



O.A.No.283 of 2018, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2021

DATE OF DECISION : 30.11.2021

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

O.A.No.283 of 2018, A.No.2624 of 2018,  
A.Nos.10091, 10092, 10093, 10094, 10095, 10096  
and 10097 of 2018, O.A.No.210 of 2019  
A.Nos.1749, 1802, 1803, 1927, 2088, 2089, 2090,  
2416 and 2417 of 2019,  
A.Nos.3111, 3112, 3113, 3114, 3115, 3116,  
3210, 3211, 3212 and 3281 of 2019  
and A.Nos.2272 and 2273 of 2021

**O.A.No.283 of 2018 :**

S.Arunagiri

.. Applicant

Vs.

1.The Advocate General,  
High Court of Madras,  
Chennai-600 104.

2.Pachaiyappa's Board of Trust,  
rep by its President Mr.S.Jayachandran,  
Pachaiyappa's College Campus,  
Poonamallee High Road, Aminjikai,



O.A.No.283 of 2018, etc. batch

Chennai-600 030.

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3.S.Jayachandran

4.V.Ramanathan

5.K.Hemanath

6.R.Prabhaakaran

7.V.Durai Mohan

(Respondents 3 to 7 Trustees are having office at Pachaiyappa's College Complex, Poonamallee High Road, Aminjikarai, Chennai-600 030)

.. Respondents

**O.A.No.283 of 2018** has been filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking 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 to pass further or other orders in circumstances of the case.

For Applicants : Mr.K.Doraisamy, Senior Counsel  
for Mr.Muthumani Doraisami

Ms.Chitra Sampath, Senior Counsel  
for Mr.R.C.Paul Kanagaraj

Mr.N.R.Elango, Senior Counsel  
for Mr.Saishankar



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O.A.No.283 of 2018, etc. batch

Mr.S.Doraisamy  
Mr.V.Raghavachari

For Respondents : **Counsel for Trustees**

Mr.AR.L.Sundaresan, Senior Counsel  
for Ms.A.L.Gandhimathi and  
Mr.P.Giridharan for Mr.R.Prabhakaran  
Mr.S.Gomathinayagam, Senior Counsel  
(from 06.01.2021 till 18.08.2021)  
for Mr.E.Soundarajan  
Mr.G.Murugendran  
Mr.K.Gowtham Kumar

**Counsel for Lessee**

Mr.M.S.Krishnan, Senior Counsel  
for Mr.Guru Dhananjeyan

**For Former Administrator**

Mr.T.R.Rajagopalan, Senior Counsel  
for Mr.K.V.Sundararajan

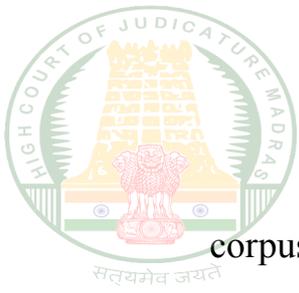
**Advocate General**

Mr.R.Shanmugasundaram,  
Advocate General, State of Tamil Nadu  
assisted by Mr.P.Dhileepan  
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## COMMON ORDER

### **(I) PREFACE / FACTUAL MATRIX IN A NUTSHELL:**

A holographic Will dated 22.03.1794 written by one Pachaiyappa Mudaliar, a philanthropist par excellence, is the genesis of the instant matter and administration / management inter-alia of vast / valuable



O.A.No.283 of 2018, etc. batch

corpus of Pachaiyappa Charitable Trust is the central theme of matters on hand.

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2 In this order, from hereon and hereafter, aforementioned Will of Pachaiyappa Mudaliar will be referred to as 'said testament' for the sake of convenience / clarity and aforementioned 'Pachaiyappa Charitable Trust' shall be referred to as 'PCT' for the sake of brevity.

3 The testator died a few days after execution of said testament (it can be gathered from the earlier proceedings {forming part of this case file} that date of demise of testator is 31.03.1794) and for nearly three decades thereafter, it appears that a need never arose for said testament to be brought to Court or subjected to legal proceedings. Some time in 1825 / 1826, certain claims qua said testament appear to have been made and it can be gathered from documents forming part of this case file that the first of court orders came to be made by the then Supreme Court of Madras vide order dated 03.02.1826. This 03.02.1826 order shall be referred to as 'first order' and it appears to have been made qua erstwhile Board of Revenue which was vested with certain powers way back in early nineteenth century by way of Regulations made by



O.A.No.283 of 2018, etc. batch

then Governor in Council of Fort St. George and it can be gathered that

though these Regulations relate to commercial activities and certain possessions of erstwhile East India company besides British possessions in India, judicial governance also came to be established for aiding local administration inter-alia by way of Mayor's Court.

4 Owing to the scope of this common order which will govern the captioned 31 applications (to be noted, originally 29 applications and thereafter, 2 substitution applications were filed due to demise of an applicant pending captioned applications), this court deems it appropriate to not to burden this order with details of either first order or subsequent orders which were made thereafter. However, there will be a mention about the successive orders for the purpose of completion of factual matrix narrative. A second order came to be made on 23.10.1832 and it can be gathered from this order that utilization of surplus funds for educational purposes was introduced for the first time. To be noted, said testament had (originally) dedicated vast and valuable properties which constitute the corpus of PCT for religious and charitable purposes. Be that as it may, suffice to say that 3<sup>rd</sup> and 4<sup>th</sup> orders came to be made on 30.10.1832 and 06.08.1841 respectively.



O.A.No.283 of 2018, etc. batch

5 To be noted, post 3<sup>rd</sup> and 4<sup>th</sup> orders, i.e., between 30.10.1832

and 06.08.1841, 'The Code of Civil Procedure, 1908 (5 of 1908)' ['CPC'

for the sake of brevity] came into force on and from 01.01.1909. This Code, i.e., CPC which came into force on and from 01.01.1909 is of immense significance as it provides for exercise of jurisdiction and authority by courts qua trusts and charities, i.e., exercise of judicial administration for supervising the functioning of charities and trust. This provision in CPC in its present form is section 92 which in my considered view is now the legal fulcrum of the case on hand. To be noted, section 92 provides for a unique legal drill. It would not be inappropriate to remind oneself that section 92 CPC has the doctrine of cypres ingrained in it and this explains the application of part of funds / corpus of PCT for educational purposes though said testament in its original form did not contain any express provision regarding education. In any event, it is nobody's case, i.e., there is no disputation or disagreement before this court that advancement of education cannot be said to be a diversion from said testament, but it is a constructive purpose under superior judgment that does not breach or go beyond the wish and attention adumbrated in said testament.



O.A.No.283 of 2018, etc. batch

6 In the aforesaid fact setting, PCT completed a century and

one V.Tiruvenkataswami edited / caused to be brought out a commemorative book giving details of institutions that flourished under PCT (1842-1942) and this commemorative book was brought out in 1942. This book forms part of the case file that has been placed before me, but it may not be necessary to advert to the contents of the same in great detail as there is no disputation or disagreement about the yeoman service and work of PCT qua educational institutions spanning over a century.

7 Thereafter, there have been several litigations touching upon PCT and successive orders have also been made by courts but interestingly and intriguingly leave of this court for institution of a suit under section 92 of CPC as a legal event has never happened thus far. In other words, there have been (only) a series of orders in a barrage of interlocutory applications and writ petitions filed by a rainbow of various individuals / parties.

8 One such application is O.A.No.283 of 2018 which pertains to interim order of injunction restraining respondents 3 to 7 therein from calling for and conducting elections for the office of trustees of PCT and



O.A.No.283 of 2018, etc. batch

thereafter, several applications were added to it. Initially, 2 applications,

namely O.A.No.283 of 2018 and A.No.2624 of 2018 were disposed of by

a Hon'ble Single Judge vide order dated 14.06.2018 appointing an

Interim Administrator and thereafter, 27 applications came to be

disposed of by a common order dated 18.12.2019 by another Hon'ble

Single Judge of this court, wherein inter-alia President (who was

appointed as Interim Administrator vide order dated 14.06.2018) was

appointed and several directions came to be given with regard to

management / administration of PCT and corpus of the same. This

common order was made in as many as 27 applications and it was carried

in appeal by way of intra-court appeals, namely 12 O.S.As and one

O.S.A at SR stage, all of which came to be disposed of by a Hon'ble

Division Bench of this court in and by a common order dated

23.12.2020. In and by this common order penned by Hon'ble Mr. Justice

A.P.Sahi {Chief Justice of this Court as His Lordship then was}

presiding a Hon'ble Division Bench of this court which made the

common order, vide this order the matter was remitted to a Single Judge.

As an Interim Administrator was appointed vide order made in

O.A.No.283 of 2018 and A.No.2624 of 2018, with the consent of all



O.A.No.283 of 2018, etc. batch

parties, these two applications were also heard out along 27 applications.

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Instant matter is now before me albeit post a review application, i.e., Review Application No.4 of 2021 (which was disposed of on 25.01.2021) and a SLP against the same before Hon'ble Supreme Court vide S.L.P. (C)No.3313-3315 of 2021 (SLP disposed of on 04.03.2021). To be noted, there will be a little more elaboration on this trajectory infra for the purpose of better appreciation of this order. Before that, it is deemed appropriate to say that paragraphs 133 and 134 of the order of Hon'ble Division Bench dated 23.12.2020 is the crux and gravamen of the scope, ambit and perimeter of the legal drill before me now. Therefore, it is deemed appropriate to extract and reproduce these paragraphs 133 and 134. I do so and the same read as follows:

'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



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O.A.No.283 of 2018, etc. batch

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.'

9 As alluded to supra, the order of Hon'ble Division Bench (containing aforementioned paragraphs 133 and 134) was sought to be reviewed by one of the parties vide Review Application No.4 of 2021,



O.A.No.283 of 2018, etc. batch

which came to be disposed of by a Hon'ble Division Bench presided by

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another Hon'ble Chief Justice vide order dated 25.01.2021. Two essential

features of this review order are that I can proceed without being unduly

influenced by the observations made in the original order and the request

to try and complete this legal drill within three months was removed, but

this order was assailed in Hon'ble Supreme Court in and by SLP(C)

No.3313-3315 of 2021 which came to be disposed of on 04.03.2021.

Hon'ble Supreme Court set aside the review order dated 25.01.2021 and

requested this legal drill to be completed within a time frame of six

months. To be noted, only essential features of the order in review and

order of Hon'ble Supreme Court are mentioned to the extent necessary

and relevant for appreciating this order. In effect, owing to the order of

Hon'ble Supreme Court, the matter rescinded to the original position, i.e.,

original order containing aforementioned paragraphs 133 and 134.

10 To set the perimeter for legal drill on hand, I deem it appropriate to set out the areas within which I will have to perambulate as this matter is being dealt with on being remitted to me by a Hon'ble Division Bench with a specific request to revisit the matter in the light of the observations which have been broadly encapsulated and adumbrated



O.A.No.283 of 2018, etc. batch

in aforementioned paragraphs 133 and 134.

WEB COPY 11 A careful perusal of aforementioned order of Hon'ble Division Bench and more particularly paragraphs 133 and 134 bring to light that I have to revisit the matter qua four issues (in the light of the observations made by Hon'ble Division Bench) and those four issues are as follows:

(i) election of members to the Board of PCT;

(ii) whether modification of existing scheme for PCT (as sought for in captioned applications) is required?;

(iii) procedure, form and substance of the proceedings to be adopted qua allegations and accusations of maladministration, mismanagement, managerial fraud, malfeasance etc., with particular reference to allegations of (inter-alia) valuable part of the corpus of PCT being given in lease for utilization for commercial purposes;

(iv) financial and administrative issues qua PCT where allegations and counter allegations have been



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O.A.No.283 of 2018, etc. batch

made in captioned applications to be gone into in accordance with the procedure prescribed by law and what would be adherence to settled procedure relating to disputes of this nature.

12 This takes me to an important observation made by Hon'ble Division Bench. That observation is to the effect that in the light of the allegations and counter allegations made by way of affidavits and counter affidavits, it may have been appropriate to appoint an independent Auditor / Accountant to probe into the same for forensic examination of the accusations / allegations.

13 Therefore, it becomes very clear that the first step post remand (I choose to use the term 'remand' for convenience though the order of Hon'ble Division Bench says the matter is remitted to me) is the procedure to be adopted.

14 In the light of the above backdrop, I heard learned Senior counsel and learned counsel in such of those applications where applicants / respondents chose to come before me.



