



W.P.Nos.24785, 24788 & 25535 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2022
PRONOUNCED ON : 11.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.Nos.24785, 24788 & 25535 of 2022 and
W.M.P.Nos.23713, 23714, 23719, 23721, 24528 & 24530

Swamy Ayyappan Educational Trust,
Represented by its Trustee,
N.Arun, S/o.Nallathambi,
No.7/9, Renugadevi Nagar,
Musiri Taluk,
Trichy District – 621 211.

... Petitioners in all Writ Petitions
Versus

Deputy Superintendent of Police,
Vigilance and Anti Corruption,
½, Kamatchiamman Kovil Street,
Karungalpalayam,
Erode, Tamil Nadu – 638 003.

... Respondents in all Writ Petitions

PRAYER in W.P.No.24785 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other Writ, calling for the records of the respondent in issuance of summons dated 29.08.2022 issued by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, the respondent herein, alleging to be in exercise of powers allegedly conferred under Section 91 of the Cr.P.C.

PRAYER in W.P.No.24788 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other Writ, calling for the records of the respondent in issuance of the notice issued on 30.08.2022 by the respondent communicating that the Executive Engineer, PWD, Buildings (C&M) Division, Trichy intended to evaluate the buildings constructed in Mangalam Village, S.F.Nos.66/2, 3A, 3B, 71/2, 71/3



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Mangalam Panchayat, Thathaiyangar Pettai Panchayat Union, Musiri Taluk, Trichy District belonging to the educational institution, MIT College of Agriculture and Technology, functioning under the petitioner Trust and quash the same and thereby forbear the respondent from in any manner whatsoever interfering with the affairs of the petitioner Trust alleging investigation of the case in the FIR in Crime No.17/AC/2021.

PRAYER in W.P.No.25535 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other Writ, calling for the records of the respondent in issuance of notice issued on 11.09.2022 by the respondent communicating that the Executive Engineer, PWD, Buildings (C&M) Division, Trichy intended to evaluate the buildings constructed in M.Pudhupatti Village & Panchayat, Musiri Taluk, Trichy District belonging to the educational institution, 1)MIT Arts and Science College for Women, 2)MIT Bodhi Vidyalaya CBSE School, 3)MIT School of Nursing and MIT Centre for Health Inspector, 4)Hostels and Lab and 5)other newly constructed buildings in the premises of petitioner Trust from 21.09.2022 onwards and quash the same.

For Petitioner

in all Writ Petitions : Mr.S.R.Rajagopal,
Senior Counsel for M/s.S.Shanmitha

For Respondent

in all Writ Petitions : Mr.S.Udayakumar,
Government Advocate (Criminal Side)

COMMON ORDER

W.P.No.24785 of 2022 to quash the summon, dated 29.08.2022 issued by the respondent in exercise of power conferred under Section 91 of Cr.P.C.



W.P.Nos.24785, 24788 & 25535 of 2022

2.W.P.No.24788 of 2022 has been filed to quash the notice, dated 30.08.2022 by the respondent communicating that the Executive Engineer, PWD, Buildings (C&M) Division, Trichy intended to evaluate the buildings constructed in Mangalam Village in S.F.Nos.66/2, 3A, 3B, 71/2 & 71/3, Mangalam Panchayat, Thathaiyangar Pettai Panchayat Union, Musiri Taluk, Trichy District belonging to the educational institutions viz., MIT College of Agriculture and Technology functioning under the petitioner Trust and to forbear the respondent from in any manner whatsoever interfering with the affairs of the petitioner Trust in respect of the case in Crime No.17/AC/2021.

3.W.P.No.25535 of 2022 has been filed to quash the notice, dated 11.09.2022 by the respondent communicating that the Executive Engineer, PWD, Buildings (C&M) Division, Trichy intended to evaluate the buildings constructed in M.Pudhupatti Village & Panchayat, Musiri Taluk, Trichy District belonging to the educational institution viz., 1)MIT Arts and Science College for Women, 2)MIT Bodhi Vidyalaya CBSE School, 3)MIT School of Nursing and MIT Centre for Health Inspector, 4)Hostels and Lab and 5)other newly constructed buildings in the premises of petitioner Trust from 21.09.2022 onwards.



