

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).Nos.2905, 2906, 4272 & 4273 of 2015

and

Connected M.P's

Date of Reserving the Judgment	Date of Pronouncing the Judgment
29.01.2016	12.02.2016

C.R.P.(PD).No.2905 of 2015

1.The Indian Cultural Research Trust

Rep by its Secretary

Mr.AR Ramaswamy

6th Floor, Rani Seethai Hall

No.603, Anna Salai

Chennai – 600 006.

2.Mr.AR Ramaswamy

Secretary of the Willingdon Charitable Trust

6th Floor, Rani Seethai Hall

No.603, Anna Salai

Chennai – 600 006.

... Respondents/Defendants/Appellants/
Revision Petitioners

Vs.

1.RM Palaniappan

S/o.PL Ramanathan

2.V.Chandramouleeswaran

3.S.Hariharan

4.V.Palaniappan ... Petitioners/Plaintiffs/Respondents/Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 16.10.2014 made in I.A.No.15897 of 2014 in O.S.No.5904 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai as confirmed by order and decretal order dated 13.04.2015 in C.M.A.No.142 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

C.R.P.(PD).No.2906 of 2015

1.The Willingdon Charitable Trust
Rep by its Secretary
Mr.AR Ramaswamy
6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006.

2.Mr.AR Ramaswamy
Secretary of the Indian Cultural Research Trust
6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006.

... Respondents/Defendants/Appellants/
Revision Petitioners

Vs.

1.RM Palaniappan
S/o.PL Ramanathan

2.V.Chandramouleeswaran

3.S.Hariharan

4.V.Palaniappan ... Petitioners/Plaintiffs/Respondents/
Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 16.10.2014 made in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai as confirmed by order and decreetal order dated 13.04.2015 in C.M.A.No.143 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

C.R.P.(PD).No.4272 of 2015

Dr.T.C.Mohan
S/o.Late A.C.Thiyagarajan

... Third Party/Third Party/Petitioner

Vs.

1.RM Palaniappan
S/o.PL Ramanathan

2.V.Chandramouleeswaran

3.S.Hariharan

4.V.Palaniappan ... Petitioners/Plaintiffs 1 to 4/
Respondents 1 to 4/Respondents 1 to 4

5.The Willingdon Charitable Trust
Rep by its Secretary Mr.AR Ramaswamy

6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006.

6.Mr.AR Ramaswamy
Secretary of the Willingdon Charitable Trust
6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006. ... Respondents/Defendants 1 & 2/
Appellants 1 & 2/Respondents 5 & 6

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.10.2014 made in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai allowing the said I.A. as confirmed by order and decreetal order dated 13.04.2015 in C.M.A.No.143 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

C.R.P.(PD).No.4273 of 2015

Mr.V.Vaidyanathan
S/o.Late Vaidya Subramaniya Iyer
... Third Party/Third Party/Petitioner

Vs.

1.RM Palaniappan
S/o.PL Ramanathan
2.V.Chandramouleeswaran

3.S.Hariharan

4.V.Palaniappan ... Petitioners/Plaintiffs 1 to 4/
Respondents 1 to 4/Respondents 1 to 4

5.The Indian Cultural Research Trust
Rep by its Secretary Mr.AR Ramaswamy
6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006.

6.Mr.AR Ramaswamy
Secretary of the Willingdon Charitable Trust
6th Floor, Rani Seethai Hall
No.603, Anna Salai
Chennai – 600 006. ... Respondents/Defendants 1 & 2/
Appellants 1 & 2/Respondents 5 & 6

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.10.2014 made in I.A.No.15897 of 2014 in O.S.No.5904 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai allowing the said I.A. as confirmed by order and decreetal order dated 13.04.2015 in C.M.A.No.142 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.G.Masilamani, Senior Counsel
for Ms.AL.Gandhimathi
in CRP (PD).No.2905/2015

Mr.AR.L.Sundaresan, Senior Counsel
for Ms.AL.Gandhimathi
in CRP (PD).No.2906/2015

Mr.R.Srinivas,
in CRP (PD).No.4272/2015

Mr.R.Srinivas,
for Mr.S.Sithirai Anandam
in CRP (PD).No.4273/2015

For Respondents : Mr.A.L.Somayaji, Senior Counsel
for Mr.M.Suresh Kumar, for R1
in CRP (PD).Nos.2905 & 2906/2015

Mr.M.S.Krishnan, Senior Counsel
for Mr.M.Suresh Kumar, for R2
in CRP (PD).Nos.2905 & 2906/2015

Mr.V.Raghavachari
for Mr.T.Balaji & Mr.P.S.Ganesh,
for R3 and R4
in CRP (PD).Nos.2905, 2906, 4272
and 4273/2015

COMMON ORDER

C.R.P.(PD).No.2905 of 2015 has been filed challenging the impugned order dated 16.10.2014 made in I.A.No.15897 of 2014 in O.S.No.5904 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai which was confirmed by order and decretal order

dated 13.04.2015 made in C.M.A.No.142 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

2. C.R.P.(PD).No.2906 of 2015 has been filed challenging the impugned order dated 16.10.2014 made in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai which was confirmed by order and decreetal order dated 13.04.2015 made in C.M.A.No.143 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

3. C.R.P.(PD).No.4272 of 2015 has been filed challenging the impugned order dated 16.10.2014 made in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai which was confirmed by order and decreetal order dated 13.04.2015 made in C.M.A.No.143 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

4. C.R.P.(PD).No.4273 of 2015 has been filed challenging the impugned order dated 16.10.2014 made in I.A.No.15897 of 2014 in O.S.No.5904 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai which was confirmed by order and decreetal order

dated 13.04.2015 made in C.M.A.No.142 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

5. The background of the case is as follows:

The respondents 1 to 4 herein as plaintiffs had filed the suit seeking for the following reliefs:

"a. For a declaration declaring that the notice convening Executive Committee Meeting which is in violation of the bye-laws of the Trust are null and void.

b. For permanent injunction restraining the defendant, their office bearers, members, men, agents, servants or any other authorized person from conducting the Executive Committee Meeting of the Trust on 17.10.2014 or any other adjourned date as per notice dated 08.10.2014 which is in violation of the bye-laws of the Trust.

c. Directing the defendants to pay the cost of the suit and

d. To grant such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."

