fees is prescribed by the Hon'ble Court. In so far as internal auditing is concerned it was decided on the basis of number of charities and entities, schools, colleges audited by them. In other words depending on the nature of their professional work, fees were determined and

paid. As a matter of fact there was no internal auditing from 2010-2011 onwards and no reports are also available. There was no proper accounting of the receipts and expenditures, which is a mandate under the scheme of management. It is submitted that the Internal Auditors have to engage 53 audit staffs for 5 months i.e. July 2018 to November 2018 by paying Rs.25,000/- per month each. Besides the Auditing Company are also to be paid. It is very unfair to make such wild allegations of over payment without looking into content and the work done. It is sufficient to say that all these allegations are also answered in detail in the reply affidavit filed to the 3rd respondent's affidavit.'

13. Thiru R.M.Jagannathan, 8th respondent herein in para 11 of his counter affidavit has simply referred to Advocate fees without making any points on that issue. However, it is submitted that Thiru K.V.Sundararajan Counsel for Pachaiyappa's Trust had submitted a bill dated 15.8.2018 to 21.01.2019 of Rs.3,42,500/- for 24 cases/applications which has been paid. His Bills dated 21.1.2019 to 1.4.2019 for 30 cases/applications for total sum of

Rs.3,50,000/- is pending. In so far as Advocate Fees is concerned the bills are accompanying by copies of the affidavit, counter affidavits and judgments if any in support of the bills. Every bill is verified before the bills are cleared. Thiru T.R.Rajagopalan, Senior Counsel had been engaged in four sets of matters on behalf of the Pachaiyappa's Trust for settling the counter and applications and for arguments. He had also in engaging for settling the counter and arguing the matter relating to MRF lease. He had been paid a legal fees of a sum of Rs.4,00,000/-. A portion of bills submitted by Advocate A.Devendran to the extent of about 2 lakhs was cleared and paid. However for the remaining bills for about Rs.2 lakhs in the absence of records to substantiate the claims or certificate from him they are pending. In any event the matter is under process.

14. The previous internal auditor Thiru S.Marudhavanan, C.A. appointed by Thiru T.N.Seshan, I.A.S., had submitted a bill dated 20.1.2015 for a sum of Rs.3,81,621/- towards the preparation and submission of audit reports for the years 2010-11, 2011-12, 2012-13. These reports

and the bills are not presented by the PTB office so far. The bills have not been settled so far. Copy of the same is annexed.

15. M/s.G.Mukundan, Chartered Accountant appointed by the former Trustees has raised a bill for a total sum of Rs.10,55,000/ dated 14.2.2019. According to this bill it is towards the filing of Income Tax returns F.Y. 2016-17 and auditing of six colleges for F.Y.2016-17. Incidentally he has also claimed a sum of Rs.3,00,000/- towards liaison officer work for getting condonation of delay in filing Income Tax returns for the year 2012-13. All these claims were found to be irregular and suitable reply was submitted by Interim Administrator stating that there were no certified financial statements and audit reports. He was also told that there is no provision for engaging a liaison officer and practically no work was done as claimed. Thiru G.Mukundan C.A. could not have been a statutory auditor as well as an internal auditor. He in yet to give a reply to the I.A's letter.

16. Thiru P.S. Moorthy Associates has been

appointed as Internal Auditor exclusively for the accounts in respect of the trust institutions for the FY 2016-2017, 2017-2018 and 2018-2019. Thiru P.S. Moorthy Associates have prepared and submitted audit reports for Pachaiyappa's Trust (20 Pachaiyappa's Estate and expenditure accounts) they have also conducted internal audit for Chellammal Estate, C.Kandaswami Naidu Estate and 23 other Estates. Besides, they have conducted internal audit for 10 Colleges and Institutions. After completion of the internal auditing and submitting the reports for all these entities and institutions their bills amounting to Rs.14,16,000/- was cleared. It is pertinent to mention that internal auditing and report has been done for the first time after the ten years for all the Pachaiyappa's Charities and its units (32 Nos) and allied charities and trusts (26 Nos.). Their reports formed the basis for the Annual Report for the year ending 31st March, 2018 and a conduct of Commemoration Day on 2.2.2019. The report published, and distributed to the Public and uploaded in the Website of Pachaiyappa's Trust has brought forth real state of affairs of Pachaiyappa's Trust to the Public, Professors, Students and Well Wishers.

These reports also formed the basis for filing applications for modifications of the Scheme to have a better administration of Pachaiyappa's Trust. The payment of bills to the internal auditors cannot be measured in terms of money. In the absence of proper accounting and deficiencies as pointed out the report has highlighted real financial state of affairs of Pachaiyappa's Trust.

17. The remuneration paid to the Chartered Accountant Mr.R.Balachandran and Co. is based on the order of the Hon'ble High Court. It was also based on the number of accounts and balance sheets and returns filed. All the reports and returns also formed part of Annual Report submitted for the year ending 31.3.2018 on the Commemoration Day.

18. It is submitted that each and every claim and bill is strictly scrutinized and cleared only after satisfactory proof. Every expenditures made during the period of Interim Administrators is accounted. In the above circumstances the averments of the eighth respondent by simply referring to the expenses to show that large amounts were spent is

unreasonable.”

59. Another application was filed by Dr.N.P.Ravikumar praying for modification of the scheme, which application is dated 1.4.2019.

60. Yet another application came to be filed by one R.Magendran on 9.4.2019 seeking amendments in the constituencies and the qualifications of the electors as well as the Board of Trustees, with a further request to remove Mr.Durai Mohan from the trusteeship.

61. On 22.4.2019, the Interim Administrator submitted his fourth report, where he pleaded before the Court to accept the prayer made in A.No.2416 of 2019 that was filed by him to cancel the elections as notified on 5.3.2019. Paragraph (4) of the said report is extracted herein under:

"4. Election to the Board of Trustees was ordered by this Hon'ble Court in A.No.2624 of 2018 dated 14.6.2018 by appointing the I.A. to conduct the

election by preparing fresh voters list. This has caused delay in preparation of voters list and therefore A.No.5829 of 2018 was filed by the I.A. to extend the time to complete the process of election by 25.1.2019. However, further time was sought for the purpose of including 87 Nos, of "Approved Teachers" and newly "Registered Graduates" of 320 Nos. In A.No.8104 of 2019 time to complete the election was extended to 25.4.2019 taking note of the fact that the previous board of trustees had not taken timely efforts for effectively updating voters list necessitating the appointment of I.A. to conduct the election in a proper manner and to provide for a larger electoral college. The process commenced as directed by the Hon'ble High Court with the publication of draft voters list on 13.2.2019. Election notification dated 5.3.2019 was issued and the same was published on 6.3.2019. **By order dated 5.3.2019 this Hon'ble Court in A.No.1802 of 2019 passed an order of injunction from issuing any notification. By a subsequent order in A.No.1927 of 2019 dated 20.3.2019 this Hon'ble High Court issued a clarificatory order directing the I.A. not to proceed any further in**

conducting the election processes until further orders."

62. Certain judgments thereafter came to be delivered in relation to the educational institutions of the Trust. We may point out that the learned Single Judge in the present matter reserved orders on 26.4.2019, whereafter the judgment came to be delivered on 18.12.2019, which is impugned in the present appeals.

63. The matter was proceeded with and the arguments were advanced by the learned counsel from time to time. The orders passed by us prior to the reserving of judgment are extracted herein under in chronological order.

Order dated 31.8.2020:

"Shri C.Manishankar, learned Senior Counsel, has invited the attention of the Court to the list of dates and events, and the orders passed from time to time regarding the enforcement and amendment of the Scheme of the Trust and has then taken us through the decree of the learned Single Judge dated

4.1.2007, that of the Division Bench dated 24.9.2008, and the order of the Hon'ble Supreme Court dated 1.8.2016. He has also invited the attention of the Court to the Government Order dated 7.10.1996 and then proceedings in the year 2013 with regard to the appointment of an Interim Administrator and holding of elections by him.

2. The argument further commenced with the filing of O.A.No.283 of 2018 seeking an injunction with regard to the holding of elections, in which the first order passed by the learned Single Judge dated 14.6.2018 was placed before the Court and then the subsequent orders passed in succession in the said proceedings leading to the directions issued for getting the elections held on the basis of the election schedule finalized by the Interim Administrator himself.

3. He has then invited the attention of the Court to the application dated 23.3.2019, which appears to be the commencement of the bone of dispute between the parties. It is with the aforesaid background that the arguments have proceeded.

We have heard Shri C.Manishankar, learned Senior Counsel and since the arguments could not conclude today, put up tomorrow (01.9.2020) at 2.15 P.M.”

Order dated 01.09.2020:

“Heard Sri.Manishankar, learned counsel, who has continued with his arguments on the issue of the impugned judgment proceeding to modify the Scheme, for which he has invited the attention of the Court to a chart indicating various provisions that were existing prior to the impugned judgment and the modifications which have been brought about through the impugned judgment, which broadly fall in two parts, namely, amendments in the existing provisions as well as the introduction of certain new provisions in the Scheme.

2.He has also substantiated his submissions by pointing out the law laid down by the Bombay High Court in the case of Dhiraj Lal Velji Gucka vs. Prathap Bhogilal and Others, 1986 SCC OnLine Bom 211 and that of the Supreme Court in the case of

R.Venugopala Naidu & Ors. vs. Venkatarayulu Naidu Charities, 1989 Supp 2 SCC 356, to contend that the principles of constructive res judicata are attracted and keeping in view the earlier modifications brought about by the order of the learned single Judge dated 04.01.2007 that merged into the Division Bench judgment dated 24.09.2008, it was not open for the learned single Judge to have modified the said Scheme unilaterally.

3.It is also submitted with the aid of the said judgments that the provisions of Section 92 CPC are not open-ended so as to allow the Scheme to be modified as and when the Court desires and is subject to such terms and conditions that may be necessary for the benefit of the running of the Scheme or the Charities thereunder. He further submits that the nature of the amendments which had been brought about completely changes the basic nature and character of the Trust or the Scheme that was controlling the Trust properties for which there was absolutely no justification with consequences which virtually upturned the running of the Scheme that did not require any modification

on the facts and circumstances of the present case.

4.The learned Advocate General has also put in appearance and he has submitted that in view of the position of law that governs the framing of a Scheme and the hearing of a Scheme Suit as involved in the present case, the learned single Judge appears to have issued excessive directions far beyond than that was necessary for the purpose of managing the Trust properties and the Charities under the Trust and basically the directions amount to changing the entire constitution of the body entrusted with the powers of managing the Trust, namely, a Nine-member Committee that had stood the test of almost two centuries. He submits that the manner of changing of the constituencies and the introduction of the electorate by virtue of the modifications as indicated in the impugned judgment were absolutely unnecessary and consequently, the creation of a new Scheme by introducing a President of the Board of Trustees and then, a superior authority exercising management over the Board of Trustees, namely, the Advisory Council, completely destroys the original structure of the functioning of the Trust,

which was not required at all on the facts and circumstances of the case. His submission was that in case there was any malfeasance or mismanagement, then, in the event any such modification or orders were required, it should have been brought to the notice of the Advocate General and on his failure to have responded to the same, any interested person should have approached and moved an application for the said purpose. He, therefore, submits that the entire exercise carried out was not appropriate.

5.He then submits that so far as the process of election is concerned, that should be allowed to be completed so that the Board of Trustees as envisaged is constituted and the functioning can be handed over to the Board of Trustees thereafter.

6.Our attention has been drawn to the affidavit filed by the Interim Administrator indicating his desire to be relieved as the President of the Panchiappa's Trust Board, on which the learned Advocate General suggests that in the event the said affidavit is considered, then the Administrator General and

Official Trustee of the High Court being a responsible officer may be handed over the entire arrangement presently continuing for the purpose of getting the elections completed.

Put up for continuation of arguments tomorrow (02.9.2020) at 2.15 P.M."

Order dated 02.09.2020:

"Heard Shri C.Manishankar, learned Senior Counsel, who today referred to the two common counter-affidavits that were filed to contend that the learned Single Judge did not proceed to consider the material that was placed through the said counter-affidavits for the purposes of assessing objections raised in response to the applications that had been filed. He submits that the finding with regard to the alleged benami control over the property is based on no evidence or at least without appreciation of the evidence of both sides. He also submits that the learned Single Judge has not recorded any findings of mal-administration or misappropriation, but has proceeded to consider the submissions unilaterally

raised on behalf of the applicants, that too even taking notice of the four reports filed by the Interim Administrator that was assessed after the applications for the proposed amendments were filed. In essence, he concluded his arguments by stating that the unilateral acceptance of the proposal of the Interim Administrator, who had no other power except to get the elections held as proposed earlier, amounted to an exercise of excessive jurisdiction by the learned Single Judge virtually unsettling the entire Scheme.

2. Supplementing the arguments and raising his own submissions, Shri R.Sankaranarayanan, learned Senior Counsel, in O.S.A.Nos.63 and 64 of 2020 contends that the application which was filed for conducting elections virtually got transformed later on into an investigation by the Interim Administrator and on the strength of such interim reports, the learned Single Judge virtually proceeded on the premise as if there was a managerial fraud or malfeasance, which did require a change in the composition of electoral colleges as well as the Scheme itself, and that too even in a summary

procedure without there being any procedure as prescribed under Order 1, Rule 8 CPC being followed for trying such serious allegations. In essence, his contention is that this could not have been done on the basis of a mere application, inasmuch as only affidavits were filed with no opportunity to either examine, cross-examine or even lead evidence, which was essential keeping in view the nature of the allegations that were taken into consideration after the submission of the reports, for arriving at a conclusion to bring about substantial changes in the Scheme. He, therefore, contends that this summary procedure, and that too even without considering the affidavits which were filed or without even inviting any suggestion from those who may likely be affected, is not the procedure which is contemplated for the purpose of either bringing about the modification or even settling the Scheme afresh.

3. Shri Sankaranarayanan, learned Senior Counsel, further submits that various findings recorded by the learned Single Judge relating to the diversion of funds, benami transaction, action being taken on the representation of the students are all unilateral and

have resulted on account of inferences and conjectures crystallizing into an inherent contradiction in the conclusions drawn by the learned Single Judge, that too even without deciding the issues that did require consideration. He contends that the very foundation, on the basis whereof the Scheme was sought to be altered and modified, and the directions which have been issued were not required at all, and even if it was so, then the remedies as have been suggested by the learned Single Judge without recording any findings have now become meaningless with the ultimate direction issued by changing the entire character of the Scheme, thereby replacing the Board of Trustees and making them look defunct.

4. He has then invited the attention of the Court to the judgments cited by him viz., the judgment of the Apex Court in the case of *State of Uttar Pradesh v. Bhasi Dhar and others*, (1974) 1 SCC 446 paragraph (18); *Raje Anandrao v. Shamrao and others*, AIR 1961 SC 1206 paragraph (11), and *A.D.K. Rangaswami Raju v. The Municipal Chairman, Rajapalayam and others*, 1977 90 LW 373: AIR 1977

Madras 287, to contend that the implementation of a Scheme can be attempted by invoking the jurisdiction of the Court by an application in the Original Scheme Suit itself, but when it comes to virtually overhauling the Scheme as has been done in the present case, then it would have been more appropriate for the Court or the parties to have allowed institution of a proceeding under Order 1, Rule 8 in a representative capacity invoking the provisions of Section 92 CPC. The submission is that by moving a mere application, the amount of transformation which has been brought about amounts to bypassing the procedure prescribed in law and for that he contends that the parties have been denied the procedural opportunity which could have been availed of by them either to counter or lead appropriate evidence in order to contest the nature of the allegations that were set out in the applications moved as also clear the doubts of the Court. He therefore submits that this procedure having not been followed, the proceedings before the learned Single Judge cannot withstand the scrutiny of law and therefore, the appeals deserve to be allowed.

5. He submits that it is not understandable as to what connection or rational nexus did exist, even assuming that there was some alleged mis-management of the properties in order to impel the Court to modify the Scheme. To the contrary, he submits that the democratic approach for either expanding the electoral colleges in various constituencies or introducing new office bearers has no rational nexus with the object of holding of elections appropriately. He contends that an election of a Trustee concerns the constitution of the management, and it has got nothing to do with the administration part, and in the absence of any defect either in the constituencies leading to any unworkability of the scheme or otherwise mal-administration, there was absolutely no reason available for introducing altogether a new system of elections that had no concern with the allegation of maladministration or otherwise, and with regard to which the learned Single Judge failed to record any findings. He submits that the learned Single Judge having recused from proceeding to investigate into the allegations, no material was put forth nor was

available so as to arrive at the conclusion to modify the scheme and even if it was so, then the learned Single Judge did it unilaterally without assessing the contest put forth in the counter-affidavits on behalf of the appellants.

6. The argument could not conclude today. Put up tomorrow (03.9.2020) at 2.15 P.M.”

Order dated 03.09.2020:

“Heard Mr.Sankaranarayanan, learned Additional Solicitor General of India, who concluded his arguments pointing out the distinction between proceedings under Section 92 CPC and that of Section 7 of the Charitable Religious and Endowments Act and Section 34 of the Indian Trusts Act, 1882. He also referred to the judgment of the Apex Court in the case of Official Trustee, West Bengal and Others vs. Sachindranath Chatterjee and Another, AIR 1969 SC 823 (paragraph 16).