O.A.No.283 of 2018, etc. batch

**(II) SUBMISSIONS OF COUNSEL FOR VARIOUS PARTIES:**

**A summation of submissions made by learned Senior counsel and learned counsel for applicants in those of the captioned applications (which were argued before me) is as follows:**

15 Mr.K.Doraisami, learned Senior Advocate appearing on behalf of counsel on record for applicant/s in A.Nos.1749 of 2019, 2272 and 2273 of 2021 and OA No.210 of 2019 made submissions which run as follows:

(a) PCT has constructed two auditoria with all facilities but they are not for the benefit of students and there is absolutely no explanation or justification for violating resolutions in this regard. The construction of Kalyana mandapams by resorting to commercial activities was without any justification or explanation. For the purpose of construction of Kalyana mandapams, all fixed deposits were transferred, utilised and loans were obtained from various banks contrary to the scheme and giving immovable properties as security. Properties forming part of corpus of PCT is to be used only for



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O.A.No.283 of 2018, etc. batch

educational purposes. The PCT properties being for charitable purposes and educational institutions are exempt from Income Tax Act, 1961 and therefore, the commercial activities will take away this benefit owing to change of character. The Commissioner of Income Tax has issued notice for withdrawal of Income Tax benefit as it is being used for commercial purpose. PCT is finding it difficult to give salary to staff members. No approval / permission were obtained from local authorities / corporation to construct these two Kalyana mandapams. As per section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, prior permission in writing should be obtained from Director of Collegiate Education. From RTI {Right to Information Act} enquiry, it comes to light that no permission was obtained from Director of Collegiate Education for construction of these two Kalyana mandapams though statutorily required. It is a serious violation.

(b) For leasing out these two kalyana



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O.A.No.283 of 2018, etc. batch

mandapams, it is claimed that wide publicity was given in leading newspapers calling for applications. These leading newspapers are, one 'Trinity Mirror' (English) and 'Makkal Kural' (Tamil). The so-called lessee is binami of the trustees. One of the employees of one of the educational institutions of PCT is a Director of lessee company. The PCT properties shall not be utilised for any purpose other than educational purposes.

(c) Learned senior counsel drew the attention of this Court to a judgment of a Hon'ble Division Bench of this Court in *P.Elumalai* case being *P.Elumalai Vs. Pachaiyappa's Trust Board* reported in *(2017) 8 MLJ 529*. One of the grounds is one property belonged to one Govindu Naicker Trust but it is under the management of PCT and therefore, it is illegal. The same principle is applicable to this case also because the property belongs to Kandaswamy Naidu College. Trustees cannot take it as if property is owned by them and cannot execute lease deed by-passing objectives of PCT which is the owner of



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O.A.No.283 of 2018, etc. batch

the property. The main object of PCT is to perform religious charities and to utilise surplus for educational purposes only. There is no provision for commercial activities. There is no provision for commercial activity in the educational institution and in the residential area. It was constructed by spending huge cost by transfer of funds and premature closure of fixed deposits of PCT fund. The properties of PCT cannot be mortgaged. Leasing out the properties under the management of PCT for 20 years would amount to alienation. Before leasing out the properties, permission from the Court to grant lease of PCT properties which are administered by orders made by High Court, should be obtained. When the property was purchased by C.Kandaswami Naidu College for Men, one of the specific conditions of sale was that the building thereon should not be used for any other purpose other than educational purpose. Therefore, PCT has no right or title to lease Amma Arangam constructed on C.Kandaswami Naidu College for Men. PCT has not



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O.A.No.283 of 2018, etc. batch

obtained Board resolution to use the multi purpose hall buildings for marriage purposes.

(d) At the time when the application came up for hearing, the erstwhile trustees were not there, only interim administrator appointed by this Court was there, but lessee was impleaded as 4<sup>th</sup> respondent. So many irregularities have been committed by PCT trustees resulting in huge loss to the institution. The two multi purpose halls should be utilised only for the benefit of students' welfare. Monies have been ploughed in for providing air conditioners, chairs and tables for dining hall and for modern kitchen. The lessee is enjoying the PCT property by taking over the same. Except monthly salary, there is no other expenses for the lessee. Electricity charges are paid by persons who book marriage halls. Lessee is not spending any amount and he is enjoying all amenities at the cost of a public trust. Registration expenses of the lease deeds have also been met by PCT only.



O.A.No.283 of 2018, etc. batch

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(e) Income and property should be available with the PCT and should not go to any third party. These are undisputed facts to show that the conduct of trustees and affairs of the PCT are not acceptable. Illegalities and irregularities have been committed by them. The present Scheme is not workable and the Court can devise necessary methods to suit the current situation to prevent continuation of irregularities. No technicality can stand in the way when it comes to safeguarding the properties of PCT. A Hon'ble Division Bench of this Court vide judgment dated 08.09.2017 made in O.S.A.No.161 of 2013 cancelled similar lease deeds entered into by previous management of PCT on ground of breach of trust and Hon'ble Supreme Court declined to interfere.



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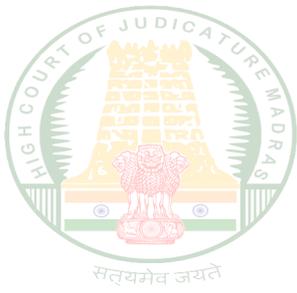


O.A.No.283 of 2018, etc. batch

(f) Regarding two substitution applications, it is submitted by learned Senior Counsel that when a person having similar interest has come before this court seeking to substitute him, it will be in the interest of justice to allow him to continue the proceedings by substituting his name.

16 Ms.Chitra Sampath, learned Senior Advocate appearing on behalf of counsel on record for applicant/s in A.Nos.1802, 1803 and 1927 of 2019 made submissions, which run as follows:

(a) Necessary amendments to the scheme is imperative and objections have to be heard from general public. There are four types of trustees who are appointed from different constituencies, i.e., Senate, College Council, Approved Teachers, Registered Graduates Constituencies and discrepancies are found in these appointments. It is submitted that when students leave the college after successful completion of course, they can be issued an identity card.



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O.A.No.283 of 2018, etc. batch

Subsequently, candidates who are interested in participating in election process can produce identity cards and participate in the election process. Proper procedure has to be laid down for participation in the election process. There should be free participation of graduates and post graduate scholars. Necessary amendments to remove persons with bad conduct and moral turpitude has to be brought in.

(b) There should be disqualification of persons from participating in elections if they are associated with any political activities. The participants should be free from politics. There was a provision for appointment of trustees from Hindu Councilors of the Corporation of Madras. Further the qualification says that candidate should have paid tax of Rs.10000/- under Madras Municipal Corporation Act. Therefore, if one who is living outside Chennai is interested in the election, he cannot participate. This is an unfair requirement. Therefore, amendment can be made on the



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O.A.No.283 of 2018, etc. batch

lines that candidates must be Income Tax assesseees. An amendment can be made qua Rs.10000/- tax under the old Act. It can be fixed based on property tax not less than Rs.2000/- in Chennai District and Rs.5000/- as City Municipal Tax or not less than Rs.25000/- payable as income tax for persons to be eligible to contest election for trusteeship in PCT.

(c) It is also submitted that there must be 'one person one vote' principle. At present, same individual is participating in the election process for different constituencies and this should be avoided. One individual can participate in one constituency alone.

(d) There is no effective way to control the functions of PCT. As the court is the custodian of PCT, amendment in the form of restrictions and curtailing the powers of trustees to manage the PCT, can be brought in and without any liability, there will be no responsible functioning by the trustees. This Court can call for original documents in the custody of AG&OT and mark



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O.A.No.283 of 2018, etc. batch

those documents. In the light of the changing scenario,  
amendment is necessary to block the holes.



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O.A.No.283 of 2018, etc. batch

(e) Accounts are not maintained properly by PCT. Power is given to modify the scheme, so that there is no malfunctioning in future. Trustees are accountable, PCT being a public trust. There must be disqualification of trustees if maladministration or mismanagement is found. The conditions for participation in the election process also need to be modified according to the present scenario and there should be more transparency in PCT activities. All admitted documents need not be proved. It is for the court to call upon trustees to give explanation and remedial measures should be taken to revive the functions of PCT in a transparent manner. Already, a Division Bench of this Court has made amendments in applications, not in a suit. Therefore, learned senior counsel sought for amendment to the scheme.

(f) The tenure of the trustees should be for the unexpired period of five years even if elections are held in between. The scheme itself should provide for



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O.A.No.283 of 2018, etc. batch

consequences if there is failure to conduct commemoration day and non preparation of annual budget. The notice for cancellation of registration of Income Tax exemption was issued on grounds that there was illegal appointment of Principals and construction of two marriage halls. The funds and fixed deposits of 27 constituent trusts including PCT were illegally transferred to Amma Mandapam and Anna Mandapam which are for commercial purposes.

17 Mr.N.R.Elango, learned Senior Advocate appearing on behalf of counsel on record for applicant/s in A.Nos.10091 and 10092 of 2018 made submissions which run as follows:

(a) There is maladministration in the entire PCT activities. The PCT is existing for about 280 years. Properties worth about Rupees 1000 crores are in the hands of trustees. Case on hand should not be seen as a lis between two contesting parties. The total strength of Pachaiyappa's college was about 3000 students. Even in



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O.A.No.283 of 2018, etc. batch

the selection / appointment of teachers, there are many malpractices and number of writ petitions are pending. The Interim administrator has also found some malpractices in appointments. Specific clause is provided under the scheme itself to apply for modification or for any direction. Relying on *Raje Anandrao* case, it was stated that a scheme can be modified by application if the scheme contains a clause for modification.

(b) The scheme as it exists today is not good enough to prevent trustees who are elected from committing breach and indulging in maladministration. Attention of this court was drawn to P.Elumalai's case regarding mismanagement and maladministration of trust. For construction of two Kalyana mandapams, loans were obtained fraudulently. There is no provision in the scheme for removal from trusteeship, if any maladministration is found.

(c) If such trustees continue, all educational institutions of PCT will vanish. Before conduct of election,



O.A.No.283 of 2018, etc. batch

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a proper scheme has got to be framed with necessary modification to the existing scheme providing removal of trustees if they are found to indulge in maladministration. Unless the scheme is modified, continuing election under the old scheme will not serve any purpose and it will not be for betterment of PCT.

(d) The object of the scheme is that functions of PCT are performed properly, budget and accounts are properly prepared. Commemoration day has to be conducted. There was corruption in appointments of faculties and non teaching staff. The modifications sought by the applicants do not alter the basic structure of the scheme or the purpose for which PCT was created. When the court is exercising its power to protect the interest of the trust in the capacity of a parent, the question of res judicata does not arise.

18 Advocate Mr.S.Doraisamy in A.No.10097 of 2018 made submissions which run as follows:



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O.A.No.283 of 2018, etc. batch

(a) Amendment to scheme is required to safeguard PCT. For stopping breach by PCT management, measures have to be taken. There was improper filing of return and for that, Income Tax department has to reopen the assessment for the year 2016-17. In Olden days, students were called for meetings of the trust Board and trustees used to ask students if they have any grievance. PCT can call for public opinion before taking a decision.

(b) For proper implementation of the scheme, amendment is necessary. If trustees fail to perform their duties as per the scheme, they should not be permitted to continue as trustees. Accounts of the Board of PCT shall be audited by court appointed certified Auditor. Budget has to be prepared every year. There should be supervisory authority to control the activities of the PCT and to supervise the functions of PCT for better management. Since it is an application for amendment,



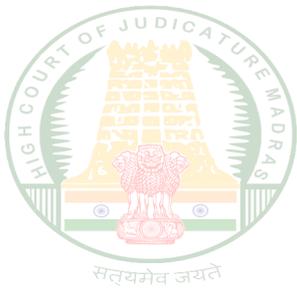
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O.A.No.283 of 2018, etc. batch

applicant is not asking for a decree and therefore, obtaining sanction of Advocate General does not arise. Any amendment made in the application will become final and any aggrieved person can come forward with a application seeking amendment. Section 92 of CPC need not be invoked.

(c) Once a decree is passed, unless that decree is set aside in a manner known to law, one cannot invoke section 92 for framing of the scheme. There is a provision in the scheme decree for modification by way of filing application. Learned counsel submitted that the argument that amendment cannot be by way of an application and one has to file a suit under section 92 of CPC is no more good law. Any application for modification can be entertained as far as the modification is for the purpose of administration. For the purpose of administration, an application for modification is sufficient and no evidence is required



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O.A.No.283 of 2018, etc. batch

and it is for the court to decide. Article 329 deals with only Parliamentary and State legislature elections. PCT is not a statutory authority and therefore, Article 329 is not a bar. The entire amount for construction of Kalyana mandapam has been mobilised by obtaining loan by PCT or transferring funds from other trusts. The management of PCT is not proper.

(d) Modifications to the scheme are required to conduct commemoration day and fling of report of income and expenditure every year, auditing of accounts and budget. There was no proper collection of rental dues from the properties of PCT. The funds from the endowments were transferred for commercial activities.

19 Mr.V.Raghavachari, learned counsel appearing on behalf of applicant in A.No.10096 of 2018 made submissions, which run as follows:



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O.A.No.283 of 2018, etc. batch

(a) It is necessary and imperative to make amendments / modifications to the scheme for the betterment of the management of PCT. In the best interest of PCT, it is necessary that the scheme should be modified. Originally, the object of PCT was keeping in mind education. Experts in the field of education can be appointed in PCT. It is difficult for one trust board to manage all the functions of PCT, namely, education, religious and other charitable functions. Amendment to the scheme would be in the direction of less corruption and more transparency in the management.

(b) There is no improvement in the standard of education in Kandaswamy College except the improvement made in the building. Before giving the property under sub lease, they should have obtained permission of Court. It is not known under what capacity, the resolution was passed for changing the trust property as marriage hall. PCT can lease out the property provided Court grants permission on an



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O.A.No.283 of 2018, etc. batch

application filed.