6. It is the case of the respondents that they are the Executive Committee Members of The Indian Cultural Research Trust and The Wellington Charitable Trust. While so, violating the bye-laws of the Trust, the Secretary of the Trust had issued notice for conveying the Executive Committee meeting on 17.10.2014 and hence, they were forced to file the suit seeking for the above stated reliefs.

7. Along with the plaint, the respondents/plaintiffs had also filed an application for interim injunction. The Trial Court, after hearing both sides had disbelieved the contention that the plaintiffs 2 to 4 are not the Executive Committee members and granted an order of interim injunction, which was also confirmed by the first appellate Court, as against the same, the present Civil Revision Petitions have been preferred.

8. It is an admitted fact that both The Indian Cultural Research Trust and The Wellington Charitable Trust were registered under the Tamil Nadu Societies Registration Act, 1975 [hereinafter called as the 'Act'] and as mandated under Section 6 of the Act, the memorandum and the bye-laws of the Trust were filed before the Registrar. It is also

admitted that on the basis of the resolution dated 17.09.2012, the memorandum and bye-laws were amended as per Section 12 of the Act.

9. Mr.G.Masilamani, the learned senior counsel appearing for the petitioners in C.R.P.(PD).No.2905 of 2015, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners in C.R.P.(PD).No.2906 of 2015 and Mr.R.Srinivas, learned counsel representing the petitioners in C.R.P.(PD).Nos.4272 & 4273 of 2015 would submit that the respondents 2 to 4 are not the members of the Executive Committee. They were inducted/admitted into the Trust as its members along with one Tmt.V.Valliammai, as per the resolution of the Executive Committee meeting dated 16.06.2011 and they attended the first General Body meeting on 21.09.2011. While so, on 17.09.2012, both the General Body as well as the Executive Committee meeting were conveyed. In the General Body meeting, the existing Executive Committee members were re-elected as per Agenda/Item No.4 and the newly inducted member Tmt.V.Valliammai was elected as the member of the Executive Committee for a period of three years from 07.09.2012, as per Agenda/Item No.5. Even though no resolution is passed to elect the respondents 2 to 4 as Executive

Committee members, the Trial Court has held that the respondents 2 to 4 are the members of the Executive Committee and granted an order of interim injunction.

10. Mr.R.Srinivas, learned counsel would contend that since the respondents 1 to 4 had played fraud upon the Court and obtained the discretionary relief of injunction, they should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation must be curtailed. To substantiate the said contention, he relied upon the decision reported in **(2010) 8 Supreme Court Cases 383, Meghmala and Others v. G.Narasimha Reddy and Others.**

11. It is also admitted by both sides that as per bye-law 4(a), any person may, on any application made by him and on payments of an entrance fee of Rs.1000/- be admitted as a member of the Society. Such admission shall be at the discretion of the Executive Committee and the decision of the Executive Committee thereof shall be final. Further, as per bye-law 5(a), the members of the Executive Committee shall be elected at a meeting of the General Body by a resolution of a majority of the members present and voting.

12. According to the learned Senior Counsels and the learned counsel for the revision petitioners, in the General Body meeting convened on 17.09.2012, the existing members were re-elected and one Tmt.V.Valliammai who was newly inducted as a member of the Trust on 16.06.2011 was elected as a member of the Executive Committee and the respondents 1 to 4 knowing fully well that the respondents 2 to 4 are not the members of the Executive Committee had filed the suit and obtained an order of injunction. Hence, the learned counsels prayed for setting aside the finding that the respondents 2 to 4 are the members of the Executive Committee.

13. Furthermore, as per Section 15(4) of the Act, the term of the office of the members of the Committee shall not exceed three years from the date of their appointment. Even though, in view of proviso to Section 15(4), during the pendency of the revision viz., 06.09.2015, the tenure of the Executive Committee has expired, it cannot be inferred that there is no Executive Committee as on date.

14. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners would contend that in the absence of provision for

consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of the word 'shall'. So, merely because the period of three years is over, it cannot be held that there is no Executive Committee. He would further contend that till the new committee is elected, the present Executive Committee will be functioning. Furthermore, the respondents/plaintiff had also filed an application for amendment to declare that the plaintiffs 2 to 4 are the Executive Committee members of the Trust. To substantiate the said contention, he relied upon the following decisions:

- (1) (1987) 2 Supreme Court Cases 407, M/s.B.P.Khemka Pvt. Ltd., v. Birendra Kumar Bhowmick and Another.**
- (2) (1989) 2 Supreme Court Cases 413, M/s.Rubber House v. M/s.Excelsior Needle Industries Pvt Ltd.,**
- (3) (1995) 5 Supreme Court Cases 272, Administrator, Municipal Committee Charkhi Dadri and Another v. Ramji Lal Bagla and Others.**

15. Mr.AR.L.Sundaresan, learned Senior Counsel would further contend that the advantage gained by party relying on interim orders or impoverishment suffered by party prejudiced by interim orders can

be made restitution of advantage or compensated for impoverishment while passing the final orders. For the said proposition, he relied upon the following decisions:

(1) (2003) 8 Supreme Court Cases 648, South Eastern Coal Fields Ltd., v. State of M.P and Others.

(2) (2004) 2 Supreme Court Cases 783, Karnataka Rare Earth and Another v. Senior Geologist, Department of Mines & Geology and Another.

(3) Unreported decision of this Court dated 29.06.2012 made in O.A.Nos.656 to 659 of 2011 [M/s.SBEC Projects Private Limited v. BGR Energy Systemts Limited].

16. Mr.G.Masilamani, learned Senior Counsel would contend that merely because the names of the plaintiffs 2 to 4/respondents 2 to 4 have been wrongly mentioned as Executive Committee members, being the members of the General Body Meeting held on 17.09.2012 and also the signatories to the resolution passed in the said meeting, they very well knew that have not been elected as Executive Committee members and hence, they are estopped from stating that they are the Executive Committee members.