2.Mr.Sankaranarayanan then urged while referring to the question posed by the learned single Judge in

paragraph 33 that a Court had no power to proceed particularly with the nature of the reliefs granted by the learned single Judge through a summary proceeding. He further submitted that issues of general administration do not include the object of framing of a scheme or re-framing a scheme or even modifying it. He submits that the learned single Judge while granting the relief has recorded incoherent findings contrary to the issues framed at Item no.s2 and 4. The contention is that even the questions which have been framed had not been answered in the light of the law applicable to the controversy and even on the facts of the case, inasmuch as the learned single Judge has not appreciated the fact that the introduction of the President or the Advisory Council through the relevant amended clauses do not qualify for the word 'Trustee' at all. He has also cited a judgment as a collateral argument in support of his submissions in the case of Nell vs. Longbottom, 1894 (1) QB 767.

3.The contention in sum and substance today advanced by Mr.Sankaranarayanan is that this proceeding which has culminated in the impugned

judgment is in the shape of applications all rolled into one for a relief which could not have been granted through applications that were not maintainable, that too even without considering the contentions raised while objecting to the aforesaid applications.

4.Mr.S.Gomathinayagam, learned Additional Advocate General, advanced his submissions contending that firstly, the very rule of impleading a proper and necessary party was violated inasmuch as his client Mr.V.Ramamurthy had filed a separate application which was finally disposed of on 31.10.2018. No appeal was filed against the same and the said order had become final, yet, when the subsequent applications seeking injunction and appointment of Interim Administrator were filed, he was not made a party to the said applications that were disposed of simultaneously by the learned single Judge through the impugned orders. He, then, contends that once the elections had been set into motion and had reached a particular stage, that too even under the final orders of the Court itself, the same could not have been upturned without there

being any recall or modification of the earlier orders and the Interim Administrator, on his own, could not have moved an application for cancellation of the elections, inasmuch as he himself had acquiesced to the earlier orders passed finalising the election program. The contention is that any further applications contrary to the final orders dated 31.10.2018 were barred by principles of res judicata and constructive res judicata.

5.He, then, submits that altogether new plea through four applications was raised, that too even one of them being by the Interim Administrator to alter the Scheme, who does not fall within the definition of "interested person". The Interim Administrator, therefore, by introducing this new application virtually impeded the election process which could not have been done, once the election process had been completed almost midway. He has also urged that while moving these applications, not even a mention was made of the order dated 31.10.2018 and neither the learned single Judge while passing the orders has taken care to address himself to the impact of the order dated 31.10.2018.

He submits that these were all independent orders and not having been rescinded, modified or even challenged. The disposal of the 27 applications by the impugned order dated 18.12.2019 was an exercise without jurisdiction by the learned single Judge.

6.He has then invited the attention of the Court particularly to paragraph 31 of two of the applications moved being A.No.10096 of 2018 and 10097 of 2018 contending that one of the persons in both the applications is common and therefore, paragraph 31 in both the applications are incompatible. This incongruous pleading itself indicates that the applicants had proposed the amendments in a different form and what is more revealing is that none of these applications had sought for introduction of the new clauses, particularly with regard to the induction of a former High Court Judge as a President and the constitution of a huge Advisory Council.

7.He has then contended with the aid of Clause 13 of the Scheme that recourse could have been taken to

the said clause only for a direction to modify, which does not include the unsettling of the entire Scheme or introduction of any such provision as has been done through the impugned order. The contention, therefore, is that the learned single Judge has entertained the applications which are not tenable in terms of Section 92 CPC and as a matter of fact, there was no material on record nor any due process followed by the learned single Judge for the adjudication of the applications which were moved and disposed of in a summary manner.

8.He has then contended that for the purpose of default in the holding of elections, the provisions of Clause 11(g) of the Scheme finalised under the Decree dated 24.09.2008 of the Division Bench of this Court have not been invoked and therefore, the orders passed by the learned single Judge clearly amounts to overreach over the order dated 24.09.2008 running counter to it. The learned single Judge, therefore, could not have reversed the finality of the order dated 24.09.2008. He then contends that the amendments which have been introduced are inherently contradictory keeping in view the

nature of the rule which is being defined for the President or even the Advisory Council and therefore, such incoherent virtually indicates the inherent defects in the impugned order, which also suffer from the want of jurisdiction.

9. After the arguments of Mr. Gomathinayagam, Mr. Murugendiran, learned counsel appearing for the appellants in O.S.A.Nos. 60, 61 and 62 of 2006 and for the respondents in O.S.A.No. 346 of 2019, has urged that the learned single Judge has broadly proceeded to touch upon the elections with regard to mismanagement of property of the Trust, the holding of the elections and thirdly, with regard to modification in the Scheme. He submits that nothing has been done in conformity to Section 92 CPC and more particularly, not keeping in mind or rather ignoring the original intent of the framers of the Scheme or the Judgments and Decrees which have been finalised and are still intact. He submits that the turning point in the case began with the introduction of Application No. 283 of 2018, where an injunction was sought restraining the Trustees from holding the elections. It is on the last date of

nomination that the injunction was granted by the learned single Judge and then, the matters proceeded that have been narrated by the respective counsel appearing for the parties.

10.He further submits that the learned single Judge in respect of the property and its mismanagement has simply referred to the interim reports that were neither subjected to any trial, evidence or examination. In the absence of any such test having been put to the probative value or otherwise of the facts stated in the interim reports of the Administrator, the same could not have been made the basis of any conclusion even though the learned single Judge has refrained from deciding the said issues finally. He submits that the procedure, therefore, adopted is totally unacceptable in law and while advancing his submission, he has mentioned the fact that the Interim Administrator himself, while administering the Trust, should be called upon to answer as to whether engagement of 14 employees, the utilisation of Fixed Deposits for the causes of litigation and other expenses will amount to a mismanagement or not. In the given circumstances,

the learned single Judge did not take notice of these facts and therefore, such an election or an interim report ought not to have been considered, which was bereft of the own manner of administration of the Interim Administrator himself. He has also urged that the appointment of Principal for four institutions and then the appointment of one as a Principal of two institutions do not appear to be compatible in any law without following any procedure and therefore, the Interim Administrator himself has not administered the affairs of the Trust, which clearly indicates that it was being mismanaged.

11.He has further submitted that the submissions with regard to lease contracts were made before the learned single Judge and the learned single Judge has proceeded to cancel the leases without there being any appropriate procedure having been adopted either by the parties to the lease or otherwise treating the lease to be invalid for reasons which, according to the learned counsel, are based on surmises and conjectures and without dealing with the nature of the lease and the evidence in respect thereof.

12.He, then, contends that the Scheme Decrees, which have been finalised from time to time by the Court itself cannot be altered for which he has referred to Clause 13 of the Scheme and has laid emphasis that the said clause seals and finalises the manner and mode of the administration to be carried out by the Trust and such finality of Decree could not be re-opened and orders could not have been passed running counter to the said Scheme Decrees. He has then urged relying on the definition of the word 'Decree' as contained under the Civil Procedure Code that the Decrees which have been finalised could not have been upturned through orders and this definition has been lost sight of by the learned single Judge while proceeding to pass orders in the matter.

13.Coming to the provisions of Section 92 CPC, he has invited the attention of the Court to the judgment in the case of Rajee Anandrao vs. Shamrao, AIR 1961 SC 1206 (paragraph 11) and then to the judgment in the case of Vidyodaya Trust vs. Mohan Prasad (2008) 4 SCC 115 (paragraph 18) to urge that the learned single Judge has travelled

beyond the scope of the powers as enunciated in law laid in the aforesaid two judgments. He has laid emphasis on the fact that the Apex Court has clearly indicated that the amendment brought about in 1976 in the provisions of Section 92 and Order I Rule 8 clearly indicate that such a proceeding can be only instituted with the permission/leave of the Court. In the instant case, neither any leave was sought nor granted and as a matter of fact, after examining the contents of any such proceeding so as to weigh it on the anvil of the provisions of Section 92 that the Court proceeds to grant permission for pursuing of such a proceeding which does not appear to have been adopted by the learned single Judge and therefore, there being a clear violation of the Statute and the law laid down by the Apex Court, the entire proceedings before the learned single Judge are without jurisdiction.

14.He has then urged that in the Scheme, inclusion of clauses pertaining to the introducing of former High Court Judge as a President is not a modification and is rather an introduction of an individual who was not even envisaged either by the framer of the

Trust to act as President or even under the Schemes that were finalised from time to time. He submits that Nine-member Committee has originally indicated that Trustee has to be elected from amongst the nine members and therefore, imposing a President from outside clearly amounts to upturning the very basic structure of the Scheme of management of the Trust. This being impermissible, the impugned judgment deserves to be set aside.

15.He has then invited the attention of the Court to the applications moved by the respective applicants to urge that all of them have come for their personal interests and benefits either seeking change in eligibility conditions or changing the constituency so as to accommodate more people and not for any charity or charitable or religious purpose for which the Trust was originally created and founded. To illustrate his submissions, he has urged that the learned single Judge abruptly came to the conclusion that a graduate need not wait for ten years to become a voter and he reduced the period to six months. This, according to the learned single Judge, was in order to accommodate more people

interested, but he submits that contesting an election for a Trustee is not a fundamental right and is rather governed by the provisions of the Scheme already finalised. There being no rational for reduction in the age, he submits that there was a rationale in allowing a student matured for ten years before he could participate in the elections and for which he submits that a student immediately passing out at the age of 19 or 20 years would become eligible to contest the elections within six months as proposed by the learned single Judge and then, even if he is pursuing his post graduate studies in the institution, he would simultaneously become a Trustee and also a post-graduate student and thereby exercise control over Professors, Teachers and all other such activities which the Board of Trustees are responsible to administer. He submits that the framers never intended to allow this to happen and that this sense of responsibility with the age of maturity of an elector of having spent ten years time after graduation may have been found fit, which issue was neither examined nor put to examination by leading any evidence by the learned single Judge. He, therefore, contends that this

sudden drop in the age of eligibility is whimsical, and there being no rational behind it without testing the finalized scheme which prescribed ten years, is an erroneous approach and cannot be sustained legally.

16.He then submits that on the issue of reduction of a property qualification, where a tax payer to the extent of Rs.10,000/- has been contemplated, there is no reason as to why it required to be reduced to Rs.3,000/-. The only reason is that lesser wealthier people could participate in the said constituency. He submits that the reason for fixing a standard or a level of monetary qualification was to ensure that the person concerned would be more concerned about the welfare of the trust, rather than his own personal welfare. There were many other considerations or might have been other considerations, but nothing was discussed by the learned Single Judge before reducing the said amount.

17.He then submits that "the one person, one vote" concept adopted by the learned Single Judge totally misses the point that the manner of special rights created in people acquiring a particular status and

then becoming a voter is to ensure the bondage with the functioning of the Trust. He submits that the general rules of democracy could not have been introduced without understanding the concept for which these special rights were preserved under the Scheme and for this also no valid reason has been given and a conclusion has been arrived at without investigating the same.

18.He then submits that the local jurisdiction of Madras and the exclusion of any other territorial jurisdiction was well engrained in the original scheme itself, where householders within the limits of the jurisdiction of the then Supreme Court of Madras had been envisaged to be the voters. Without indicating as to why should this provision in the scheme should be transgressed, the learned Single Judge only on the creation of a new university in Tiruvallur, extended the territorial jurisdiction, which runs counter to the final scheme of the Pachaiyappa Trust.

19.He has then urged that by virtually conferring a power on the High Court to nominate a President,

the provision introduced eliminates the election of the President, which is the original intention under the scheme who has to be elected from amongst the nine members.

20.He has also urged that the power of the Court in order to change the scheme runs counter to the original scheme itself, which empowers only the trustees to alter the bye-laws and, therefore, any such new power conferred under the amendment also defeats the very purpose of the original final scheme.

The arguments could not conclude today. Put up on 4.9.2020."

Order dated 04.09.2020:

"Mr.S.Gomathi Nayagam, learned Senior Counsel has supplemented his arguments by contending that no new trustee can be appointed except on the principles as indicated in Section 74 of the Indian Trusts Act, 1882 and, therefore, in the absence of any impractical situation, or any disqualification, or

non availability of a person to occupy the vacancy, the Court does not have the power to substitute a trustee or bring about a new trustee, as has happened by way of the impugned amendments.

2. His next argument is that by virtue of the new provisions brought under Clause 11(K), the Scheme intends to provide remuneration to the newly inducted President. The contention is that in view of Section 50 of the 1882 Act, no such remuneration is admissible to a trustee for his activities dedicated towards the trust. Thus, any perks or emoluments cannot be paid to either a trustee or the President of the Trust.

3. He has then invited the attention of the Court to the fact that even though the learned Single Judge has himself indicated that as per Clause 11(K)(e) the High Court shall appoint the President of the Trust, while issuing the directions in paragraph 66(iii), the learned Single Judge himself exercising the powers has appointed the current Interim Administrator as the President of the Trust. It is urged that this is incompatible and incongruous, in as much as if the

power was given to the High Court to do so, then the learned Single Judge sitting on the judicial side could not have exercised the power by ascribing it to himself with the caption and phrase "this Court".

4. He has then invited the attention of the Court to the order passed by the learned Single Judge on 30.7.2018 on the application moved by the Interim Administrator, where the Interim Administrator had only made a request for completing the election process, which was already under way, and had sought extension of time for six months, which was granted by the Court. He submits that the said order has become final and, therefore, without reversing the said order, further directions which have been given under the impugned order clearly run counter to the same. The learned Single Judge, therefore, under the impugned order has violated the directions issued by the Court itself.

5. We have heard Mr.Murugendran, who, while concluding his arguments, has urged that all applications have been moved with regard to different issues and the Court without framing of any

issues proceeded to reserve orders, and to the contrary has referred to four issues in paragraph (33) of the impugned judgment. This, according to him, is not complying with the procedure of a proper trial, as the parties were totally unaware of the issues which were to be determined by the Court.

6. He submits that, as a matter of fact, the dispute began with elections, but later on it converted into the framing of the scheme. There was no necessity of this, as none of the decrees earlier passed had touched upon the finalized schemes and it was only peripheral modifications that were done. In the present case, the scheme has been totally modified on the presumption that this will smoothen the functioning of the trust, but according to the learned counsel, this has created more hardship – financial as well as administrative.

7. He submits that once remuneration is being indicated for the President, there is every likelihood of the Administrator and the other Members claiming higher remuneration. Therefore, this is a burden on the trust, which is also evident from the fact that the

Auditor who has to be paid a sum of Rs.11,000/- for auditing 20 of the accounts of the trust, has now been substituted by a Chartered Accountant during the regime of the Interim Administrator, who has been paid a sum of almost Rs.35 Lakhs without seeking leave of the Court or its permission. He, therefore, submits that all the previous orders of the Court have been violated, so as to create an additional burden on the Trust, which is against the spirit of the charitable endowment made by the donor.

8. Resuming his arguments on the issue of elections, he submits that the Court could not have entertained an election dispute, more so when the entire election process has already been finalized and had been undergone. The Interim Administrator could not have approbated and reprobated by first getting the elections held and then all of a sudden advising the other applicants by his letter dated 6.3.2019 to get the elections forestalled.

9. Learned counsel submits that the applicant Chenkuttuvan, strangely enough, in his application

mentions about the interim reports of the Administrator, when nobody else knew about it. His prayer was not to declare the election results, contrary to the orders passed by the Court. On this application, an order is passed on 5.3.2019 for injuncting the election process, which had already undergone, and which was in total violation of the principles of Order XXXIX Rule 1 of the Code of Civil Procedure. There was neither any prima facie case pleaded by the applicant, nor balance of convenience shown, nor any irreparable loss was demonstrated so as to allow the Court to issue an injunction. According to the learned counsel, the said application was moved motivatedly, which now stands unfolded with the applications moved in quick succession thereafter on 8.3.2019. It is on such an application that an order again came to be passed by the learned Single Judge on 20.3.2019 and the injunction order dated 5.3.2019, which was slightly modified, came to be confirmed.

10. He submits that in quick succession thereafter, an application for amendment and seeking permission to cancel the earlier elections was moved

by the Administrator on 23.3.2019. There was no reason for the Administrator to have moved such an application, but the learned counsel contends that this was done as the Administrator was aware of the earlier orders issued by the High Court for holding of the elections, which orders had neither been set aside, nor had even been challenged.

11. In this background, it is urged that as a matter of fact, the Interim Administrator took a u-turn along with some other applicants to forestall the election process, which could not have been done and for which the law laid down by the Court, particularly in election matters is clearly to the effect that an election process once having commenced, it should not be impeded. The argument is that the orders which were passed in aid of holding of the elections earlier were virtually countermanded by the subsequent orders, which was impermissible and was even unlawful. It is, however, not disputed that the orders dated 5.3.2019 and 20.3.2019 were not challenged either by way of an appeal or otherwise. Nonetheless, it is contended that there was no necessity to do so, as earlier orders were passed by

the High Court for holding of the elections and the process already having been undergone with nominations having been accepted, there was no need to further contest the same.

12. It is urged that the last date for withdrawal of nominations was 23.3.2019, on which date the application for modification and cancellation of earlier election was moved by the Interim Administrator. The contention is that since there was virtually no legal impediment in the process which had already concluded, there was no reason to further challenge the said orders which were almost infructuous in nature.