(c) The loopholes in the scheme decree can be plugged if there is a relook and if it is modified. Scheme should be modified to such an extent that the welfare of the institution should be paramount. The interim administrator is an officer of the Court and he is not an outsider. The issues in the applications can be segregated. Modification of scheme and initiation of action against trustees for maladministration and mismanagement can go on separately and independently.

(d) This Court has powers to examine the issues afresh and the remand order is made to decide the issues afresh without being prejudiced by the findings given by Hon'ble Division Bench. Clause 13 of the Scheme provides for modification by way of application. The scheme decree has been modified on 9 occasions earlier by way of applications. It has been the practice of the court to modify the scheme and the



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O.A.No.283 of 2018, etc. batch

practice of the court is the law of the court.

(e) There are deficiencies in the present scheme. Election has to be conducted in a fair and proper manner. Lease deed has been executed without the leave of the court. There is no legal embargo to cancel the alienation under section 92 of CPC. The scheme decree has to be construed strictly as a statute. The court has ample powers to safeguard the trust property and from the maladministration and mismanagement of the trust by the trustees.

**A summation of submissions made by learned Senior Counsel and learned counsel on behalf of Trustees is as follows:**

20 Mr.AR.L.Sundaresan, learned Senior Advocate appearing on behalf of counsel on record for respondent/s in A.Nos.10092, 10096 and 10097 of 2018, 1803 and 2416 of 2019 made submissions which run as follows :

(a) The argument before Hon'ble Division Bench was without following Section 92 CPC route,



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O.A.No.283 of 2018, etc. batch

whether such applications could have been filed. Hon'ble Division Bench observed that it could have been filed in terms of Section 92 CPC. The modifications sought by the applicants are in the nature of introducing totally new clauses for PCT. The substantive modifications / amendments are going to change the entire structure of bylaws and they should pass the test of section 92. If at all this court comes to a conclusion that modifications are necessary, then this court can pass orders with regard to electoral aspects. The applications for modifications are to be dismissed.

(b) No new material or pleadings are made. Paragraphs 109 and 111 of Hon'ble Division Bench order was adverted to, it was submitted that learned Advocate General is part of the scheme and therefore, there is no necessity that there should be a tenth person in the form of a retired Judge of this court to be appointed as President of the Advisory committee. The trustees are responsible for handling the activities of PCT under the



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O.A.No.283 of 2018, etc. batch

supervision of Advocate General. If Advisory body is constituted as suggested in the modification applications and as suggested by interim administrator, who was appointed for the purpose of election, then it will completely upset the scheme that has been framed by Hon'ble Division Bench of this Court in the year 2008. They cannot be made as permanent body thereby undermining the control of the elected board of trustees who were elected according to the scheme of PCT.

(c) Board of trustees, whenever they require the services of experts, such as auditor etc., they will engage their services, but there cannot be a permanent advisory council by way of application in a proceeding which started with O.A.No.283 of 2018 which is for injunction restraining respondents 3 to 7 therein from conducting elections for the office of trustees of PCT.

(d) Modifications were never considered necessary from 2013 and no new material different from the one placed before Hon'ble Single Judge earlier which



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O.A.No.283 of 2018, etc. batch

formed part of material placed before Hon'ble Division Bench was placed before this court to revisit the scheme. If it has to be done, it has to be done under section 92 CPC. Auditors appointed by this court earlier have approved the accounts and on this basis, returns have been filed. An opportunity to defend the case has to be given, necessary documents are to be proved by recording evidence and respondents may have to enter the box to explain / defend their cases.

(e) The proceedings in respect of PCT or any charitable institution which would come strictly under section 92 of CPC cannot be put on the same platform like a Public Interest Litigation under Article 226 of the Constitution of India where any one who can kick start it and therefore substitution is not necessary. The person sought to be substituted is not in any way related to the person who had initiated the application concerned. Therefore, he does not have any locus at this stage to substitute himself.



O.A.No.283 of 2018, etc. batch

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(f) Hon'ble Division Bench had made it clear that the matter requires revisitation only on specific heads. Once election process has started, election cannot be stopped and no adequate pleadings were made to cancel the notification. The amendments sought in cases on hand substantially alter the management of the trust and such amendments cannot be made by applications. Further, altering the constitution of the Board by creating a post of President and increasing the number of trustees to 10 would create a deadlock while passing resolutions. The amendment seeking to reduce the tax limit may not be considered as no reason has been provided for reduction. There must be an allegation of breach of trust for section 92 CPC to be attracted. The applicants have not satisfied the requirement under section 92 of CPC.

21 Mr.S.Gomathinayagam, learned Senior Counsel appearing on behalf of learned counsel Mr.E.Soundarajan made submissions, which



O.A.No.283 of 2018, etc. batch

run as follows:

WEB COPY

(a) Earlier orders passed by learned Single Judge regarding elections have become final and were not challenged. All the captioned applications are not maintainable. Amendments to the scheme suggested by learned Interim Administrator are not tenable. There can be no bar on politicians being trustees. Once election process has commenced, it cannot be interdicted.

(b) The applications by learned Interim Administrator were filed after the last date for withdrawal of nominations when the election process was fully under way, that too pursuant to orders of this Court. Learned Interim Administrator should not take position / sides on such applications. Election was notified pursuant to one single Judge's order. Therefore, such application before another learned Single Judge is not maintainable, only a appeal should have been filed but the same has not been done. A perusal of the order of Hon'ble Division Bench shows that modifications 'if at all required'. Therefore, the



O.A.No.283 of 2018, etc. batch

words 'if at all' means that modification is not required.

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Even if modification is required, this will be only prospective and cannot have retrospective effect.

(c) The present applications filed to restrain the election is nothing but an attempt to delay the election process. The reason given by learned Single Judge restraining the election was not accepted by Hon'ble Division Bench. The earlier order passed by learned Single Judge in O.A.No.283 of 2018 and A.No.2624 of 2018 has to be complied with. A.Nos.1802, 1803 and 1927 of 2019 are hit by res judicata and binds not only the parties in the application, but also all who are interested in the trust.

22 Mr.G.Murugendran, learned counsel on record for respondent/s in A.Nos.1802, 1803, 1927, 2416, 10092 and 10096 of 2019 made submissions, which run as follows:

(a) According to scheme decree in respect of PCT, election has to be conducted once in five years. Accordingly, we have participated in the election and elected as trustees for the period from 2013 to 2018. As



O.A.No.283 of 2018, etc. batch

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per clause 11(F) of the decree, it shall be the duty of Board of Trustees to make necessary arrangements for conducting elections. Some of the applicants earlier moved this court vide O.A.No.283 of 2018 praying for an order of interim injunction restraining the respondents 3 to 7 from calling for and conducting elections for the trustees in the second respondent PCT pending disposal of the O.A. This application was ordered on 14.06.2018. Interim administrator was appointed to administer the PCT. After that application was ordered, all other applications have been filed. If they really want to amend the scheme decree, they could have filed applications much earlier. Therefore, the present move is to stop the elections and applicants do not want the present trustees to be in PCT.

(b) It was argued by senior counsel and counsel for applicants that they want an advisory board above the trust board to supervise PCT, but it is not the observation of Hon'ble Division Bench. Even if the scheme is to be



O.A.No.283 of 2018, etc. batch

modified, a advisory board cannot be appointed.

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Therefore the argument of counsel for applicants to introduce some advisory board and experts in certain fields cannot be done. Further the argument of learned senior counsel and counsel for applicants that the scheme decree can be modified by way of applications and not under section 92 CPC cannot be accepted. Therefore, modifications cannot be done by way of applications.

(c) Learned counsel submitted that Section 92 of CPC gives protection to PCT. There is no summary procedure. Parties cannot file suit without leave of the court and they have to satisfy the court. The applicants did not obtain leave of Court and they filed applications without leave of court and unless leave is granted, applications are not maintainable.

(d) Vidyodaya Trust case being *Vidyodaya Trust Vs. Mohan Prasad R and others* reported in *(2008) 4 SCC 115* applies and vide paragraph 17 of this case law, reliance was placed on Swami Paramatmanand



O.A.No.283 of 2018, etc. batch

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Saraswati case. Sitalaxmi Sahuwala Medical Trust case [Ashok Kumar Gupta Vs. Sitalaxmi Sahuwala Medical Trust] reported in (2020) 4 SCC 321 (paragraphs 7, 10 and 19 of the said decision) also applies. A judgment of Hon'ble Division Bench of this Court in *B.D.V.Rangarathinam Vs. Sri Bakthositha Perumal Temple* case reported in 2004 (4) CTC 641 (paragraph 10) would buttress the plea that applicants have not obtained leave of the court which is necessary to seek the reliefs prayed for.

(e) Learned counsel citing Article 243ZG of the Constitution of India stated that there is a bar qua interference by courts in electoral matters and Article 329 was also cited. Article 243ZK was cited to say that election has to be conducted before expiry of the term of the board and it cannot be stopped once the process has started. Therefore, it is the intent of the legislation that once election process has been kick started, it cannot be disturbed.



O.A.No.283 of 2018, etc. batch

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(f) The scheme decree shows that every five years, election has to be conducted. Learned Single Judge of this court by order dated 05.03.2019 in A.No.1802 of 2019 has granted an order of injunction restraining issue of any notification for election of trustees. Learned single Judge has not given any finding for granting interim injunction stopping the election. Election process has started and nominations were received. It is no way connected with the scheme decree. It is the decree passed by Supreme Court of Madras and it cannot be modified by way of filing applications. Further, whatever order is passed in the application cannot become a decree. As per Order XIV Rule 1 CPC, the court cannot come to a conclusion based on the pleadings in an application without framing issues.

(g) Clause 11 of the decree says only a Hindu can become a trustee. Otherwise, it will be against the Will of the founder. Under Clause 11(A), payment of tax of Rs.10000/- is fixed, so that with sound financial



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O.A.No.283 of 2018, etc. batch

background persons alone will participate in the election process. Further, persons within the jurisdiction of Madras alone will be considered in the election. These minimum requirements are necessary only to ensure that good people alone participate in the election process. Learned counsel submitted that amendment sought for in the decree by applicants in respect of tax payment puts persons outside of Madras at a disadvantage, they also should become eligible for elections. This amendment sought is for personal gain of applicants and not for charity purpose. The amendments now sought for are against the said testament.

(h) Learned counsel submitted that the grounds raised in the applications and the modifications to be carried out in the decree should be made under section 92 of CPC and a trial has to be conducted by giving opportunity to all to have their say as to whether amendments need to be carried out or not. The scheme can be modified for the benefit of PCT and only for



O.A.No.283 of 2018, etc. batch

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substantive reason. Learned counsel read out clause 11(O) regarding power to frame byelaws and clause 11(G) regarding default in holding of elections. The amendments sought are contrary to the scheme decree of Supreme Court of Madras. Learned counsel relied on a decision of Madurai Bench of this High Court being *D.Soundaraja Nadar Vs. Thakshinamara Nadar Sangam* case reported in 2009 (5) CTC 865 to say that once the election process has started, the court should not interfere with the said process, he further relied on a decision of this court made by a learned Single Judge in *The Tamil Nadu Evangelical Lutheran Church Vs. Daniel Shanmugam* case reported in 2010 (5) CTC 481 for the very same proposition.

(i) It cannot be said that PCT has diverted the funds and the funds cannot be used for any other purposes. Amma Arangam was constructed only for the betterment of PCT and it is now a good asset to PCT. It is not correct to say that it is not for education purpose. It is



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O.A.No.283 of 2018, etc. batch

given on lease and it is not permanent possession but it is subject to conditions in the lease deed. It can be cancelled if the conditions are violated or breached. PCT has not sold any property to third parties.

(j) What are all the administration activities carried out by PCT was followed by the interim administrator, but more expenses are incurred by the interim administrator than what was made by PCT. Religious activities are also carried out by PCT. Interim administrator has spent more expenses towards auditor's fee, lawyers' fee, which is not for charity purpose. The PCT has not spent this much amount earlier.

(k) Learned counsel submitted that the objects of said testament cannot be disturbed and the aim of the founder is reflected in said testament. It is reflected in the decree of the Supreme Court of Madras. The applicants' wanted any IAS officer, Vice Chancellor or a retired High Court Judge to be appointed. It is against the said testament. The scheme decree itself permits the trustee to



O.A.No.283 of 2018, etc. batch

amend the same but attempt to bring a new scheme is impermissible.

(l) Section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 does not apply to the present case. PCT need not get prior permission from the competent authority. The submission of applicants regarding 'One Vote One Person' cannot be accepted. Already, there is a set of procedure to participate in the election and therefore, that need not be disturbed. Learned counsel further submitted that income tax returns have been properly filed. PCT has conducted the Commemoration day and 175<sup>th</sup> year celebration. Many development activities have been carried out by PCT for the welfare of the students in the institutions run by PCT. There is no maladministration as argued by applicants' side.