17. Mr.R.Srinivas, learned counsel representing the petitioners in C.R.P.(PD).Nos.4272 & 4273 of 2015, would submit that the revision petitioners Mr.T.C.Mohan and Mr.V.Vaidyanathan are the Executive Committee Members of the trust. The respondents 2 to 4 who are not the Executive Committee members had played fraud upon the Court and obtained an order of interim injunction. Hence, in order to safeguard the interest of the Trust, the revision petitioners had filed the revisions along with applications seeking leave of the Court for preferring the revisions, which were allowed. The learned counsel would further submit that since Mr.T.C.Mohan and Mr.V.Vaidyanathan are interested in the welfare of the Trust, they are entitled to maintain the revisions and hence, he prayed for dismissal of the revocation applications.

18. Thus, the learned Senior Counsels and the learned counsel appearing for the revision petitioners prayed for setting aside the impugned orders.

19. Resisting the same, Mr.A.L.Somayaji, learned Senior Counsel appearing for the first respondent in C.R.P.(PD).Nos.2905 & 2906 of 2015, Mr.M.S.Krishnan, learned Senior Counsel appearing for

the second respondent in C.R.P.(PD).Nos.2905 & 2906 of 2015 and Mr.V.Raghavachari, learned counsel appearing for the respondents 3 and 4 would contend that the respondents 2 to 4 are the Executive Committee members of the Trust and the same is evident from the notices issued to respondents for convening the Executive Committee meetings. Since the notices for convening the Executive Committee meeting were not issued just one or two times, but several times, it cannot be termed as a mistake committed by the Trust. They would further contend that even in the document filed by the revision petitioners, viz., the amendment to memorandum and bye-laws, the names of the respondents 2 to 4 and one Tmt.V.Valliammai are stated to be the Executive Committee members. Even in Form VI, they were stated to be the Executive Committee members and Form VII which is filed to intimate the change in members must be accompanied by a special resolution as per section 12 of the Act. However, there is no such resolution. The learned counsels would further submit that that the Registrar of Co-operative Societies is only the person who collects the information and does the ministerial work. The registrar could only look at the provisions of the Act and Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form VII, in order to effect change in the Register and the validity of the election

can be decided only by the competent Civil Court. To substantiate the said argument, the learned Senior Counsel relied upon the following decisions:

(1) 2010 (3) CTC 390, C.Dharmalingam v. The District Registrar.

(2) 2005-4-L.W.67, The Music Academy, Rep. By its Executive Trustee v. Inspector General of Registration & others.

20. The learned Counsel appearing for the respondents would further contend that the term of office of the Executive Committee is for three years from 07.09.2012 and the said period has expired. So, there is no Executive Committee as on date. Hence, the Secretary has convened the meeting of the General Body to elect members to the Executive Committee as per the bye-laws of the Trust. Thus, the learned Counsels would contend that taking into account of the subsequent events, there is no necessity for setting aside the finding of both the Courts below. To substantiate the said contention, the learned Counsel relied on the decision reported in **(2004) 11 Supreme Court Cases 168, Shipping Corporation of India Ltd., v. Machado Brothers and Others.**

21. Mr.V.Raghavachari, learned counsel appearing for the respondents 3 and 4 would submit that the the documents maintained by the statutory authority are the public records and when once the documents are public documents, there is no need to call for witnesses to prove the same. To substantiate the said contention, he relied upon the following decisions:

(1) AIR 1963 SC 1633, Madamanchi Ramappa and Another v. Muthaluru Bojjappa.

(2) (2012) 1 Supreme Court Cases 520, Anita Malhotra v. Apparel Export Promotion Council and Another.

22. The learned counsel would further contend that when the subsequent event makes a matter to become infructuous, it will be the duty of the court to take such action as is necessary to dispose of the infructuous litigation. To substantiate his contentions, he relied upon the decision reported in **(2004) 11 Supreme Court Cases 168, Shipping Corporation of India Ltd., v. Machado Brothers and Others.**

Thus, the learned Counsels appearing for the respondents prayed for

the dismissal of the Civil Revision Petitions.

23. Considered the rival submissions made by either sides and perused the typed set of papers filed before this Court.

24. As far as the issue in respect of the admissibility of the documents are concerned, both sides had not disputed the genuineness, admissibility and relevancy of the documents filed before this Court and hence, the decisions relied on by the learned counsel appearing for the respondents 3 and 4 reported in **AIR 1963 SC 1633, Madamanchi Ramappa and Another v. Muthaluru Bojjappa** and **(2012) 1 Supreme Court Cases 520, Anita Malhotra v. Apparel Export Promotion Council and Another** has no relevancy to the facts of the present case.

25. Now this Court has to decide whether in the instant case, the subsequent events had to be taken into account?

It would be appropriate to consider the decision relied on by Mr.A.L.Somayaji, learned Senior Counsel appearing for the first respondent as well as Mr.V.Raghavachari, learned Counsel appearing for the respondents 3 and 4 reported in **(2004) 11 Supreme Court**

Cases 168, Shipping Corporation of India Ltd., v. Machado Brothers and Others, wherein it was held that by the subsequent event if the original proceeding has become infructuous, *ex debito justitiae*, it will be the duty of the Court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation.

26. In the above decision, the application has been filed under Order 7 Rule 11(a) and it was held that the subsequent events had made the suit infructuous. In the above decision, the respondent was appointed as the steamship agent of the appellant for the purpose of handling tankers, bulk carriers and tramp vessels, calling at the port of Tuticorin. As per provisions in the agreement, a termination notice dated 23.02.1995 was issued for terminating the contract of the respondent and it was challenged by way of a suit in O.S.No.4212 of 1995 in the City Civil Court at Chennai, wherein it was prayed as follows:

"The plaintiff, therefore, prays for a judgment and decree against the Defendants 1 to 3 for a declaration to declare that the order of termination issued by the 1st defendant on 23.02.1995 through telex terminating the

plaintiff's agency, as per the agreement dated 03.06.1988, is illegal, void and unenforceable."

The first termination notice was issued on 23.02.1995 which was the basis of the suit in O.S.No.4212 of 1995 and the very same agency came to be terminated once again by another notice dated 23.08.2001. Further, it is also not disputed nor is it the basis of the orders of the two courts below that by the issuance of the second notice, the earlier termination notice dated 23.02.1995 stood superseded. If that be so, the question of our consideration is: whether the said suit in O.S.No.4212 of 1995 is liable to be dismissed as having become infructuous. Thus, it was concluded to be infructuous on issuance of the second termination notice. However, the above citation will not be applicable to the facts of the present case because in the instant case, this Court has to decide whether as per Section 15(4) of the Act, the Executive Committee will be in existence even after the expiry of three years?