13. Mr.Krishnan, learned Senior Counsel has appeared on behalf of the lessees of the two buildings, namely, Anna Arangam and Amma Arangam, the lease whereof has been cancelled under the impugned order. He contends that the leases were granted after inviting an open offer, which came to be accepted lawfully and there was no occasion, nor any complaint in respect thereof after the leases had been granted in the year 2017, for

the Court to have taken up this matter for summary proceedings, which the learned counsel contends could not have been subject matter of even a Section 92 CPC proceeding. He submits that lease rights could not have been determined summarily in the fashion it has been done determining it without any trial on the issue of the validity of the lease or even the consideration money envisaged therein. He contends that neither there were any pleadings, nor any proof for the learned Single Judge to have arrived at the conclusion that the fair market rent had not been settled.

14. He submits that as a matter of fact, the Interim Administrator had not even pleaded for cancellation of the lease and had only sought enhancement, for which an offer has been made by his clients that a rise of 15% on the amount already settled could be considered in the event the Court comes to a conclusion that fair rent had not been settled. He submits that even this aspect, which was an offer made in writing by his clients, does not find discussion or consideration, and on an application of a third party, Dr.T.K.S.Villalan, who made a request

to cancel the lease, the learned Single Judge has proceeded to oust the lessees without any proper adjudication. He submits that this hits at the jurisdiction of the learned Single Judge to have entertained such an application and it is urged that even the Interim Administrator has later on in his application raised a demand from the lessees, which reflects an inconsistency that establishes that there was no material, or data, or evaluation by any expert about the fair market rent of the premises.

15. The contention is that in the absence of any pleadings and proof, applying the principles of Order VI Rule 4 of the CPC, there could not have been any finding that too even in an matter where no leave had been sought by either of the parties to raise this issue.

16. He contends that even otherwise on facts there is an error apparent on the face of the record, in as much as the learned Single Judge has completely overlooked the change in address of the registered office, which was brought about and has on mere suspicion and surmises concluded that the lessee

had planned out everything in a predetermined manner to somehow or the other get the lease from the trustees, with whom the lessee had apparently some close relationship. Mr.Krishnan submits that all these assumptions are not based on any evidence at all and, therefore, the impugned judgment deserves to be set aside.

The arguments could not conclude today. Put up on 7.9.2020 immediately after the cases fixed for physical hearing are over."

Order dated 07.09.2020:

"Heard Shri M.S.Krishnan, learned Senior Counsel for the lessee appellant, who has advanced his submissions firstly on the issue relating to the allegation made, in particular about the nature of the lease transaction being benami, which he contends is based on mere suspicion and that too only on a letter addressed by students to the Chennai Metropolitan Development Authority, where an allegation was made that the transaction was possibly benami. The allegation was full of doubt,

hesitancy and without evidence to support the same.

2. Learned Senior Counsel has invited the attention of the Court to various paragraphs of the impugned judgment, particularly, paragraph 53.19, the findings recorded by the learned Single Judge in paragraphs 53.27 and 53.28 to contend that there is absolutely no foundation nor any link to establish the aforesaid allegation. He further submits that there is general denial of the said allegation in the counter-affidavit and even assuming that there is no such specific denial of the said allegation, there is no admission either on behalf of the appellant. He submits that the denial already made in the counter-affidavit suffices on this issue for the reason that the allegations itself are vague and incomplete and do not conform to the principles of Order 6, Rule 4 of Code of Civil Procedure, 1908. Learned counsel has referred to Ground No.29 of the memo of appeal.

3. He has then urged that there are perverse findings recorded by the learned Single Judge in paragraph 53.10 of the impugned judgment, where an issue has been carved out to rule against the

appellant on the ground that the address of the incorporated company itself is indicative of this benami status of the lessee. He contends that the finding is perverse, inasmuch as the learned Single Judge has completely overlooked the address recorded in the lease deed as well as the change of address, which was already on record. The company was incorporated on 28.12.2016 with its address at Kolathur, Chennai and the lease deed contains the same. The change of address which has been pointed out in the allegation and recorded in paragraph 53.10 took place on 30.6.2017, which fact has remained unnoticed. This argument is supported by the form registered with the Registrar of Companies, which is on record. For this, learned counsel has invited the attention of the Court to the general denials in the counter-affidavit and has further contended that a specific ground has been taken in the Memo of Appeal in Ground No.22.

4. He has then proceeded with his argument on the issue of no permission having been taken in terms of Section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and in such circumstances,

the lease being allegedly in violation of law cannot withstand scrutiny. He contends that this allegation nowhere concerns the appellant lessee. For this learned counsel has referred to the findings recorded in paragraph 63 coupled with the conclusions drawn in paragraphs 66 (ix) and 66 (xi) of the impugned judgment. The contention is that the learned Single Judge himself has come out with an opinion that the Trust should act swift to save the building from being demolished or being put to any harm and appropriate steps should be taken by the Trust to get the construction of the building regularized. He submits that the learned Single Judge himself is of the opinion that the same requires to be preserved in the interest of the Institution and in this background, there was no occasion for the learned Single Judge to have determined the lease and cancelled it through a direction contained in the impugned judgment. The submission is that the aforesaid relief granted to the applicants is absolutely incongruous to the finding recorded by the learned Single Judge himself. He has invited the attention of the Court to certain paragraphs in Application No.10091 of 2018 and the findings

recorded by the learned Single Judge to substantiate his submissions. It is also urged that the Interim Administrator had not prayed for cancellation of the lease in Application No.10093 of 2018.

5. The third argument advanced by him today is on the issue of the findings recorded by the learned Single Judge in paragraph 53.17 about the atrocity caused to the property of the Trust on account of extending the benefits of parking. Learned counsel submits that the parking area is not transferred under the lease deeds and it is only usage which is permitted with certain conditions therein, for which, learned counsel has invited the attention of the Court to Clause X of the resolution of the Board of Trustees and Clause X of the lease deed itself to demonstrate the same. He submits that this is purely a permissive possession for the user during functions, but clearly without any hindrance to use of the parking place for the College for its activities and other purposes. He therefore submits that there is absolutely no impediment caused to the user of such land by the College or of its students and therefore, the extension of parking benefit ancillary to the lease

deeds has been wrongly construed to be an act that may invite an extreme decision of cancellation of the lease.

6. He has then urged that the issue of unfair rent has also been discussed in the impugned judgment, but for this learned counsel has invited the attention of the Court to the relief prayed for by the Interim Administrator in his Application No.10093 of 2018 that was preceded by the letter of the Interim Administrator dated 10.1.2020 calling upon the lessee to pay the market rent. His submission is that neither any proper pleadings were instituted nor was this issue tried by allowing the parties to lead evidence in order to determine as to what would be the market rent in order to ascertain as to whether the proposal of the Interim Administrator was legally sustainable or not. He submits that these proceedings of determination of the lease involved civil rights and if there was any issue of lesser rent having been fixed under the lease deed, the appellant had offered an enhancement of 15% on the amount already referred, but nonetheless for the Court to record a finding there was absolutely no

material, nor any procedure was followed, by the Court to conclude that the lease deserved to be cancelled on account of any unfair rent having been fixed by the Trust. He submits that these are purely contractual rights that have been crystallized as a lease and the same could not have been made the basis for throwing out the appellant even if it is assumed that the rate of rent required a revision. For this, the Court itself could have undertaken the exercise and therefore in the wake of the observations made and the prayer of Interim Administrator, the issue instead of being determined has been ignored and rather a new relief of cancellation of lease has been granted, which was not pleaded by the Interim Administrator.

7. He has then invited the attention of the Court to certain Clauses of the resolution passed by the Board, particularly, Clause 24(e) and (f) to urge that the interest of the College has been protected and that fixation of rent had nothing to do with the utilization of the parking place. To the contrary, the terms and conditions itself indicate that the lessee would allow the premises to be used by the College

for its purposes and even offered the premises at substantially concessional rates for use of the employees of the College for their personal functions.

8. Learned Senior Counsel has then urged that the findings recorded by the learned Single Judge that all this has been done for commercial interests particularly vis-a-vis the tenure of the lease which is 20 years, could not have been a ground to come to the conclusion that the Trust was denuded of its authority to enter into any such agreement for renting out its premises. He submits that for a charitable trust, several activities are permitted and there being no bar in leasing out the property, the period for which lease had been granted was still a negotiable consideration that ought to have been taken into account by the learned Single Judge in stead of cancelling the lease itself. He further submits that such nature of allegations could not have been made the basis for entertaining such claims on mere applications and that a proper trial with full opportunity to lead evidence ought to have been conducted either for determining the fair rent

or even otherwise the terms of the lease. He therefore submits that even in the judgment in the case of *Raje Anandrao v. Shamrao and others*, AIR 1961 SC 1206, paragraph 13, the Supreme Court has not said that such issues should be dealt with on mere applications and the procedure prescribed in law of a trial should not be undertaken by the Court.

9. He has then wound up his argument contending that whenever pleadings have to be construed by the Court in such cases where the allegations are of benami touching upon fraud, then the absence of specific and full particulars of the allegations denudes the applicants or plaintiffs from seeking any relief, inasmuch as full particulars have to be given by disclosure of the correct facts to the other side for meeting the judgment or the evidence in respect thereof. In the instant case, a mere allegation and a denial does not conform to the principle of Order 6, Rule 4 CPC and particularly in matters of serious allegations which touch upon fraud. For this, he submits that there is no pleading so as to link any of the Trustees, who had passed the resolution and the Director of the lessee company to establish that

there was any relationship worth the name nor there was any pleading to that effect. The assumption therefore of the learned Single Judge in the absence of such pleadings conforming to law would be violative of the propositions enunciated in several decisions, some of which were cited at the bar viz., in the cases of Bharat Dharma Syndicate Limited v. Harish Chandra, AIR 1937 PC 146; Bishundeo Narain and another v. Seogeni Rai and Jagernath, AIR 1951 SC 280 (Paragraphs 27 and 28) ; Ladli Parshad Jaiswal v. The Karnal Distillery Co. Ltd. and others, AIR 1963 SC 1279 and the judgment in the case of Bachhaj Nahar v. Nilima Mandal and another, (2008) 17 SCC 491.

10. He has therefore urged that he may be granted some time after the arguments are concluded by the other side to further assist the Court on this issue.

The arguments could not conclude today. Put up tomorrow (08.9.2020) immediately after physical hearing."

Order dated 08.09.2020:

"Heard Mr.K. Duraisamy, learned Senior Counsel for Dr.T.K.S. Villalan, who is one of the applicants and made a prayer for taking appropriate action particularly with regard to the cancellation of the lease pursuant to the Resolution dated 10.04.2017 for twenty years viz., Amma Arangam Multipurpose Hall., which he contends was a property purchased from the Housing Board through a Deed dated 09.03.1999 executed in favour of the Secretary of the Committee of the Management of Pachayapp's Trust C.K. Kandasamy College. He submits that the said deed from the Housing Board itself puts in a caveat that the property should not be used except with the permission of the vendor for any other purpose. He has then invited the attention of the Court that the Resolution to construct the multipurpose hall was passed on 10.02.2014, but, later on, when it came to the transfer of funds for the purpose of such construction, there were only five of the trustees, out of nine, who passed all the Resolutions. He has laid emphasis on this that the same is of some relevance inasmuch as it is these

five trustees who continuously, transferred funds vide Resolutions of several dates from 11.09.2017 onwards upto the Resolution dated 14.05.2018 when certain premature encashments of deposits were made and transfer of funds on loan basis was transacted.

2.His contention is that there was no occasion for transfer of these funds after the lease which was clearly done to benefit the lessee and this amounts to diversion of funds. This form of mismanagement therefore leaves no room for doubt that the trust property and funds were appropriated in a manner which were adverse to the interest of the Trust and was clearly spent in a manner that has caused a loss to the College as well as to the Trust.

3.To substantiate his submission, that not only this, there was a clear stipulation in the terms of the lease deed that the expenses for registration of the lease was to be borne by the lessee, yet, the stamp duty, payment document indicates that it was paid through one Mr.Hemanth, one of the trustees presumably out of trust funds.

4.He has then invited the attention of the Court to the liberal terms of the lease to urge that extending it for twenty years with a paltry increase of 15% for every five years clearly indicates that it was not in the interest of Trust and the property was parted away at the very concessional terms.

5.He then submits that not only this, the expenses which are to be borne with regard to the building are in excess of the income that was derived from under the lease and this also therefore amounts to a loss.

6.He has then invited the attention of this Court to Sections 26 and 27 of Private Colleges Regulation Act 1976, to contend that such a lease could not have been entered into without prior permission and therefore, the same being contrary to law cannot be sustained and has been rightly cancelled by the learned Single Judge.

7.He has then invited the attention of this Court to Sections 47 and 85 of the Tamil Nadu Town and Country Planning Act, 1971 to urge that the said

provisions also clearly demonstrate that the action taken by the trustees was in violation of law and therefore, there cannot be a doubt about the conclusion drawn by the learned Single Judge.

8.He submits that the application moved by his client for cancellation of lease, therefore, has been rightly considered and allowed and it is in no way in conflict with the interest of the other applicants.

9.The aforesaid submissions have been advanced and sought to be substantiated by the judgment of the Apex Court in the case of State of Madhya Pradesh vs Narmada Bachao Andolan and another reported in (2011) 7 SCC 639 paragraphs 8 and 9 to contend that this Court is exercising its jurisdiction which is that of parens patriae and in the larger interest of the trust, which is public interest. This Court may therefore pass orders so as to preserve the properties of the trust and thereby, promote the object as underlined in the impugned judgment for the protection of the property of the trust as well as that of the College.

10.He has also invited the attention of the Court to the Division Bench judgment of this Court in the case of P. Ezhumalai vs Pachaiyappa's Trust reported in 2017 Vol.8 MLJ 529.

11.We have then heard Sri.T.R.Rajagopalan, learned Senior Counsel for the Interim Administrator, who has invited the attention of the Court to the defaults pointed out by the Interim Administrator from various pleadings on record. He has then invited the attention of the Court to various resolutions passed from time to time beginning from 10.02.2014 to contend that the intention of the Trustees initially was to construct an auditorium exclusively for the interest of the students and not for any commercial venture. He, therefore, submitted that the leasing out of the property and that too without even following the relevant provisions of law rather in violation thereof, the authorities did intervene and it is on record that a stop work notice was issued by the CMDA on 28.06.2017 under Section 56 read with 57 of the Tamil Nadu Town and Country Planning Act, 1971.

12.He then invited the attention of the Court to the reply given under the Right to Information Act from the Directorate of Collegiate Education dated 15.12.2017 wherein it has been categorically stated that no permission was obtained from the Directorate for leasing out the property vis-a-vis Section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. He has then urged that the Interim Administrator himself moved an application before the CMDA on 17.12.2018 to this effect. In between, an application has been made by M/s.Vybogam Design Consortium Private Limited, an architect, presumably on behalf of the Trust on 30.05.2018 to the CMDA for allegedly seeking construction of additional building to the existing building. Learned Senior Counsel contends that this recital was absolutely incorrect and the entire form was filled up without any particulars indicating the details of the property. He has further pointed out that the Assistant Engineer of Chennai Metro Water Supply and Sewerage Board issued a notice on 28.01.2019 pointing out that no appropriate measures have been taken for laying down sewer connection.

13.He has then extensively taken the Court to the reply submitted by the Interim Administrator in March 2019 to the counteraffidavit filed on behalf of the third respondent. Various clauses of the Scheme of the Trust have been read to contend that neither any audit was conducted nor any accounts were maintained. He has read out various paragraphs in the affidavit to demonstrate the gross irregularities that existed with regard to financial mismanagement of the Trust. He has urged that Income-tax returns were not filed and rather, the Income-tax authorities had been issuing notices for taking appropriate action on account of certain defaults with regard to return in relation to the properties of the Trust.

14.He has invited the attention of the Court to Clause 8 of the Scheme which provides for audit of the accounts and he contends that the Interim Administrator in all his returns tendered before the Court had extensively demonstrated that no such provision had been followed, as a result whereof the audit had got to be conducted by the Interim Administrator himself.

15.He has then urged that there is a clear provision for preparation of budget under Clause 9 of the Scheme and this has never been followed by these five Trustees who have been carrying on the affairs of the Trust and have transacted the lease deed as well as other unlawful transactions which had become subject matter of consideration before the learned single Judge.

16.He has then invited the attention of the Court to Clause 4 to indicate that the Commemoration Day has to be celebrated with certain irregularities pertaining to the submission of report in detail about the activities of the Trust including its administration and financial budgeting. He contends that even for the preparation of the budget, a report has to be tendered to the Advocate General as well as to the Board of Trustees. None of these provisions have been ever followed nor any permission taken from the appropriate authorities for negotiating the properties of the Trust. He, therefore, in sum and substance, has advanced his submissions contending that the mismanagement of the Board of Trustees is

apparent on the facts of the record and therefore, this Court can take cognizance of such facts and make appropriate arrangements accordingly. He, therefore, submits that the impugned judgment cannot be faulted with merely on the ground of certain technicalities as has been urged on behalf of the appellants.

Arguments could not conclude today. Put up tomorrow (09.09.2020) after the cases listed for physical Court hearing."

Order dated 09.09.2020:

"Heard Shri T.R.Rajagopalan, learned Senior Counsel, who has today proceeded with his submissions outlining his arguments beginning from the advertisement issued with regard to the grant of lease in respect of the property described as Amma Arangam. He submits that the advertisement was published in insignificant newspapers and even otherwise, the advertisement did not contain any details or particulars of the property sought to be leased out. He further submits that very carefully the

advertisement was tailored with the phrase "Limited/Private Limited Company", which indicates a close proximity with the registration of the Company of the lessee, which was done in the recent past in December, 2016. He further submits that tenders were invited even before the building was constructed and therefore, the argument in effect is that this entire advertisement and letting out on lease of the premises had been predetermined in a manner so that the lessee could get benefit of it.