(m) *Raje Anandrao* case (1961) 3 SCR 930 does not apply to the case on hand. After this 1961 judgement, the law has changed, some amendments were made and



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O.A.No.283 of 2018, etc. batch

because of major changes in section 92 CPC, this judgment will not apply. The propositions laid down in *Raje Anandrao* case have changed.

(n) The modifications sought do not come under charitable purpose and it is purely on private rights and the scheme decree does not permit some of the applicants to participate in the election and therefore, modifications are sought for individual gains. The applications for amendment / modification of the scheme decree are not maintainable. Further, the modification to the scheme is in no way related to the election and therefore, if there is any modification, same can be implemented prospectively and not retrospectively.

23 The submissions made by Mr.K.Gowtham Kumar, learned counsel for respondent 3 and 5 in A.Nos.10093 to 10095 of 2018 are as follows:

(a) Learned counsel drew the attention of this Court to paragraph 133 of Hon'ble Division Bench



O.A.No.283 of 2018, etc. batch

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order in O.S.A.Nos.346 of 2019, etc., batch and submitted that for certain issues, Hon'ble Division Bench has conclusively held against applicants and had given conclusive finding that amendment is not required. Elections were held based on directions in applications which have been filed before this court. A similar set of allegations were made in 2012. Earlier, this Court had appointed Mr.T.N.Seshan to conduct elections. Learned counsel submitted that Interim Administrator was appointed and he was managing PCT until new trustees were elected. Learned counsel submitted that in the year 2018, allegations were made that rules were not properly followed and this Court has passed an order appointing interim administrator to conduct elections. It was held that election was to be held as per the scheme of the PCT. Further, vide order dated 30.07.2018 made in A.No.5829 of 2018, further six months time was granted.

(b) Learned counsel submitted that



O.A.No.283 of 2018, etc. batch

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amendments sought for are not required at this point of time. As the election process had begun, any modification can be done only for future elections. Learned counsel submitted that there is no infirmity in the election process. It is further submitted that examining of the electoral rolls is not warranted and there is no error in the electoral rolls. No election petition is pending. The modification which is sought for is beyond the regular administration of PCT and the same requires a suit to be filed and it cannot be by way of applications.

(c) It is further submitted by learned counsel that there is nothing to show that trustees are doing something for their personal gain and there was ill intention. Learned counsel relied on a decision of Supreme Court in *Bansi Dhar* case reported in (1974) 1 SCC 446 and a decision of a Hon'ble Division Bench of this Court reported in 2017 (8) MLJ 529 (*P.Elumalai* case). Learned counsel further submitted



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O.A.No.283 of 2018, etc. batch

that there has been no financial loss to PCT. For the purpose of creating surplus fund to PCT, the PCT has utilized the trust property. Further, there is no material to show that there is binami transaction. It is submitted that with the assistance of Auditor, income tax returns have been filed.

(d) The appointment of Interim Administrator vide order in O.A.No.283 of 2018 was only to conduct elections and it cannot be turned into referendum on trust. The amendment cannot be sought by way of applications applying clause 13 of the scheme decree. No reason has been given in the applications for amendment. The modifications sought will change the basic structure of PCT itself. Further, except bald allegations in the application, no document has been produced before the court that any of the trustees have got benefit from the lease or with regard to mismanagement. The lease is for the benefit of PCT and to augment income to PCT. With regard to prior



O.A.No.283 of 2018, etc. batch

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approval, PCT can get ex post facto approval from the authorities concerned. Trust had applied for CMDA approval, but the Interim Administrator withdrew the application. Lease has been granted to the highest bidder and security deposit was obtained from the lessee and the deed provides for periodical increase in rental. The allegations with regard to maladministration are baseless.

24 Mr.M.S.Krishnan, learned senior counsel appearing on behalf of counsel for one of the respondents (Lessee) in A.Nos.10091 and 10093 of 2018 and 1749 of 2019 and O.A.No.210 of 2019 made submissions, which run as follows:

(a) Learned senior counsel made submissions as to whether any relief of recovery of possession or any other prayer in the form of declaration against alienee of a PCT property can be granted under section 92 of CPC? Whether the court has power to direct or declare the lease



O.A.No.283 of 2018, etc. batch

as null and void and to order for delivery of possession?

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The scope of section 92 does not provide for any such relief is his say. The committee had power to lease out the property at that point of time in a manner known to law and it cannot be set aside in an application under section 92 of CPC.

(b) Learned senior counsel relied on Supreme Court judgements wherein it was held that section 92 requires amendment to facilitate recovery of possession from alienees. Learned senior counsel firstly relied on a Full Bench decision in *Kalyana Venkataramana Ayyangar* case reported in ILR Vol.XL 212 and took the court to paragraph 2 in page No.215, para 2 in page 217, para 1 in page 221, a para in page 223, para 2 in page 227. Learned senior counsel submitted that the relief claimed here is outside the purview of section 92 of CPC and such amendments and suit against third parties or trespassers should not be brought in. This court has no power to exercise jurisdiction under section 92 for passing any order



O.A.No.283 of 2018, etc. batch

against third parties or alienees.

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(c) Learned senior counsel relied on Privy Council judgment in *Abdur Rahim Vs. Mahomed Barkat Ali* [1927 ILR Vol.LV 519] and took this court through some paragraphs in page No.527 of that judgment and submitted that it is not that section 92 was intended to enlarge the scope of section 539 by adding any relief against third parties or strangers to the suit.

(d) Learned senior counsel relied on AIR 1974 SC 1084 [State of UP Vs. Bansidhar], dated 11.12.1973, (Krishna Iyer J) to buttress his arguments in this direction.



O.A.No.283 of 2018, etc. batch

(e) Learned senior counsel cited a judgment of

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Hon'ble Supreme Court in ***Bishwanath Vs. Sri Thakur Radha Ballabhji*** reported in ***AIR 1967 SC 1044*** and took the court to paragraph 6 of that judgment regarding two obstacles qua maintainability of a suit, i.e., Section 92 is a bar to the maintainability of suit and a suit for possession of property of a idol (after setting aside the alienation) can only be filed by the Shebait and none else could represent the deity.

(f) Learned counsel thereafter submitted that in ***Elumalai*** case rendered earlier by a Hon'ble Division Bench of this Court reported in (2017) 8 MLJ 529, the decision taken by Privy Council was not taken into account. Hon'ble Division Bench judgment holding that the relief of possession and for setting aside the alienation would fall within section 92(h) is incorrect. The remedy is under a normal suit filed possibly in a District Court or Sub Court or before High Court having original jurisdiction and not under section 92 CPC.



WEB COPY



O.A.No.283 of 2018, etc. batch



O.A.No.283 of 2018, etc. batch

(g) It was also submitted that cancellation of lease

cannot be done on affidavits and counter affidavits, even if it is by way of a suit, it cannot be a suit under section 92 is his say.

(h) Relying on *Charan Singh* case reported in (1975) 1 SCC 298, it was submitted that declaration and recovery of possession against alienation or a third party is not maintainable under section 92. It was also submitted that Interim Administrator also did not want to cancel the lease. If at all, these applications have to be decided, evidence has to be let in.

(i) Being a bona fide lessee, the lessee cannot be evicted without following due process of law. There is no benami transaction. The burden of showing that the transaction is benami lies on the person who is making the allegation. The lessee company has spent huge amounts for maintaining the building. The lessee company had only paid the registration charges and stamp duty.



O.A.No.283 of 2018, etc. batch

WEB COPY 25 Mr.T.R.Rajagopalan, learned senior counsel made his submissions (he had represented learned Interim Administrator before Hon'ble Division Bench and this Court requested him to address / give audience to ensure that factual matrix before this Court is as complete as possible) and summation of the same is as follows:

(a) As per said testament, the whole purpose is only for charity. The order of learned Single Judge appointing not only a retired Judge as head of PCT, but also appointing council of members is in order. It is also provided for in clause 5 of the scheme. Considering the charities being performed in PCT, nine trustees may not be sufficient in the year 2021. Any person interested can apply for modification whenever required. Application for modification can be moved so long as modification is for the purpose of administration. Learned counsel relied on *Raje Anandrao* case [*AIR 1961 SC 1206*] and submitted that one need not file a suit for modification of a scheme. Learned counsel also relied on *R.Venugopala Naidu case*



O.A.No.283 of 2018, etc. batch

reported in *1989 Supp (2) SCC 356* in this regard.

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O.A.No.283 of 2018, etc. batch

(b) It was submitted that the remand to this Court

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was because predecessor learned Single Judge has not considered some aspects of the matter. The report of the Interim Administrator is based on documents produced by the trustees. The Administrator has highlighted the irregularities committed by the trustees. Learned senior counsel submitted that before commencement of construction activities, PCT should have sought permission of the court. Further, when the object of PCT is charity, they cannot begin commercial activities. The court has to safeguard PCT. There should be transparency in the activities of PCT. Even when not asked for as amendment, the court can provide such amendment to safeguard PCT.

(c) Modification and amendment can be done under clause 13 of the scheme. Two kalyana mandapams were constructed for commercial purposes while the object of PCT is for educational and religious purpose. There are deficiencies in the existing scheme and therefore, amendments should be made. Budget has not been



O.A.No.283 of 2018, etc. batch

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prepared as per Clause 9 of the scheme. Borrowal of funds from other trusts under the control of PCT cannot be permitted without leave of the court. The properties were leased out without proper public auction. The report of the Interim Administrator is based on records. As PCT is managing 12 educational institutions and number of religious charities, a retired High Court Judge may be appointed to head the Board. As the High Court is custodian of PCT, it is empowered to amend and modify the clauses in the decree in the interest of trust.

26 In the proceedings before Hon'ble Division Bench, learned Advocate General was heard and this has been captured in the remand order. Owing to this and also owing to the statutory privilege / position accorded to learned Advocate General in and by section 92 of CPC, I consider it appropriate to hear learned Advocate General in these proceedings also. Therefore, learned Advocate General was requested to address this Court and a summation of submissions made by learned Advocate General is as follows:



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O.A.No.283 of 2018, etc. batch

(a) For the administration of the trust, amendments can be made by way of applications under the relevant clause in the scheme. The above principle is settled in *Raje Anandrao* case. The High Court as the custodian of public charities is empowered to suitably modify and amend any clause in the scheme decree for the benefit of the trust without specific pleadings and on information. The amendments are sought in respect of elections, qualifications of trustees, for maintenance of colleges and schools under clause 3 and also for regulations.

(b) 'One vote, one person' concept can be introduced to remove the anomalies in the constitution of the Board under clause 11(B). The tenure of trustees under clause 11(H) may be reduced to three years, so that there may be active participation of all and it will help to check the administration and functioning of PCT.

(c) The provision with regard to payment of



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O.A.No.283 of 2018, etc. batch

tax under Madras Municipal Act for the year preceding is unreasonable and persons from non wealthy strata of society also are maintaining high standards of integrity and ethical values. The power to accord sanction may be vested with Advocate General to effectuate the role as per the scheme and to facilitate to initiate proceedings to form checks and balances in PCT's administration. A retired High Court Judge may be appointed as Interim Administrator for conducting elections to Board of Trustees and to carry out the administrative functions of the PCT.

### **(III) DISCUSSION AND DISPOSITIVE REASONING :**

27 As already alluded to supra, Hon'ble Division Bench has said that there is remit of captioned matters to me, but for convenience, I am using the term 'remand'. Be that as it may, 'remit' as a noun in the British sense of the term would mean ambit or realm of the task or area of activity assigned to me. It is necessary to have both clarity and specificity qua remit in this British sense of the term. The answer to



O.A.No.283 of 2018, etc. batch

search of such clarity and specificity lies in paragraph 133 of the order of Hon'ble Division Bench. To be noted, paragraphs 133 and 134 of the order of Hon'ble Division Bench have already been extracted and reproduced supra. A careful perusal of paragraph 133 makes it clear that Hon'ble Division Bench has put the disputes in four distinct compartments (though paragraph 133 talks about three issues). The four distinct compartments are as follows:

1. Election of Board of Trustee qua PCT;
2. Modification of existing scheme that has been sought for by the applicants;
3. Maladministration, mismanagement, managerial fraud and malfeasance (particularly, with regard to lease) – Procedure, form and substance of proceedings in this regard;
4. Other financial and administrative issues regarding which allegations and counter allegations have been made – have to be gone into provided such issues are raised in accordance with the procedure prescribed by law – examination thereof as per settled procedure qua



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O.A.No.283 of 2018, etc. batch

disputes of the present nature.

28 It is clear that with regard to 3<sup>rd</sup> compartment, the remit of the legal drill before me is to decide and pronounce on procedure, form and substance of the proceedings regarding adjudication of allegations of maladministration, mismanagement, managerial fraud and malfeasance. The 4<sup>th</sup> compartment is dovetailed and inextricably intertwined with the 3<sup>rd</sup> compartment as the procedure, form and substance of proceedings qua 3<sup>rd</sup> compartment would decide the manner in which allegations and counter allegations regarding other financial issues are to be examined / adjudicated upon. Compartments 1 and 2 may or may not be brought within the rigor of such procedure, form and substance of proceedings (to be decided by me) and I have adequate elbow space in this regard. To be noted, compartments 1 and 2 in the present scenario go together as answer to compartment No.1 will be in the nature of a sequitter to answer to compartment No.2. To make it a little lucid and put it in simplistic terms, if modification of the existing scheme is held to be unnecessary, the election can proceed (from where it has been interdicted) on the basis of the existing scheme and if modification to the scheme is held to be



O.A.No.283 of 2018, etc. batch

necessary, the election will have to be in accordance with the modified scheme as modification touches upon qualifications / eligibility of electorate / contestants, etc., This means that if modification is held to be necessary, the election process thus far has to be unwound and it has to be recommenced.