27. So, it is appropriate to incorporate Section 15 of the Act:

"15. Committee.- (1) *Every registered society shall have a committee of not less than three members to*

manage its affairs. Every registered society shall file with the Registrar a copy of the register maintained by its under sub-section (1) of Section 14 and from time to time, file with the Registrar notice of any change among the members of the committee.

(2) A copy of the register shall be filed either at the time of the registration of the society or within such period as may be prescribed from the appointment of the members of the first committee and the notice of any change among the members of the society or of the committee shall be filed within such period as may be prescribed from the date of such change.

(3) The members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitle to vote thereat.

(4) The term of office of the members of the committee shall not exceed three years from the date of their appointment.

(5) The members of the committee shall be eligible for re-appointment."

It is pertinent to note that as per Section 15(4) of the Act, the term of office shall not exceed three years.

28. At this juncture, it would be appropriate to consider the argument put forth by Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the revision petitioner stating that the word 'shall' used in Section 15(4) of the Act is not mandatory in nature and it has to be read as 'may'. For the reason, he relied upon the following decisions:

(1) In the decision reported in **(1987) 2 Supreme Court Cases 407, M/s.B.P.Khemka Pvt. Ltd., v. Birendra Kumar Bhowmick and Another**, it was held that the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. It is appropriate to incorporate paragraphs 14 and 15 of the said decision:

"14. Even if the proviso is viewed in a limited sense as being attracted only to those cases where there has been full and complete compliance with the provisions of sub- section (1) or (2) or (2A) of [Section 17](#) and will not apply to a case as the one on hand, the appellant cannot

be denied relief because the words "shall order the defence against delivery of possession to be struck out" occurring in Section 17(3) have to be construed as a directory provision and not a mandatory provision as the word "shall" has to be read as "may". Such a canon of construction is warranted because otherwise the intendment of the Legislature will be defeated and the class of tenants for whom the beneficial provisions were made by the Ordinance and the amending Act will stand deprived of them. We may only refer to two decisions of this Court on this aspect of the matter. In Govindal Chhagganlal Patel v. Agricultural Produce Market Committee, Godhra, [1976] 1 SCR 451: [1975] 2 SCC 482, Chandrachud, C.J. speaking for the Court approved the following passage in Crawford on 'Statutory Construction'

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be

ascertained, not only from the phraseology of the provision, but also while considering its nature, its design, and the consequence which would follow construing it the one way or the other."

In Ganesh Prasad Sah Kesari v. Lakshmi Narain Gupta, [1985] 3 SCC 53 this Court, dealing with a similar provision for striking out of defence in Section 11A of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 referred to Govindlal Chhagganlal Patel's case (supra), and held as follows:-

"Applying this well-recognised canon of construction the conclusion is inescapable that the word 'shall' used in the provision is directory and not mandatory and must be read as 'may'."

15. Once the word "shall" used in [Section 17\(3\)](#) is read as "may" and consequently the provision for striking out of the defence is to be read as directory and not mandatory then it follows that the Court is vested with discretion to order either striking out of the defence or not depending upon the circumstances of the case and the

interests of justice. This Court has consistently taken the view that if the Court' has the discretion not to strike out the defence of the tenant committing default in payment or deposit of rent as required by a provision in any Rent Restriction Act, then the Court surely has the further discretion to condone the default and extend the time for payment or deposit and such a discretion is necessary implication of the discretion not to strike out the defence. We may only refer in this connection, to three earlier decisions of this Court. [Shyamcharan Sharma v. Dharamdas](#), [1980] 2 SCR 334 is a case which arose under the Madhya Pradesh Accommodation Control Act, 1961. [Santosh Mehta v. Om Prakash and Anr.](#), [1980] 3 SCR 325 and [Ram Murti v. Bhola Nath and Another](#), [1984] 3 SCR 111 were cases which arose under the [Delhi Rent Control Act](#), 1958. The Rent Control Act of Madhya Pradesh as well as the Rent Control Act of Delhi provided that if a tenant failed to make payment or deposit as required by the Section the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application. In all these cases it has been uniformly

held that the powers of discretion vested in the Rent Controller give him further right to condone the delay in deposit or payment of rent for the subsequent months."

(2) For the very same proposition, he relied upon the decision reported in **(1989) 2 Supreme Court Cases 413, M/s.Rubber House v. M/s.Excelsior Needle Industries Pvt Ltd.,** wherein it was held that the word "shall" in its ordinary import is obligatory. Nevertheless, the word "shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question.

(3) Similarly, in the decision reported in **(1995) 5 Supreme Court Cases 272, Administrator, Municipal Committee Charkhi Dadri and Another v. Ramji Lal Bagla and Others,** it was held that the absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature

despite use of word 'shall'. It is appropriate to incorporate paragraphs 14, 15 and 16 of the said decision:

"14. In our considered opinion, [Section 44-A](#) cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the Trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following :

(a) The Section while using the expression "shall" does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. Manbodhan Lal Srivastava v. State of U.P. (A.I.R. 1959 S.C. 912). The proviso to [Section 44-A](#) empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it

indicate in any manner that the said power can be exercised by the Government only once and no more.[Emphasis supplied]

15. A question may then arise, why was the proviso put in at all? What purpose it seeks to achieve, if not to give a mandatory character to the requirement in the main limb of [Section 44-A](#)? Having regard to the totality of circumstances (including those mentioned under (b) and (c) occurring hereinafter) we are of the opinion that it appears to be a form of governmental control over those statutory bodies. If the trust does not execute the scheme within the period of five years - and the Government does not see sufficient reason to extend time therefor - the Government may take any of the steps contemplated by Chapter-VA, which chapter was introduced by the Haryana Legislature by the very same [Amendment Act \(17/1973\)](#) which introduced [Section 44-A](#). Chapter V-A vests in the Deputy Commissioner the power of control over the trusts. [Section 55-A](#) empowers the Deputy Commissioner to call for information, statements, accounts and reports from the

trusts and to enquire generally into their working and affairs. Section 55-B confers upon the Deputy Commissioner the power to suspend any resolution or order of the trust. More important, Section 55-C empowers the Deputy Commissioner to provide for performance of duties in case of default of the trust in performing its duties. Section 55-C reads as follows:

"55-C. Power to provide for performance of duties in case of default of trust.-(1) When the Deputy Commissioner after due enquiry, is satisfied that a trust has made default in performing any duty imposed on it by this Act, or by any order or rule made under this Act, he may, by an order in writing duly supported with reasons fix a period for the performance of the duty; and should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expenses thereof shall be paid, within such time as he may fix, by the trust. (2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the trust fund to pay the expense, or so much thereof, as may from time to

time be possible, from that balance in priority to all other charges against the same."