2. He has then drawn the attention of the Court to Clauses VII, IX, X, XVI and XXIV of the resolution of the Board accepting the offer of grant of lease to the lessee, to contend that such Clauses are clearly against the interest of the trust property and are designed without any burden on the lessee at all. To the contrary, the said Clauses clearly indicate that the lessee was being benefited directly or indirectly and this form of accommodation to the lessee was clearly detrimental to the Trust funds.

3. He has then submitted that the period of lease

and the manner in which the security clause has been couched absolving the lessee of any liability arising out of default of rent also indicates that more comfort to the lessee was being made available than was desirable, against the interest of the trust property. This was being done in favour of the lessee who did not have its own capital to reflect the capacity to even either pay the security or the rent amount fixed. He has also drawn the attention of the Court to the manner in which the user of car parks has been extended parking facility free of any charges, which tells upon the occupation of large playgrounds that are meant for the students and not meant for commercial purposes of parking. He submits that all these things are based on the records and the report of the Interim Administrator, which is founded on the records of the Trust itself. This evidence therefore which was led before the learned Single Judge does not give rise to any question of proof, inasmuch as this is the document of the trust itself, which has remained undisputed.

4. He has then urged that with regard to the very same Trust, a dispute had arisen, that went up to

the Supreme Court in the case of Committee of Management of Pachaiyappa's Trust v. Official Trustee of Madras and another, (1994) 1 SCC 475, where it has been categorically held that the dispensation of the trust property should always be by open auction and for that he has heavily placed reliance on several paragraphs of the said judgment, including paragraphs (29) and (41), to urge that in that case also the Court itself had taken upon the responsibility of fixing the rent in respect of the lease, that was deprecated by the Apex Court and it was held that the Court should not have proceeded without any material in this regard or subjecting the transaction to public notice.

5. He has then urged that the resolution for constructing the building dated 10.2.2014 was only meant for auditorium for students, which purpose was clearly diverted, and even otherwise there was no planning permission obtained from the competent authority. He has then submitted that the provisions of Section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 have been clearly violated, which held that any lease executed in violation

thereof would be null and void and he, therefore, submits that viewed from any angle, it is evident that the entire transaction being in violation of law, the learned Single Judge was fully justified in cancelling the lease. He submits that he would assist the Court after the arguments of the other learned counsel for the appellants is concluded.

6. *Shri Duraisamy, learned Senior Counsel, has today supplemented his submissions made before by contending that if the property has been used and was meant for the use of the institution, then if it belongs to the trust, Section 27 of the 1976 Act would be attracted, for which he has heavily placed reliance on the judgment of the learned Single Judge in the case of Association of University Teachers, National college Unit, rep. by its President Dr.B.Bhaskaran v. The all India Council for Technical Education, rep. by its Chairman and another, 1999 Writ L.R. 219, paragraphs (15) and (16).*

7. *He submits that the principles of malice in fact and malice in law would also be attracted for which he has cited the Apex Court judgment in the case of*

Punjab State Electricity Board Limited v. Zora Singh and others, (2005) 6 SCC 776.

8. He has then reminded the Court once again that the very same five trustees, who continued to transact the lease, had again filed their nominations to contest the elections which are under dispute, and again they were shown to have been re-elected unopposed. It is for this reason, they have pressed hard upon the Court to declare the results, which would not be in the interest of the trust, as the very same trustees have grossly mismanaged and are responsible for the misappropriation and the alienation of the property of the trust in the manner, as is evident, and they should be prevented from entering the office of the Trustees once again. He has indicated the proceedings of the election of 2019 at page 335 of the pleadings set of documents placed before us in particular, and argued that one Mr.Prabakaran has been convicted and therefore, keeping in view his antecedent, as such he is not a desirable person so as to occupy the office of the Trustee of Pachaiyappa's Trust Board.

9. Mr.V.Raghavachari, learned counsel who has appeared on behalf of a Former Judge of the High Court, who moved an application, being A.No.10096 of 2018, that has been disposed of by the common judgment, contended that the present appeals do not implead the said applicant as a party and, therefore, the consequences of such non impleadment may result in anomalies, as the objection of the applicant having been allowed, if remains unchallenged would operate as res judicata. He submits that there cannot be two decrees in these proceedings, and for which he has placed reliance on the decision of the Apex Court in Lonankutty v. Thomman and others, AIR 1976 SC 1645; the judgment of this Court in K.A.Perumalsamy v A.Kandasamy and others, 2001 (4) CTC 297, followed by the judgment of the Apex Court in Gangai Vinayagar Temple v. Meenakshi Ammal, (2015) 3 SCC 624. He has emphatically asserted that when it is a composite common judgment, then all persons who are parties to the proceedings of the Court below are proper and necessary parties and having not done so, the appeals cannot be proceeded with.

10. He then contends that even on merits the trustees have not followed the provisions of the scheme of the trust, particularly with regard to audits, accounts and budgets, the provisions whereof have already been placed before the Court by the other counsel, but he points out in particular that such information pertaining to the transaction of finance as well as of the property ought to have been compulsorily intimated to the Advocate General, who under the scheme occupies that position entitled to be informed of any such transactions. He, therefore, submits that this procedure has not been followed at least from the year 2010-2017.

11. He then contends that the trustees who have executed the lease deeds were not empowered to do so because the scheme does not envisage conversion of any of the corpus of the property for commercial purposes. In the absence of any authorization under the scheme or any indication to that effect even in any of the documents of the trust, the trustees have travelled beyond their authority in creating liabilities on the trust by executing lease deeds, which were

impermissible and amounts to breach, and hence such transactions apart from being in violation in law are otherwise ultra vires the powers of the trustees themselves and, therefore, such actions are invalid. Thus, the consequential survival of the lease does not arise and the learned Single Judge has committed no error in cancelling the same.

12. *He then contends that the issues raised on pleadings are totally misdirected, in as much as the burden lay, or rather the onus was clearly on the appellants to have established before the learned Single Judge by specifically refuting the evidence or rebutting it, which was in the shape of affidavits and documents that related to the trust. In the absence of any such denial to the material which was already there before the learned Single Judge, the argument being advanced for opportunity to lead evidence is absolutely misconceived. He submits that, as a matter of fact, in the absence of rebuttal, no further proof was required and the learned Single Judge therefore did not commit any error in proceeding to rely on the said affidavits and documents and then passing orders.*

The arguments could not conclude today. Put up on 10.9.2020 immediately after the cases fixed for physical hearing are over.”

Order dated 10.09.2020:

Mr.V.Raghavachari, learned counsel, who has concluded his arguments today mainly focusing on various modifications that have been brought about in the scheme under the impugned judgment contending that such modifications were necessary in the background of an autonomous management of the trust and therefore, the clauses introduced are all in aid of a proper management of the trust and not to denude the trust or its authority or trustees of their powers.

2. He contends that the trustees in the present case have transgressed their authority and, therefore, any action taken by the trustees, particularly in relation to the dispensation of the property by way of a lease is an act which can be described as void. He has invited the attention of the Court to the judgment in

the case of Abacus Trust Co (Isle of Man) and another v. Barr and others, (2003) 2 WLR 1362 to substantiate his submissions.

3. He has also invited the attention of the Court to the judgments rendered by this Court in the matters relating to trust, where it has been emphasized that in the absence of any such authority, the trustees could have approached the Court, which they did not, and therefore, any action taken on their part cannot be correlated to any of the powers conferred under the scheme. He has specifically invited the attention of the Court to clause IA of the scheme finalized by the Division Bench on 29.4.2008 to urge that beyond that the trustees did not have any such powers and the argument that the rules make a provision for the same cannot be accepted, inasmuch as the rules, which are stated to have been framed in the shape of by-laws in 1971 have not partaken the character of having any binding effect over and above the scheme already finalized.

4. He submits that any mode of dispensation of the property discussed as a subject for being taken up

during meetings cannot amount to conferment of powers on the trustees to dispose of the property. The rules that have been relied on by learned counsel for the appellants, therefore, cannot have any overriding effect over the scheme, which has been finalized by the Court and consequently, it is in the teeth of the law laid down in the case of Sanjay Gupta and another v. The Corporation of Chennai, 2011 (3) CTC 58, as confirmed by a Division Bench in the case of Rajendra Gupta and others v. The Corporation of Chennai and another, 2011-4-L.W. 633.

5. He therefore concluded his argument by contending that if the scheme has been amended in a way that benefits and ensures future proper functioning of the trust, then the same should be allowed to be observed and if in the event any anomaly comes into existence causing impediment in the smooth functioning of the trust or the management thereof, it is always open for any person interested to approach this Court for such modification, keeping in view the provisions of Section 92 of CPC. He therefore contends that the

power of this Court can always be invoked in the event the method as suggested by the learned Single Judge is not found to be suitable in future, but for the time being, he contends that the necessity to modify the scheme which does not change the character of the scheme or takes away the power of the trustees should be allowed to continue and no interference is called for at this stage.

6. *Heard Mr.N.R.Elango, learned Senior Counsel appearing for the applicant in A.No.10092 of 2018, who has advanced his submissions contending that keeping in view the status of the College that it has enjoyed, its reputation deserves to be restored and therefore, he submits that as a matter of fact certain rules and regulations had been framed as guidelines for elections in 1964, where qualifications had been prescribed under Rule 6 thereof, where persons having been declared insolvent or otherwise having been convicted in an offence under moral turpitude were not qualified to seek election as trustee.*

7. *He then submitted that the territorial expansion of the constituency is primarily for the reason that the*

students of Pachaiyappa's College or otherwise they passed out are all not residents of the city of Chennai and therefore, being spread over, they also reside in towns which can be termed as suburban and moffusil areas, where if they are residing in houses which do not pay enough municipal tax, they would be deprived of the participation and it is for this reason that the tax slab of Rs.10,000/- was reduced to Rs.3,000/-.

8. *He therefore submits that it was in order to accommodate a large section of electorate this was found necessary, which in no way offends or impinges any of the rights of the trust or the existing trustees and hence, such provision should be allowed to continue.*

9. *He has also raised an issue that the appellants have not questioned the impugned judgment by filing appropriate appeals, inasmuch as no appeal has been filed on the disposal of the Application No.10091 of 2018 filed by Mr.Cheran.*

10. *He has then invited the attention of the Court to*

paragraph 53.2 in relation to the identity of the land, and more particularly with regard to the condition put forth by the Housing Board that the land shall not be utilized except for the purpose for which it has been vended in favour of the institution, and submits that keeping in view the said condition imposed, the land could not be used for any other purpose, which in the present case has been used for commercial purpose, hence, the cancellation of the lease by the learned Single Judge is well founded. He further submits that even otherwise utilization of the said construction as a marriage hall which keeps on being occupied directly affects the students and therefore, such activity should not be allowed to carry on inside the premises.

11. Heard Mr.Om Prakash, learned Senior Counsel for Mr.S.Doraisamy, applicant in Application No.10097 of 2018. He points out that no appeal has been filed, nor has this applicant been arrayed in the proceedings and, therefore, this would be fatal for the appeals.

12. He has then invited the attention of the Court to

the provisions of Section 92 of the Civil Procedure Code to contend that this being a non-adversarial form of litigation, in the instant case, there being no original deed of trust having been framed by the propounder, the management of the trust has come to be controlled by schemes evolved from time to time by the Courts itself, and in such circumstances, the scheme can always be a matter of consideration by the Court in terms of Section 92 of the Civil Procedure Code itself, where the role of the Court is in focus, and the Court has the authority to modify the scheme and preserve the management of the trust as may befall in the facts and circumstances of any particular case. He submits that this is not a trust where there are any vested rights of the trustees or hereditary trustees, who can have a claim in the management, and in such circumstances, the Court having such authority and control, the learned Single Judge in the present case has exercised that authority and, therefore, the contentions advanced about the modifications having been carried out on behalf of the appellants are absolutely untenable in law.

13. He then submits that so far as the role of the Interim Administrator is concerned, being an Officer of the Court, he was under a bounden duty to have informed the Court about the affairs of the trust and his role could not be said to have been limited only to the holding of the elections, and rather it was obligatory on his part to have submitted such reports that may have been found necessary for the purpose of assisting the Court in proceeding to take an appropriate decision. Thus, the criticism made by the appellants about the overstepping of the Interim Administrator is untenable, in as much as the entire conduct of the Interim Administrator has been only to inform the Court of the necessities having arisen due to the alleged mismanagement of the trust. It is in these circumstances that the role of the Interim Administrator was to produce such material that was necessary for the Court to assess the status of administration of the trust and then to enable it to pass appropriate orders in relation thereto.

14. He submits that he would be circulating written submissions in support of his contentions. He is permitted to do so.

15. Mr.Godson Swaminath, learned counsel submits that Mr.T.R.Rajagopalan, learned Senior Counsel, will assist the Court on behalf of the Interim Administrator.

Put up on 11.9.2020 immediately after the cases fixed for physical hearing are over."

Order dated 11.09.2020:

"Heard Mr.T.R.Rajagopalan, learned Senior Counsel, who supplemented his submissions by contending that the 1841 Scheme approved by the Court indicates the existence of a nine member Committee with a power of general supervision to the Board of Revenue and therefore, this concept of a supervisory body was also there, hence, the Advisory Council under the impugned judgment is also justified. He has also invited the attention of the Court to other clauses of the Scheme to contend that at places the scheme also obliges the agents to inform the Collector about the activities of the Trust coupled with information to the Advocate General, the law

officers and the Board of Revenue about such activities.

2.He has then invited the attention of the Court to the scheme finalised by the Court in 2007-2008, where clause 1 indicates the entailment of religious charities whereafter indications are given as to how the Trust would be managed under the Scheme. Pointing out to several provisions and the qualifications of the Trustees, he submits that there can be alterations in the qualifications in order to improve the quality of the candidates, who can stand for election as a Trustee. He submits that these changes which have been made by the learned single Judge under the impugned judgment are in conformity with the object sought to be achieved of improving the management of the Trust. He submits that it was necessary keeping in view certain other facts relating to large scale unlawful appointments of teachers having been made in the institution and the meeting of the Trust being conducted without following any procedure. Mr.Rajagopalan concluded his arguments.

3.We have also heard Mr.Krishnamoorthy, learned counsel, who submits that his client has not been shown as a respondent, yet, he would like to advance his submissions.

4.Mr.V.Raghavachari, learned counsel, has invited the attention of the Court to the judgment in the case of M.Runganatha Thathachariar vs. Krishnaswami Thathachariar, AIR 1924 Mad 369, to contend that the Scheme as framed by the Court should be interpreted and construed as a Statute.

5.Learned counsel for the appellants have submitted that they will submit their rejoinder on Monday (14.09.2020).

Put up on 14.09.2020 immediately after the cases listed for Physical Court hearing."

64. We have heard Mr.C.Manishankar, Mr.AR.L.Sundaresan, Mr.S.Gomathinayagam, Mr.M.S.Krishnan and Mr.R.Sankaranarayanan, learned Senior Counsel and Mr.G.Murugendran, Mr.K.Gowtham Kumar, learned counsel for the appellants; and Mr.R.Vijaynarayan, learned Advocate General, and Mr.T.R.Rajagopalan, Mr.K.Doraisami, Mr.N.R.Elango, learned Senior Counsel, Mr.V.Raghavachari and Mr.J.Srinivasamohan, learned

counsel for the respondents, apart from Mr.Om Prakash, learned Senior Counsel for Mr.Elangovan, who appeared on behalf of the applicant in Application No.10097 of 2018 and Mr.M.Krishnamoorthy, learned counsel who appeared for the applicant in Application No.10091 of 2018.

65. We may now proceed to consider the issues raised and the issues framed by the learned Single Judge, which, in his opinion, were to be answered in the proceedings, which included the modification of the scheme, the conduct of the elections of the Trust Board, and also the issue of a lease in respect of certain properties. The judgment of the learned Single Judge is reported in **2019 5 LW 865 [L.Chenkuttuvan v. Interim Administrator Pachaiyappa's Board Trust Board and others]** and we shall be referring to the paragraphs of the said report in order to narrate the record of the judgment. We may further point out that the learned Advocate General was also heard in the matter along with the learned counsel for all the parties. Paragraph (33) of the said

report frames the four questions, which the learned Single Judge found fit to be considered and answered. Paragraph (33) is gainfully reproduced herein under:

"33. After hearing the arguments from both groups or both sides, the issue in controversy for resolvment for the purpose of disposal of these applications are categorised under four broad questions, they are:

(i) Whether this Court has got power to pass orders giving modification to the existing scheme?

(ii) If so, what modification can be made in the front of general administration of the Trust in the context of Trust Board of the Pachaiyappa's charities?

(iii) Whether the decision taken by the Pachaiyappa's Trust Board to extend the long term lease for Muhurthaam, the lessee, for two Arangams (Multipurpose Halls), namely Anna Arangam and Amma Arangam is

justifiable or not? and also

(iv) How the elections to be conducted for the Trust Board, before which, whether the criteria fixed for electoral college and the candidates contesting are liable to be varied or modified?"

66. The learned Single Judge, therefore, appears to have undertaken an exercise of clubbing all these applications together that had populated during the course of the pendency of the Original Application seeking interim injunction, and has then proceeded to answer them through the impugned judgment. Learned counsel for the appellants have urged that this procedure adopted by the learned Single Judge is totally contrary to law, in as much as the scope of a proceeding in terms of Section 92 of the Civil Procedure Code is entirely different, more so when there are certain rights to be determined, and an adversarial nature of adjudication is involved.