4.Since the parties are common and the issue involved and, prayer sought for by the petitioner are identical, this Court considers all the Writ Petitions together and disposes the same.

5.For the sake of convenience and clarity, M/s.Swamy Ayyappan Educations Trust hereinafter referred to as 'the Trust'. The Managing Trustee/Chairman R.Elangovan and his son Vice Chairman E.Praveen Kumar of the Trust are A1 and A2 in Crime No.17/AC/2021, which has been registered by the respondent Police.

6.The case of the petitioner is that the Trust was incorporated by a Deed of Trust, dated 22.09.2006 at Musiri, by way of registered deed in document No.117 of 2006, on the file of the Sub Registrar, Musiri. The Trust was formed for the purpose to promote and render services to the common public by way of providing education, research-oriented education, creating awareness and to develop the economic for downtrodden people. Initially, the Trust was founded by one N.Raju Mudaliar. The Trust also envisaged philanthropic activities and created for the purposes of setting-up educational institutions to offer various courses such as art & science, paramedicine,



polytechnic and other subjects. The said N.Raju Mudaliar is the author of the Trust as Founder Trustee/Managing Trustee. The other trustees appointed are N.Selvaraj, K.Raja, S.Padmini, S.Sivaramalinga, Manivanna and G.Uma. The Trust was reconstituted from time to time more particularly on 01.11.2007, 27.11.2008, 07.02.2011, 22.05.2017, 03.02.2016, 22.05.2017, 24.01.2020 and 10.02.2021. The induction/appointment of the trustees and retirement were by way of amendments of the Deed of Trust. Presently, the trustees are R.Elangovan, N.Adhithya, K.Indhirani E.Praveen Kumar, Vatchala Sundraparipooranam, N.Arun Nallathambi and B.Monica. The said R.Elangovan/A1 is currently the Managing Trustee of the Trust and Chairman of the Board of Trustees, his son E.Praveen Kumar/A2 is a Trustee and Vice Chairman in the Board of Trustees. The present Managing Trustee R.Elangovan/A1 was made as Trustee in the year 2016, by way of Deed of Amendment, dated 03.02.2016 in document No.3 of 2016. Likewise, his son on 22.05.2017 was made as Trustee and later, the Vice Chairman of the Trust. There are seven institutions that are established and functioning under the Trust, which are as follows:-

<i>S.No.</i>	<i>Name of the Institution</i>	<i>Affiliation Details</i>	<i>Academic Year</i>
1	MIT Polytechnic College	Directorate of Technical Education, Chennai	2007-08



S.No.	Name of the Institution	Affiliation Details	Academic Year
2	MIT College of Education for Women (B.Ed.)	Tamil Nadu Teachers Education University, Chennai	2012-13
3	MIT College of Arts and Science for Women	Bharathidasan University, Trichy	2015-16
4	MIT Bodhi Vidhyalaya (CBSE School)	Central Board of Secondary Education, New Dehli	2016-17
5	MIT Centre for Health Inspector	Health and Family Welfare Department, Chennai	2017-18
6	MIT School of Nursing	Health and Family Welfare Department, Chennai	2018-19
7	MIT College of Agriculture and Technology	Tamil Nadu Agriculture University, Coimbatore	2019-20

7.The benefactor of the Trust, are, public at large and there is no single benefactor. The Trustee one N.Arun/petitioner came to know that a criminal case in Crime No.17/AC/2021 has been registered by the respondent Police on 21.10.2021 against the said R.Elangovan and others, for offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of IPC. The check period is between 01.04.2014 and 31.03.2020. On shock and surprise, on 23.08.2022, a notice was issued by the respondent Police on R.Elangovan/A1, Managing Trustee and E.Praveen