16. The section is self-explanatory and needs no elaboration at our hands. [Section 44-A](#) has to be read and understood along with this section which means that the Deputy Commissioner will have to take action under [Section 55-C](#), in case of the failure of the trust to execute the scheme within the period of five years. If the time is extended under the proviso and yet the trust fails to execute the scheme within the extended time, the Deputy Commissioner can - ought to - resort to [Section 55-C](#). [Sections 55-D](#) and [55-E](#) make the acts and orders of the Deputy Commissioner subject to Government's order. It, therefore, cannot be said that [Section 44-A](#) or its proviso have no purpose behind them or that they are a mere surplusage.

(b) The more important and substantial reason, of course, is that [Section 44-A](#) does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting

of title of the Trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the Trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in [Section 44-A](#) is only directory notwithstanding the use of expression "shall" therein. The said provision is meant to impress upon the Trust and its authorities, the desirability of the time- frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the Section

which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilised for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilised. A question arises what is 'utilisation'? Suppose, a road is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilisation or not? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners? Whether they are liable

to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in [Section 44-A](#) not being mandatory in the sense it is sought to be understood by the respondents.”

29. Considering the facts of the present case along with the proviso to Section 15(4) of the Act which reads that the term of office of the members of the committee shall not exceed three years from the date of their appointment, in the decision reported in **(1995) 5 Supreme Court Cases 272, Administrator, Municipal Committee Charkhi Dadri and Another v. Ramji Lal Bagla and Others** it was specifically held that in the absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of word 'shall'. In the instant case it was not stated what would be the consequence if a new committee has not been elected even after the expiry of 3 years. But clause 5 reads that the members of the committee shall be eligible for re-

appointment. In such circumstances, I am of the considered view that the word 'shall' used in clause 4 of Section 15 is only directory and not mandatory in nature.

30. Merely because the period of three years is over, it cannot be held that there is no Executive Committee. However, till the new committee is elected, the present Executive Committee will be functioning. Further, it is pertinent to note that in the General Body meeting held on 17.09.2012, one Tmt.V.Valliammai was elected as Executive Committee member and the existing members were reelected and the names of the respondents 2 to 4 does not find place. Furthermore, it is pertinent to note that during the pendency of the revision, they had filed application for amendment to declare that the plaintiffs are the Executive Committee members. Even now, they are pursuing the suit and further filed series of suits. In such circumstances, I am of the view that the word 'shall' used in Section 15(4) of the Act is only directory in nature, since there is absence of provision for consequence in case of non-compliance. Thus, the contention that the Executive Committee is not functioning after 07.09.2015 is unsustainable.

31. So, I am of the considered view that the word 'shall' used in Section 15(4) of the Act is not mandatory in nature, but it is only directory, since there is no provision for consequence in case of non-compliance. It is also pertinent to note that the respondents/plaintiffs had amended the plaint for declaration that the respondents 2 to 4 are the members of the Executive Committee. Thus, it can be concluded that the revisions have not become infructuous.

32. Now this Court has to decide whether the finding of the Trial Court that the respondents 2 to 4 are Executive Committee members is sustainable?

It is appropriate to consider amended bye-laws (4) and (5).

4.a. Membership*:- Any person may, on any application made by him and on payments of an entrance fee of Rs.1000/- be admitted as a member of the Society. Such admission shall be at the discretion of the Executive Committee and the decision of the Executive Committee thereof shall be final.*

4.b. *The Committee has the right to reject the application of any person without assigning any reasons.*

4.c. Removal of Members:- *A member can be removed from membership on the basis of a resolution passed by the Executive Committee on the ground that he acts against the interest of the Society or behaves in a manner prejudicial to the dignity of the Society. Executive Committee's decision in all such cases shall be final and binding and such acts shall be ratified in the next AGM/EGM.*

5. Manner of Electing Members of Committee:

(a) *The members of the Executive Committee shall be elected at a meeting of the General Body by a resolution of a majority of the members present and voting.*

(b) *The term of office of the Members of the Executive committee shall not exceed three years from the date of their election.*

(c) *The members of the Executive Committee shall be eligible for re-election.*

33. At this juncture, it would also be appropriate to incorporate Sections 6 of the Act.

"6. Memorandum, bye-laws, etc., to be filed with the Registrar.- *For the purpose of registration of a society, there shall be filed with the Registrar of the district in which the society is formed by a member of the committee to the society or by any person duly authorized by the committee in this behalf-*

(1) a memorandum specifying -

(a) the name of the society;

(b) the objects of the society; and

(c) the names, addresses and occupations of the members of the committee; and

(2) the bye-laws of the society."

34. Section 12 of the Act reads as follows:

"12. Amendment of memorandum and bye-laws.- *(1) A Registered society may, by special resolution, amend the provision of its memorandum relating to the objects of the registered society so far as may be required to enable it-*

(a) to carry on the administration of the registered society more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to amalgamate with any other registered society; or

(d) to divide itself into two or more societies.

(2) A registered society may, by special resolution, amend its bye-laws.

(3) An amendment of the memorandum or the bye-laws shall be registered and on such registration shall take effect from the date of the passing of such special resolution.

(4) If the Registrar is satisfied that any amendment of the memorandum or the bye-laws is not contrary to the provisions of this Act, or the rules made thereunder, he may register the amendment. When the Registrar registers an amendment of the memorandum or the bye-laws, he shall issue to the registered society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered."

35. Admittedly, in the amended bye-law, the names of the respondents 2 to 4 were mentioned as Executive Committee members. However, as per Section 12(1) of the Act, the amendment must be carried out only by way of special resolution. In the instant case, it is

true that no special resolution has been passed for electing the respondents 2 to 4 as members of the Executive Committee. Since the amended memorandum and the bye-laws has been registered on the basis of the resolution dated 17.09.2012, a perusal of the said resolution would reveal that on 17.09.2012, a General Body meeting was convened and as per Agenda 4 and 5, the existing members of the Executive Committee was re-elected and one Tmt.V.Valliammai was newly elected as a member of the Executive Committee.