67. This was not a simple case of scheme modification, but it commenced with the sole purpose of getting the election of Board of Trustees held in order to ensure that the persons eligible to hold the office are elected and the Board is constituted as per the scheme. This being the only purpose, the entertaining of other applications, including modification of the scheme; the securing of the properties of the Trust, and all other ancillary matters through miscellaneous applications was beyond the scope of the proceedings.

68. It is urged by the learned counsel for the appellants that there was only one Original Application No.283 of 2018, which was confined only for an injunction that the trustees may not proceed to hold the elections. Thus, the entire scope of Original Application No.283 of 2018, which is the foundation of the entire litigation, had nothing to do with modification of the scheme, or seeking any relief in respect thereof, including the management of the Trust, and it is for this reason and solely for the said purpose that the learned

Single Judge who entertained the said application passed an order on 14.6.2018 appointing an Interim Administrator to get the elections held, which stood confirmed by the order dated 31.10.2018. It is urged that none of these orders were challenged in appeal and had attained finality with the election process having been set into motion. To pass orders contrary to the same amounts to interfering with the election process at the interim stage, which otherwise is not permissible in law. The prayer made by the Interim Administrator was, therefore, not bona fide, whereby he sought cancellation of his own election notification dated 5.3.2019.

69. In the background aforesaid, it is urged that the learned Single Judge entered into a huge enquiry that was unwarranted on the relief prayed for on the basis of miscellaneous applications that came to be filed and appear to be in tandem with the report of the Interim Administrator, who gradually converted his request for holding of the elections into modifying the scheme and then holding the elections. Allegations have been made by the appellants in

their affidavits, but it has been further submitted that the learned Single Judge has not only modified the scheme, but has altered it altogether by introducing functionaries who were neither required to be introduced, nor there was any such occasion to bring about a modification in the scheme to the extent that the very existence of the trustees was eclipsed and other superior powers were created under the impugned judgment. This, according to the appellants, was unwarranted, not needed, and was an unnecessary exercise of jurisdiction, hence the impugned judgment deserves to be set aside.

70. On the individual issues, it was urged that it was not at all necessary for the learned Single Judge to have framed any of these questions except to have pursued the election process in order to bring it to its logical conclusion. This path was abandoned by the learned Single Judge and, therefore, the deviation has brought about a result, which is subject matter of appeals. It is urged that the impugned judgment be set aside and the status of the

management of the Board be restored with the declaration of results.

71. We propose to deal with all these appeals, in which we would compartmentalise the broader concerns that arise out the impugned judgment, and which, in our opinion, would be necessary to be formulated as these proceedings even though began with a simple application for injunction regarding the holding of elections has now transformed itself into a legal debate with a much broader canvas than what was originally ordained in the application, on the basis whereof the litigation was commenced. The broad areas that we would like to demarcate for the purpose of this controversy can be segregated as follows:

(A) THE WILL, THE CHARITIES, THE TRUST AND IT'S PRESENT STATUS UNDER LAW:

72. A human will is a wish, or a desire, or an expression of choice. It is a feeling in the mind directed towards something which one believes would give satisfaction if attained, possessed or

realized. It is a wish or desire for something that may not be attainable and may remain a dream or a fantasy. However, this expression of wish with regard to human material possessions that one may have acquired in one's life time and its disposition in tangible terms may constitute a human will. This passes on at times as a command with a determined intention consciously directed for the fulfillment of one's own wish.

73. Such a human will takes a physical shape of a testamentary document, which in legal parlance is known as Will, that is a legal declaration of the intention of a testator with respect to his property, which he desires to be carried out after his death. The Will, therefore, is especially a document by which a person directs his or her estate/ property/earnings to be distributed upon the death of that person.

74. The Will of Pachaiyappa Mudaliar which appears to be a holographic document also intentionally creates charities in the

shape of a trust, which is sufficiently manifested in the said document. The paramount interest of the settlor in the said Will appears to be creating religious charities and individual benefits assigned for different purposes and the charities to be carried out at different places. The purpose of the charity and the recital in the Will indicates a mixed trust, which is both express and is constructive. The language used in the Will for the charities is devoted for being spent for the purpose as indicated therein.

75. However, the purpose of charity, according to the narration of the various decrees that were passed from time to time under orders of the Board of Revenue from 1826 to 1842, demonstrates that the funds available with the charity came to be reserved for educational purposes as well, that is recited in the Third Decree dated 30.10.1832. The Fourth Decree dated 6.8.1841 also indicates the spending of the charities for educational purposes and the order of the Board of Revenue dated 28.4.1842 expressly declares the application of the charities towards educating the Hindu

population in respect of the laws that govern them and also to cater to the practitioners of such law. This transformation can be attributed to the Doctrine of *Cypres* that stands incorporated in Section 92 of the Civil Procedure Code, 1908. The word "*Cypres*", which is of French origin, means "*as near as*" and forms the foundation of an equitable doctrine under which, according to the Black's Law Dictionary, a Court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail. The said doctrine is pressed into service by the Courts generally when the original charitable purpose cannot be fulfilled, or also to distribute unclaimed portions so as to advance somebody's interest. It is pressed into service when the exact intention of the donor remains unfulfilled, but the charity is applied in conformity with the wishes as far as possible. It can be seen from the Will and the charity created under it that Pachaiyappa Mudaliar did intend to devote his earnings to charity bequeathing a large sum of money for broad religious and social activities as well as for individual benefits. The subsequent decrees therefore having

found surplus appear to have channelized the earnings of the charity for educational purposes. The testamentary intent, which was not essentially for advancement of education, cannot be said to have been diverted, but rather utilized for a constructive purpose under superior judgment that may not travel beyond the wish or intention of the testator. There was no express provision in the original Will, but the decrees that have stood the test of time for the past 150 years brought about a useful application of the funds of the charities for educational purposes. There is, therefore, no lack of harmony with regard to the application of the funds for educational purposes of the trust without defeating the original purpose of the setting up of the charities. The allocations made by the original testator also indicate that the purpose was not singular and, therefore, the decrees continued the application of the charities for the purpose of public benefit for which the trust appears to have been created by the testator. Consequently, the performance as a close approximation to the wishes of the testator by setting up educational institutions was found to be equitable,

even though the purpose was slightly different from that which was intended by the author of the Will. The alternative adoption of the policy of setting up of educational institutions in addition to the original purpose of the charity, therefore, in no way dilutes the intention of the testator which substantially appears to be for public good.

(B) APPLICATION AND SCOPE OF SECTION 92 OF THE CPC:

76. We have dilated on the subject in order to indicate that a dispute of the present nature would therefore involve the following of a procedure that is in conformity with the principles of Section 92 of the Civil Procedure Code, 1908, which is extracted herein under:

"Section 92. Public charities.—

*(1) In the case of **any alleged breach** of any express or constructive trust created for public purposes of a charitable or religious nature, or **where the direction of the Court is deemed necessary for the administration** of any such trust, **the Advocate-General**, or two or more persons having an interest in the trust and having*

obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:—

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) directing accounts and inquiries;*
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) settling a scheme; or*
- (h) granting such further or other relief as the nature of the case may require.*

(2) *Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.*

(3) *The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be **applied cypres** in one or more of the following circumstances, namely:—*

(a) *where the original purposes of the trust, in whole or in part,—*

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of

the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

*(c) where the property available by virtue of the trust and other property applicable for similar purposes **can be more effectively used** in conjunction with, and to **that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust** and its applicability to common purposes; or*

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,—

*(i) **been adequately provided for by other means, or***

*(ii) **ceased, as being useless or harmful to the community, or***

*(iii) **ceased to be, in law, charitable, or***

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

77. A perusal of the aforesaid provision would demonstrate that the legislature in its wisdom has ordained the circumstances under which a Court of law can exercise its jurisdiction and authority to invoke the principles relating to trusts and charities and thereby exercise judicial administration for supervising the functioning of such charities and trusts. Section 92 is stated to be that instrument of law which authorizes Courts to define the course of public good.

78. It is thus clear that the decrees and the orders of the Board of Revenue which were issued in the exercise of judicial administration of governance modulated schemes by applying the said doctrine. Thus, educational institutions were established and flourished under the aforesaid charity by the application of the funds of the said corpus towards educational purposes.

79. The law relating to the scope of Section 92 of the Civil Procedure Code prior to the amendment in the in the Civil Procedure Code in 1976 had been discussed by the Apex Court in the case of *Raje Anandrao v. Shamrao and others*, AIR 1961 SC 1206, which has been relied on by most of the learned counsel appearing on either side. The said judgment put in a caveat that the Court was not concerned with appointment or removal of trustees or any other matter enumerated in Sub-section (1) of Section 92 and, therefore, the Court did not propose to consider whether it would be open to appoint or remove trustees on the ground of breach of trust without recourse to a suit under Section 92 of the Civil Procedure Code. The decision was confined only to the question whether in a case where there is provision in the scheme for its modification by an application to the Court, it is open to the Court to make modifications therein without the necessity of a suit under Section 92.

80. In the said decision, the Apex Court then went on to

examine the scope of Section 92 and observed in paragraph (11) as under:

"11. In *Veeraraghavachariar case* [(1928) ILR 51 Mad 31] the Madras High Court was cognizant of the two decisions of the Privy Council in which clauses had been inserted in the scheme providing for its modification by an application. But the learned judges were of the view that the point was never raised much less decided by the Privy Council and therefore it could not be said that the Privy Council was of the opinion that such a clause would be *intra vires*. They thought that inserting such a clause in the scheme would imply that the suit would remain pending forever. It is not necessary to hold that a suit under Section 92 in which a scheme is framed providing such a clause is pending forever. The scheme deals with the administration of the trust and for the purposes of the scheme it would not be wrong or improper to treat a suit under Section 92 as analogous to an administration suit. On that view it would in our opinion be just and convenient to provide for a clause in the scheme which is framed for the administration of the trust to allow for its modification by an application. We therefore accept

the view of the Bombay, Calcutta, Allahabad and Patna High Courts in this matter and hold that it is open in a suit under Section 92 where a scheme is to be settled to provide in the scheme for modifying it as and when necessity arises, by inserting a clause to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme, without the necessity of a suit under Section 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of Section 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is ultra vires is incorrect. It was therefore open to the District Judge in the present case to modify the scheme."

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81. Thus, a suit under Section 92 can be instituted under Section 92 if there is any alleged breach of any express or constructive trust created for a public purpose of charitable or religious nature, or where the direction of the Court is deemed

necessary for the administration of any such trust. An application for modification can be moved so long as the modification in the scheme is for the purpose of administration.

82. However, the true expanse of Section 92 came to be exhaustively dealt with in a later decision of the Apex Court after the amendment of the Civil Procedure Code in the case of *Vidyodaya Trust v. Mohan Prasad R*, (2008) 4 SCC 115, where the Court discussed the relevant authorities on the subject in paragraphs (15) to (18) of the said report extracted herein under:

"15. The parameters to be kept in view while dealing with an application for grant of leave in terms of Section 92 CPC have been dealt with by this Court in several decisions. In B.S. Adityan v. B. Ramachandran Adityan [(2004) 9 SCC 720] , it was inter alia held as follows: (SCC pp. 725-26, para 9)

"9. In this background, when a specific provision has been made in the Code of Civil Procedure in Section 104(1)(ffa) allowing an appeal to be filed against an order refusing to grant leave to file a suit, the appeal filed

by the respondents before the Division Bench was certainly competent to be considered by that Bench. In this case, on an earlier occasion, when one of the suits was filed under Section 92 CPC, when the founder had executed a deed of appointment of trustees and certain interim orders were passed in that suit, the said application was withdrawn without obtaining leave under Order 23 Rule 1 on 19-9-1978 inasmuch as the newly appointed trustees had resigned their trusteeship and withdrew their application under Section 92 CPC, the two suits CSs Nos. 352 and 353 of 1978 filed by the appellants were disposed of as having become infructuous. Later on another Application No. 165 of 1981 had been filed under Section 92 CPC for leave to file a suit for appointing them as additional trustees and for rendition of accounts. In that proceeding Application No. 879 of 1991 was filed for permission of court to cross-examine the applicants therein R. Kannan Adityan and R. Kathiresa Adityan in particular to prove

the fact that it was the father of those petitioners therein who was supplying all documents and materials and who was conducting the proceedings. Application filed to cross-examine the applicants was dismissed by the learned Single Judge. On further appeal, the Division Bench held that it would be in the interest of justice to permit the appellants to cross-examine the said parties. The matter was carried to this Court in Special Leave Petition No. 6040 of 1982. This Court dismissed the said special leave petition noticing that the cross-examination 'will be confined to the question of sanction and principles governing the same', of course, after noticing entire documents. Again, another Application No. 4738 of 1982 was brought before the court to dismiss Application No. 165 of 1981 under Order 11 Rule 21 CPC which was, however, dismissed by the learned Single Judge and the matter was carried in appeal which was also dismissed by the Division Bench. That matter was brought before this Court. This Court

asked the parties to file the appropriate affidavits in regard thereto and thereafter all papers were placed before the Court. However, this Court dismissed the special leave petition. It is in this background the learned counsel submitted that the Court ought to have examined the matter in all necessary details before granting permission under Section 92 CPC. In R.M. Narayana Chettiar case [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48] this Court considered in detail the history of the legislation and whether court is required to give an opportunity of being heard to the proposed defendants before granting leave to institute a suit under Section 92 CPC and stated the law on the matter. Although as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad

in law or non-maintainable. Grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law or even in the course of suit which may be established that the suit does not fall within the scope of Section 92 CPC. In that view of the matter, we do not think, there is any reason for us to interfere with the order made by the High Court."

(emphasis in original)

16. In *R.M. Narayana Chettiar v. N. Lakshmanan Chettiar* [(2004) 9 SCC 720] it was held as follows: (SCC pp. 53-57, paras 9-10, 16-17 & 19)

"9. We may now discuss the main cases relied on by the learned counsel for the respective parties. Coming first to the cases relied upon by learned counsel for the appellants, we find that the first decision cited by him was the decision of this Court in

Swami Paramatmanand Saraswati v. Ramji Tripathi [(1974) 2 SCC 695] . In that case it was held that to see whether the suit falls within the ambit of Section 92, only the allegations in the plaint should be looked into in the first instance. But, if, after the evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation of fact or reason but is made only with a view to bring the suit under the section then such a suit must be dismissed. Learned counsel next drew our attention to the decision of this Court in Charan Singh v. Darshan Singh [(1975) 1 SCC 298] . Section 92 of the Code before its amendment in 1976 was applicable to the case. The court cited with approval the observations of Mukherjea, J. (as he then was), in Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbai Narsibhai [AIR 1952 SC 143] which runs as follows: (AIR p. 144, para 10)

'10. A suit under Section 92 of the Civil Procedure Code, is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such suit can proceed only on the allegation that there is a breach of such trust or that directions of the court are necessary

It is only when these conditions are fulfilled that the suit has got to be brought in conformity with the provision of Section 92 of the Civil Procedure Code.'

10. Neither of the aforesaid decisions of this Court deal with the question as to whether, before granting leave to institute a suit under Section 92, Advocate General, or later the court, was required to give an opportunity to the proposed defendants to show cause why leave should not be granted. What learned counsel for the appellants urged, however, was that these decisions show that at the time when the

Advocate General or the court is required to consider whether to grant leave to institute a suit as contemplated under Section 92, it is only the averments in the plaint which have to be examined and hence, the presence of the defendant is not necessary. We may now consider the High Court decisions relied on by the learned counsel for the appellants.

16. *As far as the decisions of this Court which have been pointed out to us are concerned, the question as to whether before granting leave to institute a suit under Section 92 of the Code, the court is required to give an opportunity of being heard to the proposed defendants did not arise for determination at all in those cases. As far as the High Courts are concerned, they have taken different views on this question. The legislative history of Section 92 of the Code indicates that one of the objects which led to the enactment of the said section was to enable two or more persons interested in any trust created for a*

public purpose of a charitable or religious nature should be enabled to file a suit for the reliefs set out in the said section without having to join all the beneficiaries since it would be highly inconvenient and impracticable for all the beneficiaries to join in the suit; hence any two or more of them were given the right to institute a suit for the reliefs mentioned in the said Section 92 of the Code. However, it was considered desirable to prevent a public trust from being harassed or put to legal expenses by reckless or frivolous suits being brought against the trustees and hence, a provision was made for leave of the court having to be obtained before the suit is instituted.

17. A plain reading of Section 92 of the Code indicates that leave of the court is a precondition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave,

it would not be maintainable at all. Having in mind the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule of caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the

provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.

19. In the result, the appeals are allowed as aforestated. The impugned judgment of the

High Court is set aside. The trial court is directed to dispose of the application for revocation of leave on merits and in accordance with law."