Kumar/A2, Vice Chairman of the Trust informing that in connection with the said case, the Executive Engineer, PWD, Buildings (C&M) Division, Trichy intends to evaluate the buildings constructed in Mangalam Village on 30.08.2022. The Managing Trustee R.Elangovan/A1 requested postponement of the said evaluation to avoid causing any hindrance to functioning of the college as semester examinations was going on. Thereafter, the respondent Police informed the Managing Trustee R.Elangovan/A1 and the Vice Chairman E.Praveen Kumar/A2 that evaluation of the building constructed in Mangalam Village, can be done on 11.09.2022 at 11.00 a.m., by way of issuing another notice, dated 30.08.2022. On receipt of the same, the said R.Elangovan/A1 informed the respondent Police that after ascertaining the convenience and permission from other trustees, he would communicate the date. It is to be seen that the notices were issued to R.Elangovan/A1 and E.Praveen Kumar/A2 in their individual capacity and not as the trustees of Trust.

8. Not stopping with the same, on 30.08.2022, a summon bearing R.C.No.342/2021/MISC/SL, dated 29.08.2022 was issued by the respondent Police under Section 91 Cr.P.C., addressing to the Managing Trustee of the



Trust calling for production of certain documents pertaining to the Trust. The information sought is in respect of donors list, loans taken by the Trust between the years 2014 and 2020, statement of accounts, Income Tax Returns, balance sheets, courses offered and students enrolled under different institutions established by the subject Trust. Further, the summons had called upon the person acquainted with the facts to be deputed to appear before the respondent Police with those details. This being so, the petitioner was issued another notice, dated 11.09.2022 seeking for evaluation of buildings constructed in M.Pudhupatti Village & Panchayat, Musiri Taluk, Trichy District belonging to the educational institution, 1)MIT Arts and Science College for Women, 2)MIT Bodhi Vidyalaya CBSE School, 3)MIT School of Nursing and MIT Centre for Health Inspector, 4)Hostels and Lab and 5)other newly constructed buildings in the premises of petitioner Trust from 21.09.2022 onwards. Challenging the notices, dated 30.08.2022, 11.09.2022 and summon, dated 29.08.2022, these Writ Petitions have been filed.

9.The learned Senior Counsel for the Trust submitted that the respondent cannot extend his investigation to the Trust when the Trust is a Public Charitable Trust and is in existence since 2006. The Prevention of Corruption Act, 1988 covers the offences of public servants in possession of



pecuniary resources or property disproportionate to his known source of income. Thus, the act of the respondent Police in issuing summon and notice to evaluate the buildings of the Trust is in abuse of process of law. By issuance of notice, it is crystal clear that roving enquiry without a *prima facie* materials, is being undertaken by the respondent Police. It is for the reason that the Managing Trustee, who was the President of District Central Cooperative Bank, Salem and the Chairman of the Tamil Nadu State Apex Cooperative Bank, identified to be close to the then Hon'ble Chief Minister and important functionary of All India Anna Dravida Munnetra Kazhagam Party. Hence, targeting the Managing Trustee to wipe him out from the political arena, the above case has been registered. In the process, the functioning of the Trust is attempted to be throttled and aspersions casted on the Public Charitable Trust.

10.The learned Senior Counsel further submitted that earlier, searches were conducted by the respondent Police in the premises of R.Elangovan/A1, but failed to get any credible and incriminating material. The respondent Police is acting as puppets at the hands of the ruling



Government and, is indulging in the above acts. He further submitted that the summon calling upon the Trust to produce documents, is in violation of the fundamental rights guaranteed and enshrined under the Constitution of India. On a demeanour, if the Trust and its activities can be investigated, the same would amount to compelling a person to be a witness against himself. The check period of investigation against the said R.Elangovan/A1 is between 2014-2017, but the information sought from the Trust covers period between 2007-2008 when he was not a Trustee. The details sought for is that the courses offered and the list of students admitted each year, which clearly discloses that the respondent with pre-conceived notion, issued summons. He further submitted that the Manual of the Directorate of Vigilance and Anti-Corruption approved by the Government in G.O(3D)No.2, Personnel and Administrative Reforms (Personnel-N) Department, dated 06.01.1993, is the basic instructions and guidelines by the Government. The vigilance manual is to be followed by the respondent Police in letter and spirit. Paragraph Nos.73 & 81 of the said Manual provides for evaluation of house and other immovable properties of the public servant alone. Now, the respondent Police to evaluate the properties of Public Charitable Trust of which, A1 happens to be a Managing Trustee, would not technically give any right to the



respondent Police to call for documents and to conduct evaluation of the buildings of the Trust, without any tangible materials.