36. Further, it is pertinent to note that in the minutes of the Managing Committee meeting of the Indian Cultural Research Trust held on on the very same date viz., 17.09.2012, at 10.45 a.m., the respondents 2 to 4 herein had not signed as parties/members of the Executive Committee and the said minutes was filed in Page 137 of the typed set of papers.

37. At this juncture, it would be appropriate to incorporate Item No.4 & 5 of the agenda:

Item No.4: To elect the Members of the Managing Committee.

The following are the present Members of the Managing Committee.

- 1).Dr.M.A.M.Ramaswamy
- 2).Kumararani Dr.Meena Muthiah
- 3).Thiru.M.A.M.R.Muthiah
- 4).Tmt.Geetha Muthiah
- 5).Thiru.AR.Ramaswamy
- 6).Thiru.V.Vaidhyanathan
- 7).Thiru.VR.Veerappan
- 8). Thiru.RM.Palaniappan

As the term of Office of the above Members is over by 7th September 2012, Members of the Managing Committee are to be elected for a further term of 3 years.

The General Body, after discussion, reelected the same Members, as above, as Members of the Managing committee for a further term of 3 years. The following resolution was passed unanimously.

"Resolved to re-elect the following persons as Members of the Managing Committee of the Trust for a term of 3 years from 7th September 2012"

- 1).Dr.M.A.M.Ramaswamy
- 2).Kumararani Dr.Meena Muthiah
- 3).Thiru.M.A.M.R.Muthiah
- 4).Tmt.Geetha Muthiah
- 5).Thiru.AR.Ramaswamy
- 6).Thiru.V.Vaidhyanathan
- 7).Thiru.VR.Veerappan
- 8). Thiru.RM.Palaniappan

Item No.5: To elect Member of the Managing Committee.

Thiru AR.Ramaswamy, Honorary Secretary, proposed that Tmt.V.Valliammai, Member of the Trust, be elected as a Member of the Managing Committee for a term of three years from the date of her appointment.

Thiru V.Vaidyanathan, Member, seconded the proposal and the following resolution was passed unanimously.

"Resolved to elect Smt.V.Valliammai, Member of the Trust as a Member of the Managing Committee for a term till 7th September 2015."

38. On perusal of the documents, it is seen that the General Body meeting was conducted on 17.09.2012 at 10.30 a.m. and of the 11 members who attended the meeting, it includes the respondents 2 to 4 herein. They had also signed in the minutes of the meeting which was filed in page 22 of the typed set of papers in C.R.P.(PD).No.2905 of 2015. In the said meeting, in Item No.4, to elect the Members of the Managing Committee, it was specifically stated that the following are the present members of the Managing Committee, wherein the

names of the respondents 2 to 4 has been mentioned. Further, it was resolved to re-elect the following members viz.,

- 1).Dr.M.A.M.Ramaswamy, 2).Kumararani Dr.Meena Muthiah,*
- 3).Thiru.M.A.M.R.Muthiah, 4).Tmt.Geetha Muthiah,*
- 5).Thiru.AR.Ramaswamy, 6).Thiru.V.Vaidhyanathan,*
- 7).Thiru.VR.Veerappan, 8). Thiru.RM.Palaniappan*

as members of the Managing Committee of the Trust for a term of 3 years from 7th September 2012. Furthermore, in the said meeting, they had elected Smt.V.Valliammai, Member of the Trust as a Member of the Managing Committee for a term till 7th September 2015. Admittedly, as already stated, the respondents 2 to 4 had signed the minutes along with the other members. So, they are estopped from contending that they are the members of the Executive Committee.

39. It is also appropriate to consider that even before the amendment of the memorandum and bye-laws, even in the year 2011, the respondents 2 to 4 are the members of the General body and they are attending the meetings including the Executive Committee meetings. However, the same will not confer any right or status to them as Executive Committee members. On perusal of Form VI for the financial year 2010-2011 dated 12.10.2011, enclosed in page 79 of

the typed set of papers would show that the first member was enrolled on 05.12.1975, the members 2 to 8 were enrolled on the subsequent dates and finally, on 21.09.2011, new members viz., V.Valliammai, S.Hariharan, V.Palaniappan and V.Chandramoleeswaran have been enrolled to the General Body and the Managing Committee. In Form VII enclosed in page 78 of the typed set of papers would show the above names as names of the Member of the Society of the committee affected by the change; the nature of Change is shown as 'New Member'; the Date of Change is mentioned as '21.09.2011' and the Remarks column is shown 'Nil'.

40. In that the respondents 2 to 4 were shown as members of the General body and Managing Committee. Even in the Form VII pertaining to the financial year 2011-12 filed on 13.12.2012, it was stated that on 17.09.2012, 9 members were elected to the Managing Committee. In the Form VI filed for the very same financial year, the first nine members including Tmt.V.Valliammai were stated to be the members of the General Body and Managing Committee, whereas the respondents 2 to 4 herein were stated to be the members of the General body. Even in the Form VI pertaining to the financial year 2012-13 filed on 09.10.2013, only the first nine members including

Tmt.V.Valliammai were stated to be the members of the General Body and Managing Committee, while the respondents 2 to 4 herein were only stated to be the members of the Trust. It was also specifically stated therein that they were inducted as a member of the Trust only with effect from 16.06.2011.

41. While perusing Vol-III of the typed set of papers, it is seen that on 16.06.2011, the respondents 2 to 4 and Tmt.V.Valliammai was admitted as members of the Trust. Thereafter, in the General Body meeting held on 21.09.2011, the respondents 2 to 4 and the said Tmt.V.Valliammai had participated. Even in the General Body meeting held on 17.09.2012, except the 3rd respondent viz., Hariharan, the respondents 2 and 4 and Tmt.V.Valliammai had signed. Thereafter, in the General Body meetings held on 20.09.2013 and 23.09.2014, the respondents 2 to 4 and Tmt.V.Valliammai had signed. Since the respondents 2 to 4 were inducted as members on 16.06.2011, they have been participating in the General Body meetings and they are fully aware that they are not the Executive Committee Members, however they had filed the suit. Thus, the attitude of the plaintiffs 2 to 4 are not appreciable.