17. In *Swami Paramatmanand Saraswati v. Ramji Tripathi [R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, (1991) 1 SCC 48]* it was held as follows: (SCC pp. 697-701, paras 5, 10-11 & 14)

"5. The main allegations in the plaint were that Brahmanand did not execute the will while he was in a sound disposing state of mind, that Respondent 1 had not the requisite learning in Sanskrit and the Vedas and, therefore, he was not qualified to be nominated as successor to the Headship of the Math, that he came into possession of the Math properties and has committed breach of trust by applying for grant of succession certificate and other acts, that Krishnabodhashram was duly installed as the Shankaracharya of the Math on 25-6-1953 and that direction of the Court was

necessary for the administration of the Trust properties. The plaintiffs prayed for the removal of Respondent 1 from the Headship of the Math, a declaration that Krishnabodhashram was the duly installed Head of the Math and to appoint him as the Head, and in the alternative, to appoint any other competent person as the Head of the Math. They further prayed for vesting of the properties of the Jyotish Math in the new Head and for rendition of accounts by Respondent 1, etc., and to restrain him from prosecuting the application for succession certificate and also the mutation proceedings.

10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for

one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the rights of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested, then the suit would be outside the scope of Section 92 [see *N. Shanmukham Chetty v. V.M. Govinda Chetty* [AIR 1938 Mad 92], *Tirumalai Devasthanams v. Udiavar Krishnayya Shanbhaga* [AIR 1943 Mad 466], *Sugra Bibi v. Hazi Kummu Mia* [AIR 1969 SC 884] and *Mulla: Civil Procedure Code (13th Edn.), Vol. 1, p. 400*]. A suit whose primary object or purpose is to remedy the

infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.

(emphasis in original)

11. We see no reason why the same principle should not apply, if what the plaintiffs seek to vindicate here is the individual or personal right of Krishnabodhashram to be installed as Shankaracharya of the Math. Where two or more persons interested in a trust bring a suit purporting to be under Section 92, the question whether the suit is to vindicate the personal or individual right of a third person or to assert the right of the public must be decided after taking into account the dominant purpose of the suit in the light of the allegations in the plaint. If, on the allegations in the plaint, it is clear that the purpose of the suit was to vindicate the individual right of Krishnabodhashram to be the Shankaracharya, there is no reason to hold that the suit was brought to uphold the right of the beneficiaries of the Trust, merely because the suit was filed by two or more members of the public after obtaining the sanction of the Advocate General and claiming one or more of the reliefs specified

in the section. There is no reason to think that whenever a suit is brought by two or more persons under Section 92, the suit is to vindicate the right of the public. As we said, it is the object or the purpose of the suit and not the reliefs that should decide whether it is one for vindicating the right of the public or the individual right of the plaintiffs or third persons.

14. *It is, no doubt, true that it is only the allegations in the plaint that should be looked into in the first instance to see whether the suit falls within the ambit of Section 92 (see Assn. of R.D.B. Bagga Singh v. Gurnam Singh [AIR 1972 Raj 263], Sohan Singh v. Achhar Singh [AIR 1968 P&H 463] and Radha Krishna v. Lachhmi Narain [AIR 1948 Oudh 203]). But, if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in facts or reason but is made only with a view to*

bring the suit under the section, then a suit purporting to be brought under Section 92 must be dismissed. This was one of the grounds relied on by the High Court for holding that the suit was not maintainable under Section 92."

18. Prior to legislative change made by the Code of Civil Procedure (Amendment) Act (104 of 1976) the expression used was "consent in writing of the Advocate General". This expression has been substituted by the words "leave of the Court". Sub-section (3) has also been inserted by the Amendment Act. The object of Section 92 CPC is to protect the public trust of a charitable and religious nature from being subjected to harassment by suits filed against them. Public trusts for charitable and religious purpose are run for the benefit of the public. No individual should take benefit from them. If the persons in management of the trusts are subjected to multiplicity of legal proceedings, funds which are to be used for charitable or religious purposes would be wasted on litigation. The harassment might dissuade respectable and honest

people from becoming trustees of public trusts. Thus, there is need for scrutiny.”

83. A perusal of the aforesaid law, as explained by the Apex Court, would reveal that whenever such an issue with regard to the breach of trust is alleged, then with the amended provision, such a suit can proceed with the leave of the Court and the caution given is that Courts should normally unless it is impracticable or inconvenient to do so, give notice to the proposed defendants before granting leave under Section 92 of the Civil Procedure Code to institute a suit. This is necessary in order to prevent any frivolous or reckless filing of suits, or also to prevent any harassment that may be detrimental to the interest of the trust. This however has been explained by the Supreme Court to be not a compulsion and the Court is not bound to do so, as has been indicated in the authorities considered by the Apex Court in the decision of *Vidyodaya Trust v. Mohan Prasad R* (supra). The suit however must be of a representative character in the interest of the public and not for mere vindication of individual or personal rights.

The Apex Court, while concluding, in paragraph (26) held as under:

"26. To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts. In that view of the matter the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs."

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84. In order to institute a proceeding and then being entertained by the Court in such matters, the interest required must be a clear interest in the particular trust over and above that which

men may generally have in common with others. It must be a real and substantive interest. A person should have an interest on behalf of the public and should have some relation to the trust. A mere casual visitor to a temple or a seldom stay in a dharmashala by itself would not be an indicator to establish the bona fides of a person as an interested person. Coming to the present case, the expansion of the electoral college is not represented by any of the persons of the category for whom accommodation was sought as electors for being inducted as members of the electoral college. Not a single person or applicant in the present proceeding appears to be representing the said class who want themselves to be included as electors in the electoral college. This question has not been examined by the learned Single Judge at all in order to arrive at the conclusion that it was necessary to include such persons, as their cause was suffering. The litigation is not just a mere public interest litigation as it relates to the composition of a trust which can be contested in the proceedings as envisaged under the Civil Procedure Code.

(C). THE IMPACT OF THE ORDERS PASSED IN THESE PROCEEDINGS ON THE APPLICATION MOVED FOR INJUNCTING THE ELECTION PROCESS, NAMELY, THE ORDERS DATED 14.6.2018, 30.7.2018, 31.10.2018, 5.3.2019 AND 20.3.2019:

85. We have examined the pleadings closely and have perused the various affidavits and applications filed that have been narrated herein above, culminating into the orders referred under this head note.

86. There is absolutely no doubt that the commencement of the present proceedings under O.A.No.283 of 2018 was confined to the relief as prayed for, which has been extracted by us in paragraph 31.3 herein above. The said prayer was made in the context when five retiring trustees were proceeding for the holding of elections. The relief was to injunct them and restrain the holding or conducting of elections by the said trustees.

87. Another application came to be filed for appointing a

retired Judge as a Commissioner to conduct the elections for all the nine posts of trustees and these applications came up for consideration before a learned Single Judge, who passed the orders on 14.6.2018. The tenor of the said order would indicate the mode of elections according to the then existing scheme, with a little bit of indication of the allegations of massive mismanagement of the trust properties and the colleges and, therefore, taking an overall conspectus of this situation, the learned Single Judge observed that the term of the then existing trustees was about to expire on 26.6.2018 and, therefore, after having noted the procedure for election of the different constituencies, and also the discrepancies in the electoral rolls, the Court found it necessary that barring one trustee whose tenure was still to continue, the election should be held for the remaining eight posts of trustees, whose tenure was to expire on 25.6.2018. For this, the learned Single Judge found necessary to appoint an Interim Administrator to administer the trust and conduct the elections to the office of the eight trustees as per the existing scheme. The learned Single Judge passed an order

that the said four trustees, whose term was to expire on 25.6.2018, shall not take any major decision either on the finance or in respect of the trust properties, which shall be managed by the Interim Administrator. Accordingly, Mr.Justice P.Shanmugam, a retired Judge of the High Court, was appointed as an Interim Administrator, who was to hold charge till the elections are over and the new trustees take over charge. He was to make necessary preparations for conducting the election as per the then existing scheme by preparing the voters list afresh, and to complete the election accordingly.

88. Looking to the task of holding of the elections and preparation of electoral rolls, the Interim Administrator submitted an interim report on 27.7.2018 and also sought extension of time to complete the election process within six months. This application was allowed on 30.7.2018 after hearing the parties. The order, therefore, on 30.7.2018 granted further six months time, meaning thereby that the period was extended till January, 2019 for

completing the election process.

89. The Interim Administrator proceeded with the said exercise and narrating the aforesaid facts, submitted a second interim report on 9.10.2018, the relevant clauses whereof have been extracted in paragraph (37) herein above. While filing the report, the Interim Administrator stated that the voters list was not yet complete and the steps taken by him were detailed in a chart that has been reproduced herein above. However, in paragraph (55) of the said second interim report, he made certain suggestions, which may require modifications for improvement in the scheme. Thus, the seeds for modulating the scheme came to be sowed in the said report and this was further coupled with the application of Mr.V.Ramamurthy, who also made certain suggestions. The Interim Administrator moved before the learned Single Judge for further extension of time for holding of elections till 25.4.2019 and considering the said application, another learned Single Judge (other than the one who had passed the earlier orders) passed an

order on 31.10.2018 that has been extracted in paragraph (38) herein above. The learned Single Judge took up Application No.7376 of 2018 filed on behalf of an old student and also Application No.8104 of 2018 filed by the Interim Administrator through which he had sought for extension of time till 25.4.2019, long before the six months time earlier granted had to expire. Through an affidavit dated 26.10.2018 on behalf of the Interim Administrator, which was sworn by the Secretary of the Trust, a schedule of the programme of election was placed before the Court, which has been extracted in the order and has been reproduced by us in paragraph (38) herein. The programme of the entire schedule of holding of the elections and the declaration of results on 22.4.2019 is categorically enumerated in the said affidavit filed on behalf of the Interim Administrator. There were objections to the same, but the learned Single Judge came to the conclusion that with the improvement in the voters list, there would be a wider choice of eligible candidates and that would be more democratic and, therefore, he granted another extension in the holding of the

elections till 25.4.2019, according to the schedule as indicated by the Interim Administrator in his application. The learned Single Judge approved the said programme and also directed a compliance report to be filed in that regard. The applications were finally disposed of on the said terms.

90. Then we find another turn in the course of events with the Interim Administrator submitting his third interim report dated 14.12.2018, where he refers to three applications filed by three different people, where they had sought the relief of amendment in schemes and had further prayed for directions to be issued to the Interim Administrator for framing the scheme. The Interim Administrator referred to these three applications in his third interim report in paragraph (11.1), which has already been referred to herein above, and in respect of the process of election, he referred to the schedule which was accepted by the Court and then stated in paragraph 12.4 of his report that it is hoped that the draft voters list would be published on 13.2.2019 and final voters list on

1.3.2019, before the date of polling, I.e., 21.4.2019, and the declaration of results on 22.4.2019. This again was in conformity with the order of the learned Single Judge dated 31.10.2018, which had accepted this programme and has issued directions for implementing the same as per the schedule.

91. Then the march of events takes another turn with another former Judge of the High Court, Justice K.P.Sivasubramaniam, filing Application No.10096 of 2018 in December, 2018, where he made suggestions for substantial change in the eligibility of the electors, the change in the constituencies, and the constitution of an empowered authority over and above trustees. Reference be had to paragraph (42) of this judgment.

92. A counter dated 24.12.2018 was filed by the Interim Administrator, Mr.Justice P.Shanmugam, supporting the modifications suggested by Justice K.P.Sivasubramaniam and it was also categorically stated that the proposed amendments in the

application of Justice K.P.Sivasubramaniam were reasonable and necessary. Thus, the aforesaid exchange of pleadings between two retired Judges were in tandem with each other.

93. A third application No.1802 of 2019 filed by Mr.L.Chenkuttuvan followed, where he also stated about the three interim reports of the Interim Administrator and made his suggestions for modifications in the scheme together with another concept of "One Person One Vote", which application was filed on 4.3.2019. One of the trustees, Mr.S.Jayachandran, filed his affidavit in response to the said application later on, but the said application along with A.No.1803 of 2019 was taken up on the very next day of its filing, i.e., 5.3.2019, and an injunction order restraining the issuance of any notification for election of trustees in any category of the electoral college for holding the elections of the trust board was passed. This order dated 5.3.2019, which is extracted in paragraph (46) herein above gave the new impetus of contradicting the entire process which had been conducted earlier

under the orders of the learned Single Judge in the same proceedings and referred to herein above. This order of injunction was directly in conflict with the earlier orders, yet no appeal was filed against the same, nor did the order dated 5.3.2019 dissolve the earlier orders. The passing of this order, therefore, raises a serious controversy as to whether the election process having already commenced under the orders of the Court and the schedule having been accepted and finalised, as well as acted upon, could be interfered with by an injunction contrary to the mandate given by the Court earlier.

94. What we find is that the order dated 5.3.2019 recites that if the Court comes to the conclusion that a modification is necessary in the scheme of administration, the elections of the Trust Board would have to be held accordingly and, hence, any holding of election process should be restrained. The reason given by the Court is that there was a prima facie case and balance of convenience in favour of the applicant, as well as thousands of

similarly placed beneficiaries and interested persons of the trust concerned. We find this reason to be quite anomalous and not an acceptable reason for a prima facie case to injunct the election process. Merely because any future amendment would benefit a large number of people to participate in the elections, the election process could not be withheld, as no discrepancy existed in the programme, which had been accepted by the Court. The Interim Administrator at least was bound by the orders passed by the Court on 14.6.2018, 30.7.2018 and 31.10.2018. The Interim Administrator, in our opinion, could not have coupled himself with the reliefs as prayed for by other applicants for a future modification of the scheme and in that cover forestall the election process that had already commenced. The learned Single Judge also issued an injunction, which, in our opinion, was in conflict with law, in as much as once the process of election has been set into motion by a notification and accepted by a Court of law, it was not possible for the learned Single Judge, through an interim order, to restrain the same on the ground that the scheme requires a modification for a

better administration of the election process.

95. The question of modification of a scheme was a separate issue altogether, and which ought to have been through a regular application that could have been brought forth before the Court in terms of Section 92 of the Civil Procedure Code, provided the ingredients therein were existing. Without examining this aspect, the Court appears to have entertained miscellaneous applications one after the other, having been moved by several persons expressing their concern about bringing about a change in the scheme. This process of modification in the scheme was not even born as a concept when O.A.No.283 of 2018 was moved, which was to injunct the then trustees from holding the elections. The said situation had already been taken care of by the learned Single Judge in the order dated 14.6.2018, and with the Interim Administrator himself having finalized the programme of the elections. Whatever impediments did exist in the preparation of the electoral roll were sought to be remedied by seeking extension of

time, which was rightly granted by the learned Single Judges, as is evident from the orders dated 30.7.2018 and 31.10.2018. The Interim Administrator nowhere expressed that the time allowed was insufficient to finalise the electoral rolls, which was a huge expanse of almost nine months of period for sorting out the electoral college and then getting the elections held.

96. What appears is that instead of concluding the election process for which the Interim Administrator had been put into place, this divergence of various applications of mismanagement and modification of trust was introduced that overtook the original process of the holding of the election. No separate Original Application was instituted under Section 92 of the Civil Procedure Code for these reliefs, and they were sought to be introduced through miscellaneous applications which were found by the learned Single Judge to be entertainable, whereupon he passed the injunction orders on 5.3.2019 and 20.3.2019 staying the election process. The election process, therefore, was forestalled for what

the learned Single Judge found that there could be a better scheme to administer the Trust. The possibility of a better scheme or alteration in the provisions by modification had to be proceeded with like a scheme suit, but that could not be a ground for overriding the final orders passed by the learned Single Judges on 14.6.2018 and 31.10.2018, nor any such justification has been given as to why the said orders deserve to be not followed for the holding of the elections. The learned Single Judge in the orders dated 5.3.2019 and 20.3.2019 does not find any fault with the orders earlier passed, nor did he find any fault in the schedule finalized for the holding of the elections. The learned Single Judge, therefore, utilized the proposal for modification moved through various applications referred to above, and a u-turn having been taken by the Interim Administrator himself, for injuncting the election process. This, in our opinion, clearly amounted to interfering with the election process through interim orders dated 5.3.2019 and 20.3.2019 without finding fault with the election process that had already commenced and was notified on 6.3.2019.

97. It is also to be noted that the election notification had been finalized by the Interim Administrator himself and it is just one day before that that an application came to be filed on 4.3.2019, which was taken up on 5.3.2019 and an order of interim injunction was passed. The Interim Administrator fully realized the fact that such an injunction would run counter to the earlier orders and he, therefore, despatched his comments that have been recorded in the order dated 20.3.2019, extracted herein above, and sought clarification. This was necessary as the Interim Administrator on his own could not have taken any decision to forestall the election. He, therefore, also published the notification on 6.3.2019. These simultaneous events came to be noted by the learned Single Judge on the clarification sought by the Interim Administrator, who, by this time, had taken a u-turn that resulted in passing of the order dated 20.3.2019, whereby the learned Single Judge while modifying the order that no further election process shall be taken, confirmed his reasoning in the order dated 5.3.2019. This legal mechanism of

the filing of an application to forestall the election process, the request of the Interim Administrator to cancel his own notification for holding of the election, and the order dated 20.3.2019, all taken together clearly lead to an inference that can be safely drawn from this chronology that the Court which had commenced the proceedings for holding of elections under the orders dated 14.6.2018 and 31.10.2018, which had not been questioned in any Court of law, or higher Court of appeal, had diluted and virtually dissolved the said orders by an order of interim injunction dated 5.3.2019 that was confirmed on 20.3.2019, that too even without vacating the previous orders. The orders dated 5.3.2019 and 20.3.2019, therefore, are not only procedurally infirm, but are in clear conflict with law, as the election schedule having been finalized by the Court itself could not have been enjoined either by an ad-interim injunction or its confirmation, without analyzing the process of election, which otherwise could not be made amenable for a judicial scrutiny even before the elections were concluded, as directed earlier. The finality of the orders dated 14.6.2018 and

31.10.2018, therefore, could not have been dispensed with through interim orders, which, in our opinion, was subversion of the judicial process of the continuity of the process of election and also the finality of the orders passed earlier. The orders dated 5.3.2019 and 20.3.2019, therefore, are legally unsustainable that have finally merged retaining the consequences thereof in the impugned judgment dated 18.12.2019.