29 Though elaborate arguments were made by microscopic analysis of granular factual details, I propose to take a simplistic approach. The submissions and counter submissions which have been captured and reproduced supra would make it clear that the question as to procedure, form and substance of proceedings as projected in the hearings turn heavily on *Raje Anandrao* case reported in *AIR 1961 SC 1206*, this case law was sheet anchor of submissions in this regard and most arguments on this point were predicated and posited on this case law. The arguments that modification of a scheme can be done merely by way of an application without resorting to a suit is pivoted on *Raje Anandrao* principle. The applicants contend that modification of scheme can be done merely by way of applications by relying on this *Raje Anandrao* principle, whereas the trustees in office contend that it has to be by way of a properly framed suit presented under section 92 of CPC.



O.A.No.283 of 2018, etc. batch

30 It may be necessary to look at some of the basic facts in

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*Raje Anandrao* case. In *Raje Anandrao* case, a suit was filed way back in 1866 (much before present CPC kicked in on 01.01.1909) with respect to a temple. This suit was laid by one Raje Mansingh Rao under the guardianship of his mother primarily seeking declaration that a temple was his property. Some Pujaris of the temple were defendants in the suit. This suit was decreed by the Court of first instance, but on appeal it was held that it was a private property of the Raja, but was an endowment for the public founded by the ancestors of the Raja and that Raja was entitled (as against Pujaris) to possession and control of the institution. The office of the Pujaris was held to be hereditary. This decree and an agreement which followed operated for more than three decades. Post CPC, i.e., about three years after CPC kicked in, there was some dissatisfaction about management of temple by Raje Anandrao and a suit under section 92 was filed after obtaining permission from the Advocate General. This suit was for framing of a scheme for management of the temple. This suit was decreed on 29.04.1916 by the Additional Judicial Commissioners. Pujaris were not parties in the suit. The matter went back to District Judge who framed the scheme. Another scheme was framed in



O.A.No.283 of 2018, etc. batch

1926 followed by yet another scheme in 1935. There was another suit in

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another court between Raje Anandrao and Pujaris and this suit came to

be decided on 30.04.1936, wherein it was held that office of pujari was

hereditary, but Raja was entitled to control the Pujaris. After a lull, there

was some trouble in the temple. District Judge visited the place and then

passed an order in 1954, wherein District Judge revised the scheme

which had been in force since 1935. This was carried in revision by

Pujaris to High Court and the High Court held that modification by

application is impermissible and it has to be by way of another scheme

suit under section 92. Therefore, the main question in *Raje Anandrao*

case was whether it is open to a Court to amend a scheme once framed

under section 92 of CPC and when power to amend the scheme is

reserved in the scheme itself. The question whether a scheme with in-

built mechanism for amendment settled by a Court in a proper suit under

section 92 of CPC can be revisited by way of an application or whether

such a decree would operate in perpetuity. It is in this context that in

*Raje Anandrao* case, there was a departure from *Veeraraghavachariar*

case being *Veeraraghavachariar Vs. The Advocate General of Madras*

reported in *ILR 51 Mad 31 (FB)*. To be noted, in *Veeraraghavachariar*, a



O.A.No.283 of 2018, etc. batch

Full Bench of this Court held that a scheme framed in a suit under section 92 reserving liberty in the decree will remain and cannot be gone into by way of an application.

31 Therefore, the point is, in *Raje Anandrao* case, there was a scheme suit under section 92 CPC, the same was decreed and the scheme was operating. Whether such a scheme can be modified by way of an application was the question, but that is not the question before me. In other words, the fact scenario in *Raje Anandrao* case is clearly distinguishable nay different qua case on hand as in the case on hand, there is no suit, merely a barrage of applications at sporadic intervals have been filed, orders in the nature of / having the trappings of a scheme and modification to the same have been repeatedly made from time to time.

32 I am of the view that *Raje Anandrao* case is clearly distinguishable on facts owing to the reasons set out supra. I am also of the further view that the argument that *Raje Anandrao* case is an authority for the proposition that schemes can be framed for public trusts de hors suits under section 92 of CPC merely by way of applications which are decided on affidavits and counter affidavits is unacceptable



O.A.No.283 of 2018, etc. batch

owing to it standing distinguished on facts as set out supra and more particularly because there was a proper section 92 suit in that case. On the contrary, *Raje Anandrao* case is an authority for the proposition that a scheme once framed (for a public trust) with a inbuilt provision for amendment, in a scheme suit under section 92 of CPC does not operate in perpetuity and it can be modified from time to time by way of applications keeping in tune and tandem with changing times. In this view of the matter, I have no hesitation in coming to the conclusion that the procedure, form and substance of proceedings for framing a scheme qua a public trust is clearly codified and that codification is section 92 of CPC and other provisions of CPC which govern proceedings in a suit. The further reason for this conclusion is the twofold contra arguments of applicants do not impress me.

33 Let me set out the twofold contra arguments and as to why I am unable to persuade myself to accept the same. The first argument is scheme has been framed and modified from time to time by way of applications in the case on hand and therefore, it is permissible. This is hardly a legal argument because on earlier occasions on which schemes



O.A.No.283 of 2018, etc. batch

were framed and modified in applications from time to time, the question

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as to whether a scheme can be framed by way of mere applications without reference to suit under section 92 of CPC never came up for consideration before Hon'ble Courts. In the case on hand, merely because orders were passed from time to time being orders having trappings of a scheme and also modified from time to time by way of applications by itself does not become / make it procedure of this Court. To be noted, there will be discussion elsewhere infra in this order on this aspect of the matter.



O.A.No.283 of 2018, etc. batch

34 The second argument is posited on *Raje Anandrao* principle,

that has been discussed and dispositive reasoning on the same has already been given supra. Before I proceed further, it is deemed appropriate to set out the basis of my approach to understand and apply the ratio laid down in *Raje Anandrao* case. I have gone by *Padma Sundara Rao* principle being ***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in **(2002) 3 SCC 533**. To be noted, *Padma Sundara Rao* case law was rendered by a Constitution Bench of Hon'ble Supreme Court and is therefore a declaration of law. Paragraph 9 of *Padma Sundara Rao* case sets out the manner in which a case law should be quoted / understood and this paragraph reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'



WEB COPY



O.A.No.283 of 2018, etc. batch



O.A.No.283 of 2018, etc. batch

35 Be that as it may, besides negating these twofold

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arguments, I am also of the view that if a scheme qua a public trust is framed by a mere application (without a formal suit under section 92 of CPC), there can be a barrage of applications on a quarterly, monthly, fortnightly, weekly or even daily basis. For an illustration, even in the case on hand, this court is informed that there are several thousands of alumni of the educational institutions of PCT and if each alumni or groups of alumni start filing applications at sporadic intervals, they have to be entertained and there shall be no certainty qua scheme. This means that the very functioning of PCT can wobble and can even get derailed. If there is a formal suit, there will be adequate public notice and one has to really explain as to why he or she did not come before the court earlier. To put it differently, one has to break through the safety mechanisms built into section 92 CPC when any tinkering of a scheme settled is sought for. Therefore, an application by any one claiming to have interest in PCT will be an exception, i.e., a rarity and not a regular or routine phenomenon. I also find that when it comes to framing of a scheme for a public trust, several aspects of the matter touching upon facts, more particularly disputed facts erupting from allegations and counter



O.A.No.283 of 2018, etc. batch

allegations need to be resolved and it can be resolved only by way of a

WEB COPY

trial, i.e., documentary and oral evidence which has to be let in in a structured manner in a properly framed suit under section 92 of CPC. As already delineated supra elsewhere in this order, there is an adumbration of a unique procedure in section 92. For an illustration, in the case on hand, a registered lease deed has been assailed. If a registered lease deed has to be dislodged / set aside, it cannot be done on affidavits and counter affidavits as parties will have to necessarily let in oral and documentary evidence to discharge burden of proof (qua plaintiff) and onus of proof qua defendant (when there is a swing). Furthering this illustration, in the case on hand, it is alleged that lessee company is a benami of an existing trustee with minimum capital and one of the Directors in the lessee company is closely associated with one of the trustees. This allegation is denied and disputed. This factual dispute can be resolved only by way of a trial as evidence has to be brought before the court to establish allegations and trustees as well as lessees should have an opportunity to rebut the same besides letting in buttressing evidence in support of their case.

36 From the discussion and dispositive reasoning supra, it



O.A.No.283 of 2018, etc. batch

follows that 3<sup>rd</sup> and 4<sup>th</sup> compartments have to necessarily be dealt with only in a properly framed suit under section 92 of CPC.

37 The above brings me to 1<sup>st</sup> and 2<sup>nd</sup> compartments. The 1<sup>st</sup> and 2<sup>nd</sup> compartment issues will now be dealt with in this order and disposed of, but with a caveat. The caveat is, this is clearly a one time measure and these issues can also be canvassed in a suit qua 3<sup>rd</sup> and 4<sup>th</sup> compartments if there is one. The reasons are three in number and they are as follows:

(a) One, much water has flown under the bridge and relegating the parties to a suit and to await outcome of the suit regarding 1<sup>st</sup> and 2<sup>nd</sup> compartments also at this distant point of time may be a far cry as deciding those issues in this order now will better serve the interests of PCT owing to immediacy and imminence stemming from elections being interdicted. It would serve the interest of PCT better as holding elections is of imminence, there is immediacy and if elections are to be held, the question as to whether the scheme requires modification and if yes, to what extent has to be answered.



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O.A.No.283 of 2018, etc. batch

(b) Two, majority of the prayers for modification and grounds on which they are posited and the basis on which they are resisted / opposed are of such nature that the same can be disposed of by way of affidavits and counter affidavits, i.e., captioned applications. However, these issues also will have a window for revisiting the same in a formal suit as alluded to elsewhere in this order.

(c) Three, in the order of Hon'ble Division Bench, as already alluded to supra, procedure, form and substance of proceedings aspect has been left open with regard to 1<sup>st</sup> and 2<sup>nd</sup> compartments alone. It is obvious that this elbow space or play in the joints has been given to me as part of remit as these two compartments can be decided on affidavits and counter affidavits unlike 3<sup>rd</sup> and 4<sup>th</sup> compartments. In the case on hand, judicial discipline demands that I perambulate within the prescribed perimeter, i.e., remit qua Division Bench order.

38 The above approach has been crystallized based on the remit



O.A.No.283 of 2018, etc. batch

of the matter before me which can be culled out from the articulations in the order of Hon'ble Division Bench. To be noted, Hon'ble Division Bench has made it clear that I shall revisit the matter in the light of the observations made in the order. The observations have been neatly compartmentalized in seven baskets, namely A to F.

39 'A' deals with Charities, the Trust and its present status under law (4 paragraphs, i.e., paragraphs 72 to 75). 'B' deals with application and scope of section 92 of the CPC (9 paragraphs, i.e., paragraphs 76 to 84). 'C' deals with the impact of the orders on injunction application qua election (18 paragraphs, i.e., paragraphs 85 to 102). 'D' deals with modification of the scheme, altering the electoral college and the methodology of election (16 paragraphs, i.e., paragraphs 103 to 118). 'E' deals with lease (9 paragraphs, i.e., paragraphs 119 to 127) and 'F' deals with procedural violations (4 paragraphs, i.e., paragraphs 128 to 131).

40 I now embark upon the exercise of giving below in one cogent sequence various observations of Hon'ble Division Bench in these seven baskets, so that a reading of the same will make it clear that the procedure and nature of exercise I propose to adopt for disposing of



O.A.No.283 of 2018, etc. batch

captioned applications (set out supra) is by perambulating within the prescribed perimeter qua remit by Hon'ble Division Bench. In other words, to put it differently, setting out the observations cogently would demonstrate that the approach I propose to take for disposing of the captioned applications is a sequitur qua the observations made by Hon'ble Division Bench when it remanded the matter to me. I deem it appropriate to set out with clarity my remit as articulated in the remand order by setting out the prescribed perimeter within which I have to perambulate in the context of observations of Hon'ble Division Bench.

41 In paragraph 79 of the order of Hon'ble Division Bench, *Raje Anandrao* case has been discussed and it reads as follows:

'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



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O.A.No.283 of 2018, etc. batch

application to the Court, it is open to the Court to make modifications therein without the necessity of a suit under Section 92.'

42 In paragraph 82, after discussing *Vidyodaya* case being *Vidyodaya Trust Vs. Mohan Prasad R* reported in (2008) 4 SCC 115, following observations have been made:

'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



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O.A.No.283 of 2018, etc. batch

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



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O.A.No.283 of 2018, etc. batch

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)



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O.A.No.283 of 2018, etc. batch

“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 Ishwarlalbhai 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



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O.A.No.283 of 2018, etc. batch

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.