42. Even in the plaint, nowhere it has been stated that they were elected as Executive Committee Members. So there is no iota of evidence before this Court to show that the respondents 2 to 4 are the Executive Committee Members. As already stated, the respondents 2 to 4 were inducted as members only on 16.06.2011 by the Managing Committee Members and they attended the first General Body meeting on 21.09.2011. In the General Body meeting held on 17.09.2012, as per the resolution made in Item No.4, it was resolved to re-elect the then existing members of the Managing Committee of the Trust for a term of 3 years from 07.09.2012 and as per the resolution made in Item No.5, it was resolved to elect Smt.V.Valliammai, Member of the Trust as a Member of the Managing Committee for a term till 7th September 2015. The respondents 2 to 4 herein were also the signatories in the said meeting. In such circumstances, I am of the view that the respondents 2 to 4 have not come to the Court with clean hands as there was no evidence to show that they were elected as Executive Committee Members.

43. Further, merely because they had attended the meeting of the Executive Committee, it will not confer them the status of Executive Committee Members because as per Section 15(3) of the

Act, the members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat. Thus, the respondents 2 to 4 were not elected as Executive Committee Members as per the provisions of Section 15(3) of the enactment. So, merely because they had received the communication to the meeting and they had attended the meeting will not confer them the status of the Executive Committee Members.

44. Once there was a statutory requirement for being appointed as a Executive Committee Member as per Section 15(3) of the Act, it is the duty of the respondents 2 to 4 to prove that they were elected by the General Body. However, in the plaint nothing has been stated as to when they were elected as the Executive Committee Members. But the respondents 2 to 4 had only proved that they were inducted as a member of the Trust in the Managing Committee meeting held on 16.06.2011 and in pursuance of the same, they had attended the General Body meetings held on 21.09.2011. Thereafter, in the General Body meeting held on 17.09.2012, Tmt.V.Valliammai was elected as Executive Committee Member besides re-electing the existing Executive Committee Members for three more years from 07.09.2012. So, it is the duty of the plaintiff to prove his case. Only when the

respondents 2 to 4 would prima facie prove that they are the Executive Committee Members, they will be entitled to the discretionary relief. If not, they will not be entitled to maintain the suit. However, the Trial Court without considering the same, in paragraph 8 of the order has held as follows:

"8. ...The 2nd respondent has referred page no.18 of said document and contended that the petitioners 2 to 4 are not the committee members. Whereas the bye-laws namely clause 4 would clearly state that the petitioners 1 to 4 are the executive members. The 2nd respondent has wrongly interpreted page 19 of plaint document no.1 and attempted to canvass that the petitioners 2 to 4 are not at all the executive members of the 1st respondent Trust. I clearly understood from page 19 of the plaint document no.1 that the 8 members noted in the said page have renewed their office as executive committee members, since their term of office expired on 7.9.2012. As the petitioners' 2 to 4 term of office was not completed as on 7.9.2012 their names have not been found place in the said minute."

But the reasoning given by the Trial Court is not correct because as per the documents filed in the typed set of papers, the respondents 2 to 4 were inducted as members of the Trust only on 16.06.2011 and thereafter, they had attended the General Body meeting held on 21.09.2011 and 17.09.2012. Form VI and VII filed during the financial years 2010-11, 2011-12, 2012-13 would clearly show that they were inducted only on 21.09.2011, as member of the General Body.

45. Further, though it was fairly conceded by the learned Senior Counsels appearing for the revision petitioners that notice has been issued to the respondents 2 to 4 to attend the Executive Committee Meeting and they had signed as Executive Committee Members, mere presence in the meeting will not confer them the status of the Executive Committee Members, since they were not elected as per Section 15(3) of the Act. That aspect has not been considered by the Trial Court. Further, as already stated, the respondents 2 to 4 had not stated as to when they were elected as Executive Committee Members. In such circumstances, the finding of the Trial Court that the respondents 2 to 4 are the Executive Committee Members is perverse and unsustainable.

46. In such circumstances, merely because the respondents 2 to 4 had received the notice for the meeting and they had send their objections along with some of the Executive Committee members will not confer them the status of Executive committee Members. Further, the said meeting was adjourned for want of coram. It is also pertinent to note that even during the course of the argument in the revision, the respondents 2 to 4 were unable to specify the date on which they were inducted into the Executive committee. Hence, merely because in the amended bye-laws the names of the respondents 2 to 4 were mentioned as Executive committee Members, it will not give them any right without passing of the special resolution as mandated under Section 12(3) of the Act. So the argument advanced by the Mr.A.L.Somayaji, Mr.M.S.Krishnan, the learned Senior Counsels and Mr.V.Raghavachari, learned counsel that the respondents 2 to 4 are the Executive Committee members does not merit acceptance. So, I am of the view that both the Courts below had erroneously given a finding that the respondents 2 to 4 are members of the Executive Committee.

47. Furthermore, when two sets of the documentary evidences are available, the Trial Court ought to have considered the same, after

letting in oral and documentary evidences. However, without doing so, the Trial Court had taken into consideration of one document and came to the conclusion that the respondents 2 to 4 are the Executive Committee Members, which is unsustainable. In such circumstances, the finding of the Trial Court which was confirmed by the first appellate Court that the respondents 2 to 4 are the members of the Executive Committee is hereby set aside on the following grounds:

(a) The respondents 2 to 4 were inducted/admitted as members of the Trust in the Managing Committee Meeting held on 16.06.2011 and they attended the General Body meeting held on 21.09.2011. While so, in the General Body meeting held on 17.09.2012, one Tmt.V.Valliammai who was inducted/admitted as a member along with the respondents 2 to 4 on 16.06.2011 was elected as an Executive Committee Member, while re-electing the other members for a period of three years from 07.09.2012.

(b) In the plaint, the respondents 2 to 4 had not stated as to when they were elected as members of the Executive Committee as mandated under Section 15(3) of the Act.

(c) Mere receipt of the notice by the respondents 2 to 4 to attend the Executive Committee Meeting will not confer them

the status of the Executive Committee Members.