98. There is an interesting aspect which deserves notice and which we gather from the argument of Mr.S.Gomathinayagam, who appeared for the applicant Mr.V.Ramamurthy. This application was disposed of on 31.10.2018. Neither the Interim Administrator nor any of the parties filed any appeal questioning the said order dated 31.10.2018. The argument of Mr.S.Gomathinayagam is that any order subsequent thereto would violate the principles of *res judicata* as well as *constructive res judicata*. We find force in the submissions of Mr.S.Gomathinayagam to the extent that this aspect has nowhere been even noticed by the learned Single Judge

while delivering the final judgment dated 18.12.2019.

99. There is yet another aspect of the matter, namely the passing of orders by Courts in matters relating to an election process. In the instant case, the election process had been set into motion by the orders of the Courts itself to aid the holding of elections. The subsequent orders dated 5.3.2019 and 20.3.2019 therefore clearly impede and interfere with the process of election at an interim stage. In effect, there was no infirmity pointed out in the process of the finalization of the electoral college or the holding of the election and, therefore, in our opinion, there was no such prima facie case or any balance of convenience to annul the process of election which had been set into motion by the Court itself. The reversal of the process of election was done at the instance of an application moved by one Mr.L.Chenkuttuvan, and which application contained allegations with regard to the suggestions made by the Interim Administrator. It is thus evident that Mr.L.Chenkuttuvan was supporting what the Interim Administrator

had indicated in his interim reports. The subsequent order dated 23.3.2019 came to be passed strangely enough in the application of the Interim Administrator himself. It is well settled by now by the Apex Court that an election process should not be impeded by orders at interim stage of the elections, which should be allowed to be concluded, whereafter the remedies provided in law should be availed of.

100. As observed above, we find that the impugned judgment dated 18.12.2019 is in violation of the aforesaid principles and is, therefore, vitiated.

101. Another fact which deserves notice is that the orders dated 5.3.2019 and 20.3.2019 were not subjected to any internal challenge, but in our opinion, no such separate remedy was required to be undertaken as the judgment was reserved in the case by the learned Single Judge shortly thereafter and these orders that were interim in nature merged with the final judgment

dated 18.12.2019. Thus, the said orders even otherwise do not survive and hence a separate prayer or remedy to annul them was not required.

102. The only inevitable conclusion therefore in the background aforesaid is that the action taken of staying the election process is invalid. As a natural consequence thereof, the previous orders for conducting the elections would survive, but, in our opinion, since the issue has now turned on the very operation of the existing scheme as against the modified scheme under the impugned judgment, the election process can now be set into motion only if the learned Single Judge, on the matter being remitted before him, decides the issue relating to the modification or otherwise in respect of the scheme first, in the event the same is found to be entertainable in law. It shall therefore be open to the learned Single Judge to proceed accordingly.

(D). THE MODIFICATION OF THE SCHEME AND ALTERING THE ELECTORAL COLLEGE AND THE METHODOLOGY OF ELECTION:

103. The miscellaneous applications which were moved suggesting modifications and alterations in the scheme, providing for change in the electoral college, the voting pattern and the methodology of election were all proposals that were mooted through the applications of Mr.V.Ramamurthy and Mr.G.Anbazhagan, the suggestions of the Interim Administrator himself, the application of Justice K.P.Sivasubramaniam, and the other applications were all combined together and some of the suggestions from each application have been taken up and found to be suitable for modification. This process adopted by the learned Single Judges, firstly, was not in conformity with the provisions of Section 92 of the Civil Procedure Code, 1908.

104. The applications which have been moved suggesting modifications cover a wide range of subjects that may fall broadly under Section 92(1)(g) of the Civil Procedure Code. It also touches

upon the introducing of a totally new class of trustee, namely appointing a retired High Court Judge as the tenth Trustee to act as President of the Board. Another significant modification is the introduction of a supervising Advisory Council, the decisions and recommendations whereof would be virtually binding on the Board of Trustees. What are the nature of amendments that have been accepted by the learned Single Judge for modifying the entire scheme pertaining to the constitution of the Board of Trustees and the electoral college as well as the methodology of election, would be evident from the table of changes reflected in the typed set as provided by the learned counsel for the appellant, which is extracted herein under:

"Table of changes in the scheme made vide Order dated 18.12.2019 in A.No.1927 of 2019

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
1	11(A)	No person shall be eligible to be a trustee unless he is a Hindu and unless he had paid for the year preceding that in which the	No person shall be eligible to be a trustee unless he is a Hindu and unless he had paid for the year preceding that in which the election takes

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
		election takes place under the Madras Municipal Act IV of 1919 and due in respect of such year to the aggregate amount not less than Ten thousand rupees.	place Municipal taxes under the Madras Municipal Act IV of 1919 and due in respect of such year to the aggregate amount of not less than Three thousand rupees.
2	11(B)	The Board of Trustees shall consist of nine members	The Board of Trustees shall consist of ten members
3	11(B)	Clause non-existent	There shall be a President of the Trust Board, who shall be a Former Judge of the High Court of Judicature at Madras to be appointed by the High Court of Judicature at Madras from time to time
4	11(B)	Two, to be elected by the Hindu members of the Senate of the University of Madras	Two to be elected by the Hindu members of the Senate of the University of Madras and the Hindu Syndicate members of Thiruvalluvar University, Vellore
5	11(B)	Three, to be elected by the Graduates/Post Graduates and Research Scholars	Three, to be elected by the Graduates/Post Graduates and Research Scholars from all the six

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
		from all the six colleges now being run by the Pachaiyappa's Trust as on date of not less than ten years standing	colleges now being run by the Pachaiyappa's Trust as on date of not less than six months standing who must have completed the waiting period of one month after becoming eligible to become the voter under this category
6	11(B)	Clause non-existent	That 'One Voter One vote' concept shall be strictly adhered to and implemented. A voter in a particular category shall not be eligible to vote in another category, even though he is eligible to be a voter in that category also. In this regard, option shall be exercised by a voter, before the cut-off date fixed in this regard for finalising the voter list, that under which category he wants to be retained his name as a voter. Once such option is exercised, he shall be accordingly inducted or included only in that category voter list and if no such option is

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			exercised within the cut-off date, its open to the President/Trust Board/Election Officer to retain the voter in any one of the category and delete his name in other categories
7	11(K)	The Board of Trustees shall, every year in the month of April, elect a President of their Board and such President shall be entitled to hold office till next election and shall be eligible for re-election.	11(K) PRESIDENT: (a) The President of the Trust Board shall be appointed by the High Court of Judicature at Madras from time to time. (b) No one except a Former Judge of the High Court of Judicature at Madras shall be appointed as a President. (c) The President so appointed shall hold office for a period of two years and he shall be eligible for re-appointment for one more term. (d) In case of vacancy arises to Presidentship

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>due to resignation or otherwise new President shall be appointed in the manner aforesaid.</p> <p>(e) The Honorarium, Perquisites and other facilities to be provided to the President shall be fixed by the High Court of Judicature at Madras from time to time.</p> <p>(f) The President shall be the head of the Trust Board, who shall lead the Trust Board in discharge of the duties towards the administration of the Pachaiyappa's Charities in entirety.</p> <p>(g) In case of non-availability of quorum to have the Trust Board meeting, the President, in extraordinary circumstances or in emergent situation can hold the Trust Board meeting with available members not withstanding the quoram.</p>

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>In case of extraordinary emergency, where an very urgent decision has to be taken and implemented, the President can take such decision and implement the same without waiting for the Trust Board meeting. However, any such decision taken and implemented by the President in such extraordinary emergent circumstances, such decision shall be immediately referred to the Advisory Committee for urgent advisory opinion and after getting the same within a shortest possible period, the decisions of the President as well as the advisory opinion of the Advisory Committee shall immediately be placed in the very next meeting of the Trust Board for approval/ ratification.</p>
8	11(P)	Clause non-existent	11(P) ADVISORY COMMITTEE: There shall be an

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>Advisory Committee to aid and advise the Trust Board, consisting of the following members:</p> <p>(a) A Former Vice Chancellor of any Central or State University at Tamil Nadu, who shall be appointed by the President of the Trust Board.</p> <p>(b) An Officer of Hindu Religious and charitable Endowments Department of Government of Tamil Nadu not below the rank of Joint Commissioner of HR & CE department.</p> <p>(c) An Officer of the State of Tamil Nadu not below the rank of Joint Secretary, who shall be nominated by the Chief Secretary of Government of Tamil Nadu.</p> <p>(d) A designated Senior Advocate practising at the High Court of Judicature at Madras, who shall be nominated</p>

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>by the Advocate General of Tamil Nadu.</p> <p>(e) A reputed Auditor having considerable experience in the field of Auditing, who shall be appointed by the President of the Trust Board.</p> <p>(f) The members of the Advisory Committee shall hold office for a period of two years and shall be eligible for re-nomination. If any of the members of the Advisory Committee vacate office on resignation or otherwise, suitable subsequent incumbent from the respective category shall be appointed/nominated within a period of 30 days from the date of such vacating the office.</p> <p>(g) In case the members in Clause (b) and (c), vacate office by virtue of their official capacity or otherwise, in the respective category,</p>

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>suitable alternative nomination be made within a period of 30 days from such vacating officer of those two members.</p> <p>(h) The Advisory Committee as far as possible shall have meeting at least once in 60 days, where whatever matters referred by the Trust Board for the advise, shall be transacted.</p> <p>(i) Notwithstanding the above, the Advisory Committee can have emergency meetings for the purpose of urgent or early disposal of any issue referred to it by the Trust Board.</p> <p>(j) Each member of the Advisory Committee shall be eligible to claim a sitting honorarium, for each such meeting which shall be fixed by the President in consultation with the Advisory</p>

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>Committee.</p> <p>(k) Thought the functions of the Advisory Committee is mainly on the front of advising the Trust Board in all matters referred to it, such as General Administration, field of education, field of properties, field of financial management and field of litigation, if any particular aspect where Advisory Committee wants to render its advise, suo moto to the Trust Board, they can do so.</p> <p>(l) The quoram of the Advisory Committee shall be three members and the advisory opinion to be rendered to the Trust Board shall be formed on the basis of either unanimity or by majority.</p> <p>(m) Once an advise is rendered on any subject referred to it or suo moto</p>

<i>Sl. No.</i>	<i>Clause No.</i>	<i>Provision prior to 18.12.2019</i>	<i>Provision post 18.12.2019</i>
			<p>by the Advisory Committee, regard shall be given by the Trust Board to the advise in implementing the decision pertaining to such subject, where such advise is given.</p> <p>(n) The Former Vice Chancellor member of the Advisory Committee shall act as Convenor of the Committee to convene the meeting for transacting the business referred to it.</p> <p>(o) The Advisory Committee shall be provided with necessary Secretarial assistance on need basis by the Trust Board, which includes the place of meeting of the Advisory Committee at the Pachaiyappa's Building and the incidental expenses to be incurred if any for conducting such meeting of the Advisory Committee.</p>

105. Tracing the history of the scheme, we may revert back to the Will of Pachaiyappa Mudaliar which categorically indicated that the charities under the trust shall be administered by certain trustees who were named in the Will. When the Will was put into execution and later on the orders of the Board of Revenue were passed, it is evident from the order dated 28.4.1842 extracted herein above that the scheme was drawn up to form a Nine Member Trustee Board with one of its Members as President. This foundation of the Board from 1842 has continued since long and in the recent past, when the scheme was revisited and modified by the Division Bench judgment dated 24.9.2008, the aforesaid status of the constitution of the Board of Trustees was kept intact.

106. The question, therefore, is could the learned Single Judge have proceeded to modify the said status of the Board of Trustees when the Division Bench had left it intact while finalizing the scheme through its decree dated 24.9.2008. In our opinion, the

learned Single Judge did not examine this question at all and rather circumvented the examination of this legal limit and proceeded to delve upon the modification of the scheme. The binding effect of the judgment dated 24.9.2008 was therefore overlooked.

107. The second aspect of the matter is that there was non examination of the issue as to whether any maladministration or complaints of general nature with regard to the administration of the trust properties did require the modification of the scheme by unsettling the basic framework on the principles of general rules of democracy and redefining the electoral college with an Advisory Council over and above the Board of Trustee.

108. There is no reason spelt out by the learned Single Judge as to why the number of Trustees should be increased to ten, with a retired High Court Judge as the President of the Board. The implication of the increase of a odd number of nine to an even number of ten has also not been dealt with as this may cause

problems in executing the decisions of such a Committee. The presumption that the Board of Trustees would always be vulnerable to faults and therefore an Advisory Council should be there also therefore does not stand to any reason in the absence of any material to that effect on record. As a matter of fact, there were neither any such pleadings to supersede the Board of Trustees, and rather dispute centered around only on the holding of the elections.

109. The change in the eligibility and the expansion of the electoral college by redefining them, as has been pointed out in the chart indicated above, fundamentally has proceeded without examining the issue of the right of freedom of association, which is a fundamental right. Every society constituted of individuals have a basic right to choose with whom to associate and for that they can frame rules. The modification of the scheme for bringing about a change in the electoral college was not preceded by any such exercise, nor any such intention was notified so as to invite any suggestions on this count and the matter proceeded on the

suggestions that were made during the pendency of the case, or otherwise came out altogether as a new proposition in the impugned judgment itself. We do not find this process adopted by the learned Single Judge to be sustainable as such changes have been brought about on assumptions and mere suggestions without examining the need for bringing about a change to run the trust.

110. On the other hand, we may point out that the reason given by the learned Single Judge is that this would give an opportunity to a wider range of electors to participate in the election. The aforesaid reason has not been examined in the light of the objections raised and which also deserve to be examined in view of the arguments that have been advanced that the electoral college had purposely been defined in order to include persons of mature age and social standing. Such considerations cannot be said to be invalid and, therefore, the Court ought to have examined these issues before fixing the electoral college by redefining it in the manner in which it has been done.

111. It is necessary to point out that even though in such disputes the Courts have a wider discretion to modify the scheme for the better administration of a trust or a charity, but however discretion has to be in a Court of law a judicious discretion. Simply because there could be other ideas of administration cannot be a cause to locate a fault in the existing system. There is no guarantee that with the increase of voters and electors there would be no maladministration in future. Nonetheless, in order to check any such situation, the learned Single Judge has accepted the suggestion of an Advisory Council/Body over and above the Board of Trustees. We can only say that a Court of law while dealing with such matters has to act within bounds that have been created through judicial pronouncements and precedents as well as on the interpretation of the documents which govern such trusts. It is at this juncture that we may point out that the learned Single Judge completely omitted to consider the role of the learned Advocate General, who needs to be provided with the information with regard

to the functioning of the trust, maintaining of its accounts and other administrative business, which is evident from a copy of the 1971 Rules that have been placed on record in the pleadings. A perusal of the said Rules that have been framed for the internal management of the trust indicate a responsibility cast on the trustees to inform the Advocate General about the proceedings of the trust in the manner as provided in the said Rules. The introduction of a retired High Court Judge as a President to be nominated by the High Court and then the role of the Advisory Committee in exercising control over the Board of Trustees has all been introduced without noticing this aspect and weighing the impact thereof.

112. What is more noticeable is that all these amendments have been made without even advertent to the fact that the role of the Advocate General under the scheme is importantly mentioned. The learned Advocate General in his arguments has pointed out the status of the office of the Advocate General and the prominent role

it has to play in the administration of the trust. The modification of the scheme, therefore, involves the office of the Advocate General and while defining the Advisory Council this has been not noticed at all.

113. The contention raised on behalf of the respondents that there is a general supervision by Board of Revenue envisaged under the original schemes as suggested by Mr.T.R.Rajagopalan does not appeal to reason, in as much as such a supervisory power under the then existing laws entrusted to the Board of Revenue has no bearing on the present controversy, as we find no valid reason having been pronounced by the learned Single Judge for introducing an altogether new Advisory Council. It needs to be recorded here that the taking over of the trust and the charities of Pachaiyappa by the State Government through an Ordinance was challenged before this Court which was quashed, the judgment whereof is reported in *AIR 1988 Madras 192 [Arcot N.Veerawami v. M.G.Ramachandran and others]*.

114. Another argument which has been advanced by Mr.S.Gomathinayagam in this regard deserves notice. The introduction of a retired High Court Judge as a President amounts to introducing a new trustee which may not be permissible according to the learned Senior Counsel in terms of Section 74 of the Indian Trusts Act, 1882. Further, we find force in the submission of the learned Senior Counsel that the issue of providing remuneration to a trustee was also not examined in the light of Section 59 of the 1882 Act. The learned Single Judge thus having not assessed the legal implications of these provisions could not have introduced the nomination of a retired High Court Judge, and introducing a President by way of imposition instead of being elected from amongst the Board of trustees as provided earlier. Thus, the introduction of an Advisory Council by Clause 11(P) was wholly unnecessary in our opinion that too even without examining the necessity thereof.

115. The changes that have been brought about in the scheme and as pointed out in the chart reproduced herein above were, therefore, bereft of examination of relevant facts and law. Hence, the modifications as introduced under the impugned judgment are liable to be set aside.