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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



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O.A.No.283 of 2018, etc. batch

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



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O.A.No.283 of 2018, etc. batch

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.

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19. In the result, the appeals are allowed as aforesaid. 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



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O.A.No.283 of 2018, etc. batch

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.

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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 Kummua Mia [AIR 1969 SC 884]



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O.A.No.283 of 2018, etc. batch

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



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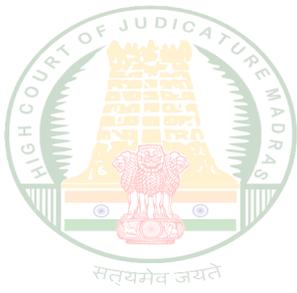
O.A.No.283 of 2018, etc. batch

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.

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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



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O.A.No.283 of 2018, etc. batch

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

43 Paragraphs 103 read with paragraphs 83 and 84 set out the need for a scheme suit and the same reads as follows:

'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.

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



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O.A.No.283 of 2018, etc. batch

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.”

84. In order to institute a proceeding and then being entertained by



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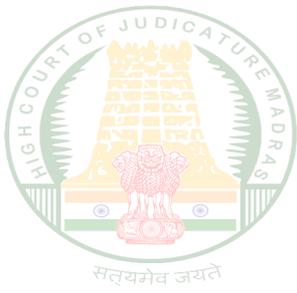


O.A.No.283 of 2018, etc. batch

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.'

44 The above also makes it clear that a suit is imperative for compartments 3 and 4.

45 Paragraphs 96 and 102 read in conjunction make it clear that election will depend upon my decision regarding the prayers for modification of the scheme and that I have been given elbow space / play in the joints in this regard. Paragraphs 96 and 102 read as follows:



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O.A.No.283 of 2018, etc. batch

'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.



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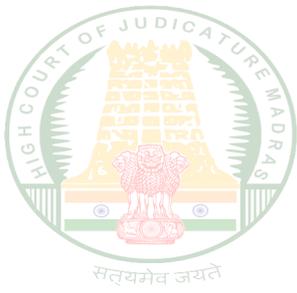


O.A.No.283 of 2018, etc. batch

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 .'

46 A conjoint reading of paragraphs 126 and 131 in baskets E and F respectively make it clear that cancellation of lease and other financial violations / allegations can be decided only in a suit. Paragraphs 126 and 131 read as follows:

'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.



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O.A.No.283 of 2018, etc. batch

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.'

47 I now proceed to consider the 2<sup>nd</sup> compartment, namely modification of the scheme.

48 In the captioned applications, at least 12 applications seek modifications in the scheme. In all these 12 applications, modification is



O.A.No.283 of 2018, etc. batch

sought in various sub clauses in clause 11. Modifications of clause 12 and modification of clauses 4, 6, 8 and 9 (along with some sub clauses of clause 11) have also been sought in some applications.

49 Most of the modification applications can be decided by affidavits and counter affidavits.

50 The amendment sought qua Clause 4 pertains to Commemoration Day, it turns on disqualification of trustees if they fail to conduct commemoration day. A perusal of this Clause makes it clear that commemoration day is not merely a ceremonial event, but it is underlined by sublime philosophy of democratic functioning and transparency as it talks about printed report including statement showing Auditors Report, receipts, disbursements, etc., and this report has to be read and circulated in commemoration day. This amendment plea is opposed on the ground that the process of finalization of such statements some time gets delayed and there have been at least one earlier occasion where reports for eight years were made available at one go on one commemoration day. In my considered view, the ground on which the



O.A.No.283 of 2018, etc. batch

amendment is resisted tantamounts to begging the question as the very reason for seeking disqualification for not conducting commemoration day is to ensure that the report is read and circulated periodically. However, I do not want to give a go-by to pragmatism and take a pedantic approach. Therefore, I deem it appropriate to partly / partially accede to this prayer by saying that not conducting commemoration day for three consecutive years will operate as disqualification for trustees. As I am not appointing an Empowered Authority, I am not going into that aspect of the matter.

51 On modification of Clause 6, though caption says 'Annual Local Inspection', a perusal of the clause reveals that it talks about inspection once in every three years. Therefore, it is a once in three years responsibility. The modification sought does not touch clause 6 as it exists. It only wants a sub clause to be added to clause 6 saying that failure to adhere to clause 6 will entail penalty and further penalty. To my mind, this appears to be a very reasonable modification that has been sought as clause 6 talks about causing all charities under the management of trustees to be locally inspected, reported and expenses incidental to



O.A.No.283 of 2018, etc. batch

such inspection to be ordered to be paid by PCT in such proportion that

is deemed fit. This modification is resisted by saying that it is not the sole

responsibility of the trustees and Auditors also take part in the

inspection. In my considered view, this is hardly an argument as Auditors

are professionals and they are engaged by the trustees, i.e., PCT.

Therefore, it is no argument to say that Auditors also take part in the

inspection. The other limb of resistance argument says that an electorate

will not return a trustee if there is non adherence to clause 6. This by

itself is a pointer to acceding to the modification request or in other

words, an answer to the modification request in the affirmative. The

reason is trustees in office, who are resisting this modification

themselves, are making this argument acceptable by saying non

adherence to clause 6 can become an impediment in getting reelected. If

that is the case, it would be rather appropriate to have a penalty

consequence so that it acts as a deterrent rather than make it a saying that

electorate will reject them when they seek reelection. Therefore, this

prayer for modification of clause 6 is acceded to as sought for in

A.Nos.10096 and 10097 of 2018.

52 This takes us to Clause 8 captioned 'Audit'. A perusal of



O.A.No.283 of 2018, etc. batch

clause 8 reveals that it talks about accounts of Board of Trustees being

audited concurrently every month and also at the close of the year by a

certified Auditor. To be noted, this clause has been modified vide Court

order made way back in 1924, on 28.01.1924 to be precise. The

modification sought by applicants is to the effect that the Board of

Trustees should provide requisite books of accounts to certified Auditor,

so as to enable him to carry out the audit and failure on the part of Board

of Trustees can become a ground for removal. The modification sought

further requests that failure on the part of the certified Auditor carrying

out the audit will also entail his removal. This is resisted on the ground

that every year PCT appoints Auditor as per the orders of this Court and

preparation of reports takes its time and the auditors undertake yearly

inspection before issuing the report and therefore, violations in this

regard cannot be attributable to the trustees alone. I find the modification

sought to be both innocuous and imperative. Innocuous because it only

makes monthly audit of accounts of the Board of Trustees besides audit

at the close of the year by a certified Auditor imperative. Imperative

because the trustees are guardians of vast corpus of PCT and therefore,

this is only an inbuilt mechanism to ensure that the sanctity of the trust

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O.A.No.283 of 2018, etc. batch

reposed is not violated and is also made known that it is not violated.

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However, as I am not going into the Empowered Authority issue, this prayer is answered by saying modification is allowed by adding in Clause 8 *'The office of the Pachaiyappa's Trust Board shall provide books of account written and prepared as required by the certified auditor to enable him to audit the accounts every month. In case of failure on the part of the office to prepare and provide proper accounts and failure on the part of the Accountant to audit the same will result in the removal of auditor and persons responsible in the accounts department of Pachaiyappa's Board for failure to prepare the books of accounts as required by law.'*

53 On clause 9 captioned 'Budget' , the amendment sought to clause 9 comes across as an identical looking twin qua clause 8 and modification to clause 8 that has been sought for. Be that as it may, the budget is a planning that is directly traceable to financial discipline. The importance of financial discipline when it comes to a charity of the size and value of PCT cannot be understated. Therefore, this prayer is also acceded to de hors the Empowered Authority limb or in other words, it is acceded to and the following is added in Clause 9:



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O.A.No.283 of 2018, etc. batch

'Any failure to prepare budget on or before 31<sup>st</sup> May every year for all charities and institutions under their management for the year commencing 3<sup>rd</sup> to 1<sup>st</sup> July following and failure to submit copies every year on or before 4<sup>th</sup> to 15<sup>th</sup> June to the Advocate General of Madras and Board of Revenue and non adherence to budgetary provisions, and expenditures in excess of the amount allotted in the budget for any particular purpose or item without specific reasons or sanctions recorded in writing and the failure to submit such sanctions over and above the allotment in the budget to submit before the Advocate General and the Board of Revenue within 15 days from passing of this resolution shall disqualify the Board of Trustees from holding and continue in office.'

54 Clause 11(A) talks about Qualifications of Trustees and stipulates that a person who has paid property tax of not less than ten thousand rupees under Chennai City Municipal Corporation Act, 1919 (this was earlier Madras City Municipal Act, 1919 and therefore, shall be referred to as 'MCMC Act' for the sake of convenience) shall be eligible to contest. This means that eligibility is restricted to persons owning property in the city of Madras or property which falls within the Corporation limit of city of Chennai. In other words, persons owning property outside the city of Chennai become ineligible. Therefore, the modification talks about payment of property tax not merely under



O.A.No.283 of 2018, etc. batch

MCMC Act, but under other local bodies Acts also. With regard to other

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local bodies, it is suggested that it should be three thousand rupees. This will enable people owning property outside Chennai also to be eligible. This is the modification sought in A.Nos.10096 and 10097 of 2018. In A.No.1803 of 2019 and A.No.10092 of 2018, it is suggested that under District Municipal Tax not less than a sum of Rs.2000/- and City Municipal Tax of not less than Rs.5000/- under MCMC Act or income tax payment of not less than Rs.25,000/-. In A.No.2417 of 2019, the suggestion is tax amount of not less than Rs.3000/-. In some applications, it is suggested that only a old student, i.e., alumni should be qualified to contest.

55 This modification plea is resisted on the ground that ten thousand rupees property tax in the previous year under MCMC Act was pursuant to the modification made vide court order dated 24.09.2008 and therefore, the same need not be modified. To my mind, the ground in which modification plea is opposed does not hold water. The reason is, even while resisting the modification plea, it has been made clear that a person owning immovable property has been made a qualification



O.A.No.283 of 2018, etc. batch

criteria as persons owning properties would have better experience / exposure in managing properties and would be good for managing vast valuable properties which constitute corpus of PCT. If this is the logic, even according to the respondents who oppose this modification plea, no further elucidation is required to say that persons owning properties outside Chennai city limit should also be eligible. Regarding Income Tax payment as criteria and only alumni being eligible, I would rather leave it to be decided in a suit rather than embarking upon it in these applications as it requires profound analysis of some granular factual details. Therefore, modification prayer for clause 11(A) is allowed vide prayer made in A.Nos.10096 and 10097 of 2018 to the extent that *'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 election takes place Municipal Property Tax under the Madras Municipal Act IV of 1919 or property tax in any of the local bodies in Tamil Nadu in respect of such year to the aggregate amount of not less than Three Thousand rupees.'*

56 This takes us to the modification sought qua sub clause (B) of Clause 11 which deals with Constitution of the Board. The PCT Board



O.A.No.283 of 2018, etc. batch

as of now is constituted by 9 members in all who are elected from / by

four different electorates, namely (a) Two to be elected by the Hindu members of the Madras University Senate, (b) Three to be elected by Graduates / Post Graduates and Research Scholars from six colleges alone by PCT, (c) Two to be elected by PCT College Council and (d) two to be elected by approved teachers from all colleges of PCT.

57 With the exception of A.Nos.10096 and 10097 of 2018, the modifications sought are in the nature of altering the constitution of the Board itself. To be noted, the modification sought in A.Nos.10096 and 10097 of 2018 alone pertain to casting of votes by electorates (not altering the constitution of the Board) as the modification sought is to restrict one vote per person from any one of the electorates. These modifications are resisted primarily on the ground that it upsets the very substratum of the scheme as the Constitution of the Board is sought to be altered. Regarding one vote per person, this plea is resisted on the ground that this is not a case where one person can cast multiple votes in favour of the same candidate.