48. It is pertinent to note that the first respondent is the Executive Committee Member and so, he is entitled to file the suit. However, when the first respondent along with the respondents 2 to 4 had played fraud upon the Court and obtained an order of interim injunction, the same has to be set aside. At this juncture, it would be appropriate to consider the decision reported in **(2010) 8 Supreme Court Cases 383, Meghmala and Others v. G.Narasimha Reddy and Others**, wherein at paragraph 36, it was held that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. It would be appropriate to incorporate the relevant paragraphs, wherein it was held as follows:

"32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn

proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage.

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."

49. Considering the facts and circumstances of the case, in the light of the decision reported in **(2010) 8 Supreme Court Cases 383, Meghmala and Others v. G.Narasimha Reddy and Others**, the first respondent who is an Executive Committee Member knowing fully well that the respondents 2 to 4 are not the Executive Committee Members had joined hands with them and filed the suit and thus, played fraud upon the Court and obtained an order of injunction. So, the order passed by the Trial Court is liable to be set aside and hereby set aside.

50. Mr.AR.L.Sundaresan, learned Senior Counsel relied upon the

decision reported in **(2004) 2 Supreme Court Cases 783, Karnataka Rare Earth and Another v. Senior Geologist, Department of Mines & Geology and Another**, wherein it was held that the advantage gained by party relying on interim orders or impoverishment suffered by party prejudiced by interim orders can be made restitution of advantage or compensated for impoverishment while passing the final orders.

51. Yet another decision relied on for the same proposition is reported in **(2003) 8 Supreme Court Cases 648, South Eastern Coal Fields Ltd., v. State of M.P and Others**, wherein it was held that on principle of "restitution" as recognised by Section 144 CPC, the party finally found to be entitled to a relief in terms of money would be entitled to be compensated by award of interest for the period for which the interim order remained in operation.

52. In the decision of this Court dated **29.06.2012** made in **O.A.Nos.656 to 659 of 2011 [M/s.SBEC Projects Private Limited v. BGR Energy Systemts Limited]** the decision of the Hon'ble Apex Court reported in **(2004) 2 Supreme Court Cases 783, Karnataka Rare Earth and Another v. Senior Geologist, Department of**

Mines & Geology and Another has been followed.

53. There is no quarrel over the propositions laid down in the above decisions. But the above decisions will not be applicable to the facts of the present case because in the instant case, no loss in terms of money has been incurred by either of the parties. Only if any loss especially in terms of money was incurred, the parties are entitled to be compensated.

54. Mr.T.C.Mohan and Mr.V.Vaidyanathan, revision petitioners in C.R.P.(PD).Nos.4272 & 4273 of 2015 had filed applications seeking for leave to prefer the revisions and the same were allowed, against which revocation applications have been filed. Since the said Mr.T.C.Mohan and Mr.V.Vaidyanathan are the Executive Members, they can very well maintain the Civil Revision Petitions because they are also interested in the functioning of the Trust. In such circumstances, I am of the view that there is no necessity for revoking the leave already granted, since the members of the Executive Committee has every right to agitate the matter. Hence, M.P.No.2 of 2015 in C.R.P.(PD).Nos.4272 of 2015 and M.P.No.2 of 2015 in C.R.P.(PD).Nos.4273 of 2015 are liable to be dismissed.

55. It is true that a notice was issued to convene the Executive Committee Meeting on 23.09.2014 for election of new members. In that the names of the member has been mentioned and they are none other than the sons' of the Secretary of the Trust viz., the 2nd respondent. So, objection was made by the existing members and hence, the said item was dropped and not dealt with in the said meeting. The objection letter was not only signed by the respondents 2 to 4 but also by the other Executive Committee members. Further, a second notice dated 08.10.2014 was issued to convene the Executive committee Meeting on 17.10.2014 with an agenda "Admission of Members". However, they had not enclosed any details of the members. Immediately, thereafter the suit has been filed by the respondents 1 to 4 as Executive Committee members, even though the respondents 2 to 4 are not the Executive Committee members.

56. As discussed supra, the respondents 2 to 4 have not prima facie proved that they are the members of the Executive Committee and first respondent herein knowing fully well that the respondents 2 to 4 are not the Executive Committee Members had colluded with them and obtained an order of interim injunction. Hence, the first

respondent is also not entitled to the discretionary relief and the interim order granted by the Trial Court is hereby set aside.

57. In view of the above stated position, the impugned orders dated 16.10.2014 passed by the Trial Court in I.A.No.15897 of 2014 in O.S.No.5904 of 2014, which was confirmed by the first appellate Court by an order dated 13.04.2015 made in C.M.A.No.142 of 2014 and the impugned order dated 16.10.2014 passed by the Trial Court in I.A.No.15900 of 2014 in O.S.No.5905 of 2014, which was confirmed by the first appellate Court by an order dated 13.04.2015 made in C.M.A.No.143 of 2014 are hereby set aside and consequently, these Civil Revision Petitions are allowed. Connected miscellaneous petitions are closed. No costs.

58. In fine,

(i) C.R.P.(PD).Nos.2905 and 4273 of 2015 are allowed.

(ii) The fair and decreetal order dated 13.04.2015 made in C.M.A.No.142 of 2014 by confirming the fair order and decreetal order dated 16.10.2014 made in I.A.No.15897 of 2014 in O.S.No.5904 of 2014 is hereby set aside.

(iii) Consequently, the application in I.A.No.15897 of 2014 in

O.S.No.5904 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai is hereby dismissed.

(iv) C.R.P.(PD).Nos.2906 and 4272 of 2015 are allowed.

(v) The fair and decreetal order dated 13.04.2015 made in C.M.A.No.143 of 2014 by confirming the fair order and decreetal order dated 16.10.2014 made in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 is hereby set aside.

(vi) Consequently, the application in I.A.No.15900 of 2014 in O.S.No.5905 of 2014 on the file of the learned VI Assistant Judge, City Civil Court, Chennai is hereby dismissed.

(vii) However, there is no order as to costs.

12.02.2016

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To

- 1.learned VI Assistant Judge,
City Civil Court, Chennai.
- 2.learned IV Additional Judge,
City Civil Court, Chennai.

R.MALA, J.

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P.D. Order made in
C.R.P.(PD).Nos.2905, 2906,
4272 & 4273 of 2015

Dated : 12.02.2016