116. One of the arguments advanced by Mr.V.Raghavachari on the strength of the judgment in *M.Runganatha Thathachariar v. Krishnaswami Thathachariar and others*, AIR 1924 Madras 369, is that a scheme has to be interpreted strictly and modifications in the scheme can be done by the Court. There cannot be any dispute with regard to the aforesaid legal position provided the procedure as enumerated in law is followed and steps are taken accordingly. As indicated above, the entire process adopted is vitiated for the reasons set out by us in the reference to context.

117. Mr.T.R.Rajagopalan urged that qualifications need to be altered and because of the mismanagement there was a necessity

to bring about a rearrangement of supervision of the trust. This argument has to be negated, as such issues have not been examined in the correct perspective by the learned Single Judge at all.

118. The learned Single Judge has introduced a concept of "One man one vote", which is yet another area of dispute, the pros and cons, or even the necessity thereof has not been examined. Without finding any infirmity or default that may amount to a cause for alteration, an attempt to ensure future participation of electors was a relief which could not have been finally granted and yet the same has been introduced in the scheme and has also been made the basis of passing of the orders stopping the election process. This does not appear to be justified, as this was not a necessity for the purpose of the present election.

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**(E). GRANT OF LEASE FOR CONSTRUCTION OF ANNA
ARANGAM AND AMMA ARANGAM:**

119. The learned Single Judge has proceeded to annul the leases finding them to have been against the interest of the trust, causing financial loss to it, in violation of certain statutory provisions and also reflecting the transaction to be a benami transaction.

120. Learned counsel for the respondents have supported the conclusions drawn by the learned Single Judge by contending that all the resolutions were passed by only Five Members of the Board of Trustees who were responsible for maladministration. The transfer of funds under the respective resolutions was transacted and the stamp duty was paid through one Mr.Hemanth extending the benefit of lease for twenty years that was contrary to law.

121. Specifying the objections, it is urged that firstly the land of which lease has been granted, over which the said constructions have been allowed to be brought up, is part of an allotment by the

Housing Board under a deed dated 9.3.1999. According to the terms of the said lease, no change of user or raising of constructions could have been brought about without the prior permission of the Housing Board, as the land has been allotted for the purpose of educational institution and not for any commercial activity. It is also urged that the construction raised is in violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971 as no permission had been sought. Secondly, it is further submitted that even though an application was moved before the Chennai Metropolitan Development Authority, the same was not pressed by the Administrator and therefore there is no legal sanction from the CMDA as well. Thirdly, it is alleged that the Tamil Nadu Private Colleges (Regulation) Act, 1976 requires a prior permission and approval from the educational authority as per Section 26 read with Section 27 for carrying out any activities and this statutory control has also been violated.

122. The appellants as well as the lessees represented by

Mr.M.S.Krishnan, learned Senior Counsel, have come up contending that this issue has been raked by one Dr.T.K.S.Villalan, represented by Mr.K.Doraisami, learned Senior Counsel, who has neither any locus in the matter, nor any pleadings or proof have been adduced before the learned Single Judge in respect of the manner in which this transaction was carried out. Thus, to label it as a benami transaction or in violation of law is without any basis. It has further been pointed out that some students had given an application to the CMDA, on the basis whereof it is urged that there has been violation of the provisions of the 1976 Act.

123. We have considered the submissions raised and there is one surprising element of fact which deserves to be noticed at the outset. The Interim Administrator or the applicant Dr.T.K.S.Villalan has nowhere requested for cancellation or annulment of lease. Their prayer was that the trust is being put to a loss and as a matter of fact, the Interim Administrator on a calculation has prayed for higher rates to be applied for the purpose of enhancing

and augmenting the income of the trust.

124. It is the contention of Mr.M.S.Krishnan that in the absence of any pleading for cancellation, the third party rights of the lessees cannot be adjudicated that too even in proceedings under Section 92 of the CPC, where the Court does not have any such jurisdiction, for which he relies on the decision in *Kalyana Venkataramana Ayyangar v. Kasturiranga Ayyangar, (1917) ILR 40 Mad 212*. His contention is that regular suit could have been filed that too even by the trustees in case there was any breach.

125. We find that the cancellation of lease was not the relief claimed by the applicants, including the Interim Administrator, and it was only an issue of fair rent and enhancement that had been raised in this regard. Apart from this, the conclusion drawn by the learned Single Judge that the transaction appears to be benami fails to take notice of the facts pleaded with regard to the change of address of the company, which is evident from such alteration, that

has been completely omitted to be noticed by the learned Single Judge. The reason, therefore, given by the learned Single Judge is a patent error apparent on the face of record and hence the finding arrived at becomes erroneous.

126. Thus, all the legal issues that were raised have been presumed to have been proved without appropriate proceedings having been instituted with regard to the prayer for cancellation of lease. Consequently, if the Interim Administrator and others were themselves praying for preventing the demolition of the constructions standing and preserving them in order to ensure fair and enhanced rent, then the relief granted by the learned Single Judge to the extent of cancelling the lease is unsustainable.

127. The dispute raised with regard to the execution of the lease for twenty years and being in violation of the deed executed by the Housing Board on 9.3.1999 and the same having been done without an appropriate permission in terms of Section 27 of the

1976 Act may still have to be examined together with the possibility of the lease being determined on this count, apart from other deficiencies including there being any element of loss caused to the finances of the trust. In the event this issue is raised in an appropriate form and is found to be triable by the learned Single Judge, then in that event we find that such a probe may be necessary as to whether the lease can be determined or otherwise be allowed to continue. In the wake of such possibilities, which is subject to any evidence or any final determination by the learned Single Judge, we find it necessary to injunct any future operation of the lease in favour of the appellants, as we find it necessary that such continuance on terms that might be permissible in law would be entirely dependent upon the legality and the lawful status of the lease. We, therefore, leave this question to be determined by the learned Single Judge appropriately, including any order that may be necessary to be passed during the interregnum period. We may further add that the continuance of possession till any orders are passed by the learned Single Judge in respect of Anna Arangam and

Amma Arangam shall be entrusted in the Administrator General and Official Trustee, Madras High Court, who shall be the custodian thereof.

(F) PROCEDURAL VIOLATIONS:

128. It has been contended on behalf of the appellants almost uniformly that the entire proceedings through various applications rolled into one were executed under the impugned judgment when the same ought to have been initiated with a formal consideration of the institution of proceedings with the leave of the Court. This, therefore, was not in conformity with Section 92 of the CPC and the judgments relied on. Neither any issues were framed in terms of Order XIV Rule 1 of the CPC, nor there were any proper pleadings in terms of Order VI Rule 4 of the CPC. The principles of Order I Rule 8 of the CPC to present a proper plaint in representative capacity was completely lacking and a motley of suggestions were aimed like arrows being shot without any target. The entire proceedings have

been summed up by the learned Single Judge as a summary procedure denying opportunity and causing serious prejudice to the appellants.

129. Having considered the same, we find that the principles of procedure as urged on behalf of the learned counsel for the appellants deserve to be observed in such matters where there are allegations of mala fides, specific breach and violations of law. This has to be substantiated by evidence and cannot be concluded by mere exchange of affidavits as if the proceedings were in a writ petition. The issues on facts, therefore, had to be properly framed, opportunity of evidence provided as may be necessary as per law, and then the matter could have been disposed of. The learned Single Judge did not, for reasons best known, deem it appropriate to follow the said procedure and while disposing of the matter, we also find that the counter affidavits filed on behalf of the appellants and their replies before the learned Single Judge have not been taken into account. These infirmities have been pointed out in the

grounds of appeals that have been preferred before us.

130. We may point out that judicial propriety and discipline does demand a respect to the procedure to be followed, as procedure at times converts from form into substance. Procedure may be a handmaid of justice, but it cannot in any way cause an obstruction so as to prejudice the cause of a litigant. Procedural hurdles are not allowed to come into the way of a Court, but on the other hand, the age-old maxim of equity "*actus curiae neminem gravabit*", that is an act of Court shall prejudice no man, continues to apply with full force even today. Processual law cannot override in a manner so as to defeat the cause of justice, but it should not be forgotten that the object of prescribing procedure is to advance the cause of justice.

131. The present case even though began for the sole object of getting elections of the Board of Trustees concluded, it slowly transformed into a contested litigation and at least was adversarial

in so far as the issue of cancellation of leases were concerned. In such a situation, justice ought to have been dispensed with by providing full opportunity, in as much as procedure is only to ensure fairness in action, being an important tenet of the principles of natural justice. Procedural law is subservient to justice, but, at the same time, when it comes to a proceeding to be carried in accordance with a procedure prescribed in law, then in so far as the present case is concerned, the principles of the Civil Procedure Code had to be observed as at many places procedural provisions can be mandatory leaving it to the Court to reduce the rigor of any such provision for mitigating genuine hardship. However, in the present case, what we have found is a decision has been taken with regard to the property of a trust without considering the affidavits contesting the position in this regard that were on record and filed on behalf of the appellants, in a summary manner, without proper trial. Prejudice therefore has been caused by not following the procedure and consequently, the impugned judgment is vitiated.

132. With the aforesaid findings having been arrived at, we are of the firm view that the impugned judgment cannot be sustained and has to be set aside. We, accordingly, allow these appeals and set aside the impugned judgment.

133. We remit the matter to the learned Single Judge with a request that the learned Single Judge will have to revisit the matter in the light of the observations made herein above broadly in respect of the three issues of dispute that have been raised, namely, (i) the election of the Board of Trustees; (ii) the examination of the reasons and the need to modify the scheme if at all required; and (iii) the procedure, the form and substance of proceedings relating to the maladministration, mismanagement, managerial fraud or malfeasance arising out of the allegations made particularly with regard to the lease having been extended for being utilized for commercial purposes. There are other financial and administrative issues also referred to with regard to which allegations and counter allegations have been made, which may

also have to be gone into provided such issues are raised in accordance with the procedure prescribed by law and in the event the same is found entertainable, then the examination thereof as per the settled procedure relating to trusts and disputes of the present nature.

134. We may, however, point out that the interim reports of the Administrator have alleged financial improprieties, but we find that the same is based on some reports that have been entertained by the Interim Administrator. In this regard, in our opinion, it would have been more appropriate for the learned Single Judge to have appointed an independent auditor/accountant to have probed into such allegations and in case an appropriate foundation was laid for the same on the basis of evidence available to forensically examine the correctness or otherwise of such allegations. The learned Single Judge having not done that has accepted the reports of the Interim Administrator to be correct in spite of objections having been taken to such allegations in the counter affidavits filed

by the appellants.

135. Apart from this, we find that the learned Administrator has himself moved an affidavit in August, 2020 requesting that he may be relieved of his duties as an Interim Administrator. We accept this request and we relieve the Interim Administrator of his responsibilities and duties as desired by him. However, in order to ensure that the trust properties are managed properly, we direct that the entire management of the Pachaiyappa Trust shall now be taken over by the Administrator General and Official Trustee of the Madras High Court, who shall in consultation with the Advocate General of the State take appropriate steps for administering the trust and its properties till the learned Single Judge finally decides the matter.

136. We may clarify that there were allegations and counter allegations with regard to the appointment of teaching staff, including Principals, in the institutions managed by the trust. The

appointment of the teaching staff by the Board of Trustees and the management was questioned and to some extent it was undone by the Interim Administrator, and that was challenged in separate proceedings. On the other hand, the appellants have alleged that the Interim Administrator after taking over has made appointments that of Principal and other staff which was beyond his authority and is not in accordance with law. These issues have already been challenged in separate proceedings or may be subjected to challenge otherwise, with which we are not dealing with in the instant appeals. Accordingly, such issues relating to appointments or otherwise in the educational institutions and even for the purpose of managing the trust are left open to be decided in appropriate proceedings. The question of any *de jure* or *de facto* powers being exercised by the Interim Administrator in respect of such appointments shall be open to challenge and scrutiny in appropriate proceedings.

137. The matter shall now be listed before the learned Single

Judge to whom the matter may be entrusted in accordance with the directions of the Chief Justice on the administrative side, with a request that the Bench concerned may proceed to examine and dispose of the matter expeditiously, preferably within three months.

138. In the result, all the appeals are allowed with the above directions and observations. No costs. Consequently, connected miscellaneous petitions are closed.

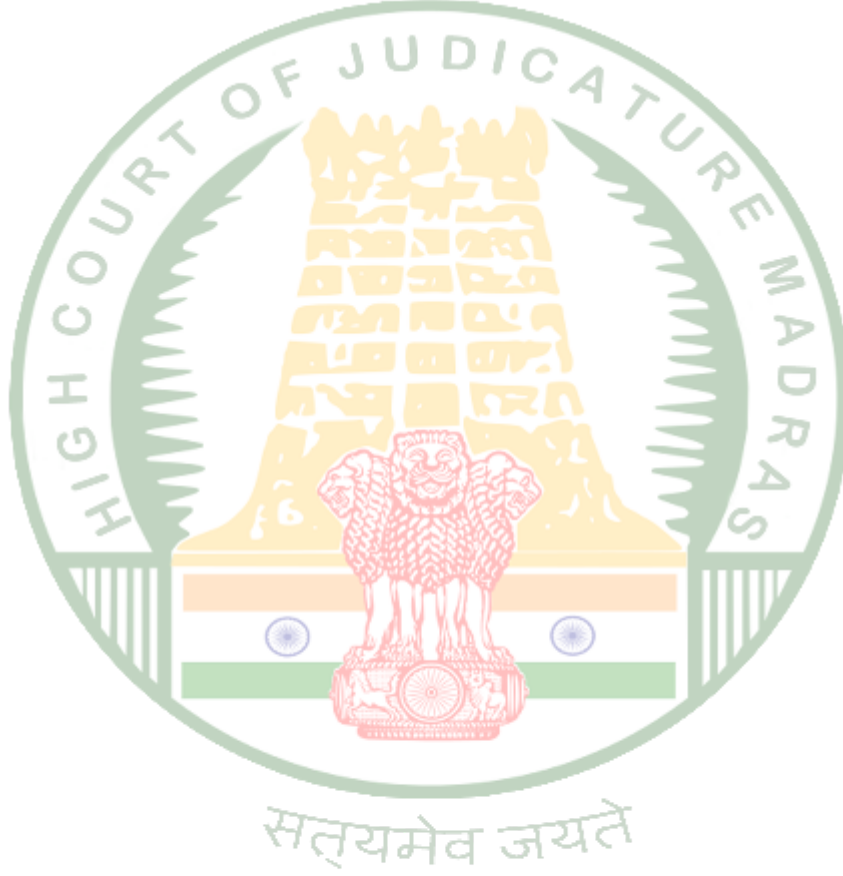
139. The Office is further directed that all the pleadings that have been filed on record in these appeals be retained and transmitted to the learned Single Judge so that the parties to the litigation may not be burdened with filing pleadings once again that are already on record.

सत्यमेव जयते

(A.P.S., CJ.) (S.K.R., J.)
23.12.2020

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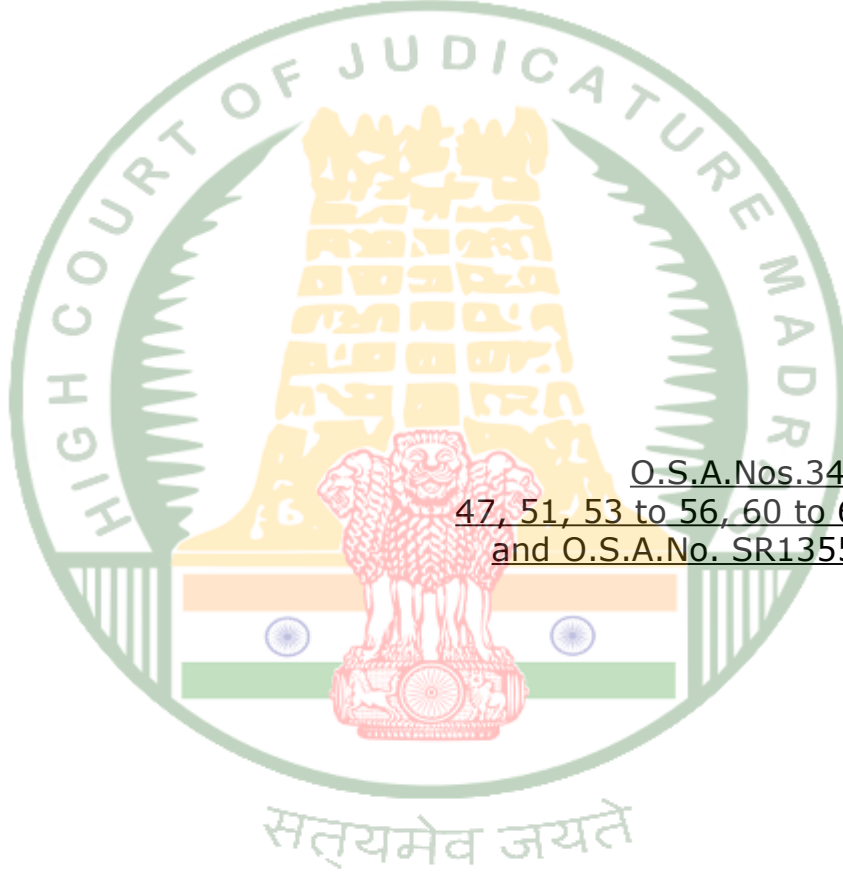


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O.S.A.Nos.346 of 2019, 47, 51, 53 to 56, 60 to 64 of 2020
and O.S.A.No. SR 13551 of 2020

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sasi)



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