O.A.No.283 of 2018, etc. batch

58 A careful perusal of the points and counter points bring to

light that the modification sought in other applications (except A.Nos.10096 and 10097 of 2018) are drastic and it does call for a comprehensive relook at the scheme. Therefore, these modifications (if at all and if that be so) should be done in a suit in a trial by permitting letting in of oral and documentary evidence rather than in an application which is decided on the basis of affidavits and counter affidavits. However, this does not apply to modification plea in A.Nos.10096 and 10097 of 2018 which in very simple terms is one vote per person. The ground on which it is resisted, i.e., the ground that one elector cannot cast multiple votes in favour of the same candidate. This counter point does not impress me as four categories of electorates are in the nature of four constituencies and electees from each of these constituencies constitute the Board. Therefore, if a elector forming part of one category of electorate is qualified to be an elector in more than one of the four categories of electorates, he can choose the electorate which he would like to be a part of and cast only one vote. Otherwise, though an elector may not cast multiple votes in favour of the same candidate in one electorate, he would be casting more than one vote in his capacity as



O.A.No.283 of 2018, etc. batch

elector in more than one category of electorate qua PCT Board. In other words, in an election to elect 9 members who constitute the Board, one elector may cast four votes in contradistinction to other electors who may be able to cast only one vote. To be noted, some may be casting two or three votes also. In electoral democracy, there should be parity amongst electors. Some electors casting more than one vote / multiple votes as opposed to other electors, who cast only one vote will be disparity and it is clear as day light that these electors with multiple votes can steal a march over the others and tilt the result qua ultimate constitution of PCT Board and therefore, I am inclined to accede to the prayer of one vote per person alone leaving open other modification pleas to be decided in a suit if there is one. In other words, plea in A.Nos.10096 and 10097 of 2018 is allowed to the extent that the following proviso can be added after Clause 11(B):

*'Provided a Voter will be entitled to cast his or her vote in any one of the constituencies only. This shall mean that a voter can exercise his or her vote in favour of Senate, Graduate or Council or Approved Teachers even if he happens to be a member of more than one constituency.*

*Explanation – For instance a Senate member who*



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O.A.No.283 of 2018, etc. batch

*happens to be a Graduate, Council Member, and Approved Teachers cannot vote in all the constituencies, he/she should choose one of constituencies and cast his/her vote in that constituency only.'*

59 This takes us to the modification sought to sub clause (C) of clause 11 which is captioned 'Electoralates Defined'. The two modifications sought are (a) to permit persons who studied irrespective of whether they have taken degree or not and (b) remove that part of the clause which says that electorate should have registered six months before the date of election. These pleas are opposed by saying that six months cooling period is necessary to avoid allegations of nexus as between electors and candidates. This court finds that the requirement that a person should have taken his/her degree is not onerous. Otherwise, any person who had gone to one of the colleges for a few months and dropped out will also become eligible. This on the face of it is not desirable. Likewise, the six months cooling period is neither undesirable nor unworkable. There is one other angle to this. If this six months before the election date limb clause is deleted, it can pave the way for electors being hurriedly registered in the eleventh hour before the



O.A.No.283 of 2018, etc. batch

election. Therefore, plea to modify clause 11(C) is rejected but though obvious it is made clear that this can always be canvassed in a suit if there is one.

60 This takes us to the modification sought qua bar on a trustee seeking reelection if he has served two consecutive terms. I find that this two consecutive terms bar has been incorporated in clause 11(I) by way of a judicial order made by this court vide A.No.1106 of 1963 in A.No.2026 of 1962. This order is dated 16.07.1963. It is therefore obvious that the bar insertion has been thought of nay thrashed out in a legal drill in a judicial exercise. There is nothing to demonstrate that this warrants revisitation. I find this bar to be not unreasonable, as it would ensure that same persons do not continue for long spells and that they make way for new and fresh blood. In any event, this being a thought out insertion and there being nothing demonstrable to show that there have been subsequent developments warranting a revisitation, I am not inclined to accede to the prayer for amendment of sub clause (I) of Clause 11. These pleas are rejected.

61 On Clause 11(J) captioned 'Cessation of Trusteeship', it is



O.A.No.283 of 2018, etc. batch

seen that an explanation has been added as late as 2007, to be precise on 04.01.2007 again by way of a legal drill in a judicial exercise vide order dated 04.01.2007 made in A.Nos.4224/2005, 4884, 4846, 4847 and 4780 of 2006. There is nothing demonstrable qua reasons much less compelling reasons warranting revisitation of the same. The reasons given, i.e., white collar offence, etc., are not of recent origin and no development post 2007 has been pointed out. Therefore, in this legal drill in an application which is being decided on affidavits and counter affidavits, I do not find any reason to accede to this prayer. Though obvious, if compelling reasons are made out, it can be revisited in a suit if there is one. Therefore, the plea to modify sub clause (J) of Clause 11 is rejected.

62 This takes this order to modification sought qua sub clause (O) of Clause 11 captioned 'Power to Frame Bye-laws'. The modification sought is far reaching as it talks about a super authority above the trustees. This is best left for adjudication in a suit if there is one. To be noted, the Hon'ble Division Bench order also touches upon this super authority aspect, but as a matter of judicial discipline, more so as it is a



O.A.No.283 of 2018, etc. batch

matter of remand, I deem it appropriate to not to express any view or opinion on the same. Suffice to say that this plea to modify sub clause (O) of Clause 11 is rejected as being far reaching leaving it open to be adjudicated in a suit if there is one.

63 I now proceed to Clause 12 which is captioned 'Pachaiyappa's Trust Board College Council'. This PCT Board college council is one of the electorates qua 11(B) where two members of the Board are to be elected by this council. As I have already come to the conclusion that the modification qua clause 11(B) (except one vote one person plea) is in the nature of an overhaul, it is best left to be thrashed out in a suit. The same would apply to amendment to Clause 12 also. Therefore, this prayer is not acceded to in the captioned applications, i.e., in this order.

64 Several other judgments and case laws have been placed before this Court. Many of the case laws turn on interdicting of election once process has begun and as to whether it would apply to trust of the nature in the case on hand, i.e., PCT. In the light of the trajectory the



O.A.No.283 of 2018, etc. batch

matter has now taken, it is not necessary to go into this question in this order and that is also left open to be decided in the matter where there is a contest / tussle of a similar nature but where it becomes imperative to decide this tussle to arrive at a conclusion in the main matter.

65 Two case laws, namely, *Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and another* reported in (2003) 4 SCC 257 and *Rais Ahmad Vs. State of U.P and others* reported in (1999) 6 SCC 391 were placed before this Court to say that practice of court is law of the Court. These case laws are obviously an attempt to buttress the argument that schemes have hitherto been framed in a barrage of applications and therefore, captioned applications should also be decided in the same manner without resorting to a suit.

66 *Jamal Uddin Ahmad* case is completely distinguishable on fact as that pertains to a election petition under 'The Representation of the People Act, 1951' (hereinafter 'RP Act' for brevity) and the question there was whether a petition presented before Stamp Reporter-cum-Oath Commissioner of the High Court who received the election petition and



O.A.No.283 of 2018, etc. batch

conducted preliminary scrutiny thereof is good enough presentation qua section 81 of RP Act. In that context, it was held that High Court being a pre existing judicial institution had certain rules, directions and practice already existing and prevalent governing the reception of documents and the same would apply to election petitions also. Therefore, this is clearly distinguishable on facts and does not aid the applicants in their campaign to say that the matter should be decided on applications without resorting to suit.

67 *Rais Ahmad* case turns on practice of counsel presenting a illness slip and seeking adjournment which is part of the tradition of Allahabad High Court. In *Rais Ahmad* case, illness slip was presented, the matter was adjourned, it was taken up a day after the period for which illness was pleaded, but illness of the counsel continued and subsequent illness slip was not brought to the notice of the court. These are clearly in the realm of traditions and this is articulated in the judgment of Hon'ble Supreme Court itself in paragraph 10. Therefore, the submission that this is an authority for the proposition that a scheme under section 92 of CPC can be framed merely by way of applications without resorting to a suit is



O.A.No.283 of 2018, etc. batch

clearly unacceptable. To be noted, there is nothing demonstrable before this court to show that there was any other matter qua a Trust where a scheme was framed by way of applications alone without resorting to a suit and it is only in PCT that over a period of time barrage of applications have been filed. In this view of the matter, *Rais Ahmad* case clearly becomes a nonstarter for the applicants. Therefore, this can neither be a tradition nor a practice of this court. To be noted, it has already been set out elsewhere supra in this order that the argument that modifying orders in the nature of schemes by mere applications without resorting to a suit has become a practice of this court will be dealt with in the latter part of this order. This is that latter part.

68 To be noted, plethora of case laws were before this Court in the hearing but case laws to the extent necessary for disposal of captioned applications by this order have been discussed. Similarly, as vast and varied submissions were made at the Bar, only those of the submissions which are most relevant for this order (more so, owing to the approach now I have taken) have been discussed, but the submissions in their entirety have been captured for the purpose of giving



O.A.No.283 of 2018, etc. batch

comprehensive picture of the trajectory of the hearing to any one reading this order.

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69 The question as to whether prayer for cancellation of a registered lease deed can be brought within the sweep of a scheme suit under section 92 of CPC or whether it has to be only by way of a separate suit is left open, as I am relegating the parties to a suit in this regard also. This course is adopted as it is desirable that such a question is left open for parties to choose the frame of suit as it may well get decided in a suit itself. Therefore, I am refraining myself from not deciding this issue by way of an order in a stand alone pre-suit application. In other words, I deem it appropriate to leave it open to *dominus litis* to choose what according to *dominus litis* is proper frame of a suit, so that this issue can be decided in that suit if raised. There is another reason as to why I am leaving this aspect open and that is, when the parties are relegated to a suit with regard to a particular issue, it is only appropriate that all issues incidental, ancillary and sprouting from the same are also left open for the civil court concerned to decide the same. This would mean that the civil court concerned will have a free hand to take any view. One more



O.A.No.283 of 2018, etc. batch

aspect of the matter is, it may not be desirable to decide about the question as to whether prayers of a particular nature will fall within the scope of a suit when the civil suit itself is yet to be born. It is best left to the civil court concerned to decide such issues as it would become a jurisdictional issue qua such civil court.

70 It is made clear that all questions regarding modification of scheme, particularly those of the prayers which have not been dealt with and answered in this order are left open to be thrashed out in the suit and this is in addition to revisiting even those of the modifications which have been dealt with in this order owing to imminence and immediacy in the light of elections to be held. As far as modification prayers which have not been dealt with in this order are concerned, this course is adopted due to three reasons. One reason is (a) these modification prayers which remain untouched are such that they cannot be dealt with and decided by way of affidavits and counter affidavits (b) such modification prayers have far reaching consequence requiring examination of granular factual particulars and / or (c) in the considered view of this court, it may not be driven by immediacy and imminence



O.A.No.283 of 2018, etc. batch

regarding election to office of trustees of PCT which is necessary to end the turbulence and put the ship back on the high seas as far as voyage of PCT is concerned.

71 From the submissions captured supra, it will be clear that regarding substitution applications, learned senior counsel Mr.K.Doraisamy had contended that a person having similar interest has come before this court seeking to substitute him, whereas it has been resisted by learned senior counsel Mr.AR.L.Sundaresan primarily on the ground that section 92 of CPC cannot be put on same platform like a Public Interest Litigation under Article 226 of the Constitution of India and the person sought to be substituted is no way related to the person who had originally filed applications. A careful perusal of the contra submissions in this regard make it clear that deciding this issue is a simple task as both sides had agreed that the captioned proceedings will not be adversarial in nature insofar as the proceedings before me are concerned. In this view of the matter, regarding substitution prayers, as applicant is only in the nature of informant (absent adversarial lis), the substitution applications (A.Nos.2272 and 2273 of 2021) are allowed



O.A.No.283 of 2018, etc. batch

making it clear that substituted applicant will also only be an informant.

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Registry is directed to carry out necessary and consequential amendment in the case file as well as copy of this order forthwith.

**(IV) CONCLUSION / OPERATIVE PORTION :**

72 In the light of the narrative thus far, discussion and dispositive reasoning set out supra, following order is passed:

(i) The substitution applications (A.Nos.2272 and 2273 of 2021) are allowed as indicated above. Registry is directed to carry out necessary and consequential amendments in the case file as well as copy of this order forthwith;

(ii) As per the remand order of Hon'ble Division Bench, issues in captioned applications are compartmentalized in four baskets, namely, Compartments 1, 2, 3, 4 and they are as follows:

Compartment 1. Election of Board of Trustee qua PCT;

Compartment 2. Modification of existing scheme that has been sought for by the applicants;

Compartment 3. Maladministration, mismanagement, managerial fraud and malfeasance (particularly, with



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O.A.No.283 of 2018, etc. batch

regard to lease) – Procedure, form and substance of proceedings in this regard;

Compartment 4. Other financial and administrative issues regarding which allegations and counter allegations have been made – have to be gone into provided such issues are raised in accordance with the procedure prescribed by law – examination thereof as per settled procedure qua disputes of the present nature.

(iii) Modification applications to the extent deemed appropriate to be decided by way of applications have been decided in this order owing to immediacy and imminence qua elections to Board of Trustees with a window for revisitation in a suit leaving open the rest to be adjudicated upon in a suit;

(iv) Prayers for modification of various clauses in existing scheme for PCT are acceded to, to the extent indicated below:

Clause in Existing Scheme	Modified Clause
4.COMMEMORATION DAY--	4.COMMEMORATION DAY--



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<p>The foundation of Pachaiyappa's Charities shall be commemorated in such manner as the Board of Trustees shall deem fit annually on the Saturday before Easter Sunday of each year, or on some other day as near thereto as may be found convenient. A public meeting shall be held on the evening of the said day at Pachaiyappa's Hall at Madras and at such meeting a printed report of the administration of the charities under the management of the Board of Trustees during the year ending *1 - 30<sup>th</sup> June previous shall be read and circulated. The said report shall include:-</p> <ol style="list-style-type: none"> <li>1.Statement showing the receipts and disbursements relating to the charities during the year.</li> <li>2.The report of the Auditor hereinafter referred to.</li> <li>3.Certificates regarding the proper performance or celebration of the said several charities at the several places in the Moufssil from the Honorary Local Superintendent's hereinafter referred to.</li> <li>4.The report of the Local inspection, if any, held during the year as hereinafter provided.</li> <li>5.Any explanation which the Board of Trustees may have to give or offer regarding any failure to perform or properly perform any of the said charities.</li> </ol> <p>Copies of the said printed report shall, every year, be submitted to the Advocate-general of Madras for the time being and to the Board of Revenue.</p> <p><i>*1 Corrected as per the order of the High Court dated 19<sup>th</sup> day of July 1920</i></p>	<p>The foundation of Pachaiyappa's Charities shall be commemorated in such manner as the Board of Trustees shall deem fit annually on the Saturday before Easter Sunday of each year, or on some other day as near thereto as may be found convenient. A public meeting shall be held on the evening of the said day at Pachaiyappa's Hall at Madras and at such meeting a printed report of the administration of the charities under the management of the Board of Trustees during the year ending 30<sup>th</sup> June previous shall be read and circulated. The said report shall include:-</p> <ol style="list-style-type: none"> <li>1.Statement showing the receipts and disbursements relating to the charities during the year.</li> <li>2.The report of the Auditor hereinafter referred to.</li> <li>3.Certificates regarding the proper performance or celebration of the said several charities at the several places in the Moufssil from the Honorary Local Superintendent's hereinafter referred to.</li> <li>4.The report of the Local inspection, if any, held during the year as hereinafter provided.</li> <li>5.Any explanation which the Board of Trustees may have to give or offer regarding any failure to perform or properly perform any of the said charities.</li> </ol> <p>Copies of the said printed report shall, every year, be submitted to the Advocate-General of Madras for the time being and to the Board of Revenue</p> <p><b>Not conducting commemoration day for three consecutive years will operate as disqualification for trustees.</b></p>
<p>6.ANNUAL LOCAL INSPECTION:-</p> <p>The Board of Trustees shall, at least once in every three years, cause all the charities under their management to be locally inspected and reported upon by one or more of their own body or any other person to be specially deputed for that purpose. All the expenses incidental to such inspection may be ordered to be</p>	<p>6.ANNUAL LOCAL INSPECTION:-</p> <p>The Board of Trustees shall, at least once in every three years, cause all the charities under their management to be locally inspected and reported upon by one or more of their own body or any</p>



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O.A.No.283 of 2018, etc. batch

paid by the Board of Trustees from such funds and in such proportions as they may deem fit. \*3- A summary of the report of the Inspection of the charities shall be published along with the annual report.

*\*3 Corrected as per the order of the High Court dated 19<sup>th</sup> day of July 1920*

other person to be specially deputed for that purpose. All the expenses incidental to such inspection may be ordered to be paid by the Board of Trustees from such funds and in such proportions as they may deem fit. A summary of the report of the Inspection of the charities shall be published along with the annual report.

**Any failure to conduct annual local inspection and to file report of inspection of charities along with the annual report shall result in penalty of Rs.3,000/- each imposed on the Trustees personally and a further penalty of Rs.1000/- per day until such reports are filed after inspection.**

8.AUDIT:-

\*1 – The accounts of the Board of Trustees shall be audited concurrently every month and also at the close of the year by a certified Auditor that may be appointed by the Court on application made by the Trustees. The remuneration of the Auditor shall be fixed by the Court and be paid by the Board of Trustees from the income of the funds under their management in such proportions as they may deem reasonable.

*\*1 Modified as per order of the High Court of Judicature Madras, dated 28<sup>th</sup> January 1924.*

8.AUDIT:-

The accounts of the Board of Trustees shall be audited concurrently every month and also at the close of the year by a certified Auditor that may be appointed by the Court on application made by the Trustees. The remuneration of the Auditor shall be fixed by the Court and be paid by the Board of Trustees from the income of the funds under their management in such proportions as they may deem reasonable.

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O.A.No.283 of 2018, etc. batch

	<p><b>Trust Board shall provide books of account written and prepared as required by the certified auditor to enable him to audit the accounts every month. In case of failure on the part of the office to prepare and provide proper accounts and failure on the part of the Accountant to audit the same will result in the removal of auditor and persons responsible in the accounts department of Pachaiyappa's Board for failure to prepare the books of accounts as required by law.</b></p>
<p>9.BUDGET:-</p> <p>The Board of Trustees shall, every year on or before the *2 - 31<sup>st</sup> May, prepare a Budget for all charities and institutions under their management for the year commencing the *3 - 1<sup>st</sup> July following. Copies of such budget shall be submitted, every year on or before, *4 - 15<sup>th</sup> of June to the Advocate General of Madras and to the Board of Revenue, Madras. The provisions in the budget shall, as far as possible, be adhered to, and no expenditure not provided for in the budget or in excess of the amount allotted in the budget for any particular purpose or item, shall be made, allowed or sanctioned by the Board of Trustees, except for reasons to be recorded by them in writing. Copies of every resolution sanctioning any expenditure over and above the allotments in the budget, shall be submitted to the Advocate-General of Madras for the time being and the Board of Revenue, Madras within 15 days from the passing of such resolution.</p>	<p>9.BUDGET:-</p> <p>The Board of Trustees shall, every year on or before the 31<sup>st</sup> May, prepare a Budget for all charities and institutions under their management for the year commencing the 1<sup>st</sup> July following. Copies of such budget shall be submitted, every year on or before 15<sup>th</sup> of June to the Advocate General of Madras and to the Board of Revenue, Madras. The provisions in the budget shall, as far as possible, be adhered to, and no expenditure not provided for in the budget or in excess of the amount allotted in the budget for any particular purpose or item, shall be made, allowed or sanctioned by the Board of Trustees, except for reasons to be recorded by them in writing. Copies of every resolution sanctioning any expenditure over and above the allotments in the budget, shall be submitted to the Advocate-General of Madras for the time being and the Board of Revenue, Madras within 15 days from the passing of such resolution.</p> <p><b>Any failure to prepare budget on or before 31<sup>st</sup> May every year for all charities</b></p>



O.A.No.283 of 2018, etc. batch

\*2,3,4 – Corrected as per the order of the High Court dated 19<sup>th</sup> day of July 1920

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**and institutions under their management for the year commencing 1<sup>st</sup> July following and failure to submit copies every year on or before 15<sup>th</sup> June to the Advocate General of Madras and Board of Revenue and non adherence to budgetary provisions, and expenditures in excess of the amount allotted in the budget for any particular purpose or item without specific reasons or sanctions recorded in writing and the failure to submit such sanctions over and above the allotment in the budget to submit before the Advocate General and the Board of Revenue within 15 days from passing of this resolution shall disqualify the Board of Trustees from holding and continue in office.**

11.THE BOARD OF TRUSTEES:  
(A)QUALIFICATIONS OF TRUSTEES:-

\*1 – 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 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.

No one who is on the staff of any institution under the management of the Board of Trustees, shall be eligible to be elected or nominated as a Trustee.

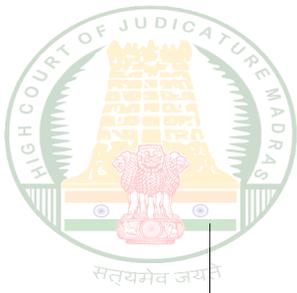
\*1 Corrected as per the order of the High Court dated 19<sup>th</sup> day of July 1920

\*2 (modified as per the orders of the Hon'ble High Court in A.Nos.4224/2005, 4884, 4846, 4847 & 4780/2006, dated: 04.01.2007)

11.THE BOARD OF TRUSTEES:  
(A)QUALIFICATIONS OF TRUSTEES:-

**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 election takes place Municipal Property Tax under the Madras Municipal Act IV of 1919 or property tax in any of the local bodies in Tamil Nadu in respect of such year to the aggregate amount of not less than Three Thousand rupees.**

No one who is on the staff of any

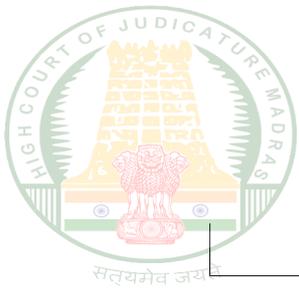


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O.A.No.283 of 2018, etc. batch

	<p>institution under the management of the Board of Trustees, shall be eligible to be elected or nominated as a Trustee.</p>
<p>11(B)CONSTITUTION OF THE BOARD:-</p> <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 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.</p> <p>*4 – Two, to be elected by the Pachaiyappa's Trust Board College Council hereinafter referred to.</p> <p>*5 – Two, to be elected from amongst the electoral college consisting of all the approved teachers from all the colleges of Pachaiyappa's Charities.</p> <p><i>*3 (modified as per the orders of the Hon'ble High Court in A.Nos.4224/2005, 4884, 4846, 4847 &amp; 4780/2006, dated: 04.01.2007)</i></p> <p><i>*4,5 (modified as per the orders of the Division Bench made in O.S.A.Nos.47 &amp; 58 of 2007 and M.P.No.2/2007 in O.S.A.Nos.58/2007, dated :24.9.2008)</i></p>	<p>11(B)CONSTITUTION OF THE BOARD:-</p> <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>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.</p> <p>Two, to be elected by the Pachaiyappa's Trust Board College Council hereinafter referred to.</p> <p>Two, to be elected from amongst the electoral college consisting of all the approved teachers from all the colleges of Pachaiyappa's Charities.</p> <p><b>Provided a Voter will be entitled to cast his or her vote in any one of the constituencies only. This shall mean that a voter can exercise his or her vote in favour of Senate, Graduate or Council or Approved Teachers even if he happens to be a member of more than one constituency.</b></p> <p><b>Explanation – For instance a Senate member who happens to be a Graduate, Council Member, and Approved Teachers cannot vote in all the constituencies, he/she should choose one of constituencies and cast</b></p>



O.A.No.283 of 2018, etc. batch

**his/her vote in that constituency only.**

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(v) Elections to the Board of PCT will now be conducted in accordance with the modified scheme as expeditiously as possible and in any event it shall be commenced and concluded within three months from today;

(vi) The modifications are open to be revisited in a section 92 suit if there is one;

(vii) Two or more applicants in Application Nos.1749, 1802, 1803 and 1927 of 2019, Application Nos.10091, 10092, 10096 and 10097 of 2018 and Original Application No.210 of 2019 can join together and present a plaint within six weeks from the date of this order, i.e., institute a suit under section 92 of CPC inter-alia regarding 3<sup>rd</sup> and 4<sup>th</sup> compartments;



O.A.No.283 of 2018, etc. batch

WEB COPY

(viii) Taking into account the time likely to be consumed for the plaint to be drafted, filed, processed, numbered and listed along with interlocutory applications, arrangement of directing the management of PCT to be in the hands of Administrator General and Official Trustee of this Court, who shall in consultation with Advocate General of the State administer PCT and all its corpus, i.e., properties (as directed in paragraph 135 of the order of Hon'ble Division Bench) shall continue for a period of 10 weeks from today;

(ix) If two or more of aforementioned applicants do not join together and present a plaint within six weeks from the date of this order, the matter will stand closed insofar as compartments 3 and 4 are concerned;

(x) If there is lack of consensus amongst applicants joining together and presenting a plaint, the



O.A.No.283 of 2018, etc. batch

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earliest plaint that is presented will be entertained and other applicants can participate in the proceedings in a manner known to law inter-alia by taking out suitable applications at the discretion of the court concerned;

(xi) Though obvious, it is made clear that all questions and issues which have not been dealt with in this order are left open to be decided in a suit and regarding revisitation window, the observations in this order will neither impede nor serve as an impetus for any party in a suit if there be one.

73 The observations, discussion in this order and dispositive reasoning are for the limited purpose of disposing of captioned applications post remand and therefore, once a plaint is presented under section 92 of CPC, all questions including the questions raised in captioned applications will be left open and the same will be dealt with on its own merits and in accordance with law in the suit and in the interlocutory applications therein from time to time. The matter will



O.A.No.283 of 2018, etc. batch

stand governed by this order subject of course to any intra-court appeal or further legal proceedings in higher fora.

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74 Before parting with this matter, I deem it appropriate to record that it has taken a little more than six months for hearing out captioned applications because of intervening restricted functioning of this Court for some time owing to Covid-19 situation, i.e., Corona virus pandemic and consequent lock down which none could portend or presage.

75 All applications are disposed of with the above directions and there shall be no order as to costs.

30.11.2021

Non speaking order

Index : No

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O.A.No.283 of 2018, etc. batch

M.SUNDAR, J.

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order in

O.A.No.283 of 2018, A.No.2624 of 2018,  
A.Nos.10091, 10092, 10093, 10094, 10095, 10096  
and 10097 of 2018, O.A.No.210 of 2019  
A.Nos.1749, 1802, 1803, 1927, 2088, 2089, 2090,  
2416 and 2417 of 2019,  
A.Nos.3111, 3112, 3113, 3114, 3115, 3116,  
3210, 3211, 3212 and 3281 of 2019  
and A.Nos.2272 and 2273 of 2021

30.11.2021