11.The learned Senior Counsel further submitted that the notices for evaluation is without any authority of law, *ex facie* illegal, arbitrary, violative of principles of natural justice. The respondent Police admits that the Trust is a Public Charitable Trust and it is in existence since 2006, even prior to R.Elangaovan/A1 becoming a Trustee. He further submitted that the issuance of summon is in violation of dictum laid down by the Hon'ble Apex Court in the case of “*State of Gujarat Versus Shyamlal reported in AIR 1965 SC 1251*”, wherein it had held that the term 'the person' employed in Section 91 Cr.P.C., does not include the person accused as the same would be violative of Article 20(3) of the Constitution of India. He further submitted that the respondent Police seeks Income Tax Returns, balance sheets and other details pertaining to the year 2007-2008 till date, which is outside the check period mentioned in the FIR in Crime No.17/AC/2021. The documents sought for by the respondent Police are all public documents, which are very much available with the concerned Departments. In the FIR, the 2nd accused E.Praveen Kumar, son of R.Elangovan/A1 is shown as Vice Chairman of the



Trust. In view of the same, no summon can be issued to the Trust and its Trustee, which is in violation of Article 20(3) of the Constitution of India.

The FIR is a detailed one, wherein the estimation of disproportionate assets are mentioned. Further, the assets found in the name of A1, his dependants at the beginning of check period, end of check period, Income Tax Returns, Expenditure Incurred, Assets acquired, likely savings and finally disproportionate assets are all provided in the FIR. According to the prosecution, the said R.Elangovan/A1 and his son E.Praveen Kumar/A2 and their family members during the check period that is from 01.04.2014 to 31.03.2020 were holding disproportionate assets to the tune of Rs.3,78,31,755/-. These particulars were worked out after collection of materials. While this being so, calling for further documents from the Trust is not required. It is not out of place to mention that the search was made in 37 places at the houses and other places of the persons, who are closely related to A1 and A2, but no incriminating documents could be found. On the other hand, using the investigation power, the respondent Police is unnecessarily harassing the members of the Trust.

12.The learned Senior Counsel further submitted that the Indian



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Trusts Act, 1882, only applies to a private trust and not to a public trust, as such, the Trustees are not beneficiaries of the trust, they hold the property of trust during their period of trusteeship. He further submitted that if there is any obligation or violation in the trust property, it is only the Benami Transactions (Prohibition) Act, 1988, comes into play. As per Section 4(9)(ii) of the Benami Transactions (Prohibition) Act, 1988, the benami property and benami transactions are defined Trustees are in fiduciary capacity of the Trust.

13.In support of his submissions, the learned Senior Counsel relied on the following citations for the principle that the accused cannot be compelled to be made as witness, which is violative of Article 20(3) of the Constitution of India. Further, for the proposition that once it is alleged that the Trust has acted as a benami, it for the person, who make such allegation, is required to prove the same.

- Nabapravat Trust & others Versus State of Orissa reported in 2002 SCC OnLine Ori 131.
- Mulla Gulam Ali & Safiabai D.Trust Versus Deelip Kumar & Co., reported in (2003) 11 SCC 772 (II).
- Mangathai Ammal (Died) through Legal Representatives and others Versus Rajeswari and others reported in (2020) 17 SCC 496.



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- P.Leelavathi (Dead) by Legal Representatives Versus V.Shankaranarayana Rao (dead) by Legal Representatives reported in (2020) 19 SCC 816.
- Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore and another Versus Vipin Dhanaikar and others reported in 2022 SCC OnLine 900.
- Selvi Versus State of Karnataka reported in (2010) 7 SCC 263.
- Shyamlal Mohanlal Versus State of Gujarat reported in AIR 1965 SC 1251.
- M.Kalanithi Maran Versus State of Tamil Nadu reported in 2003 SCC OnLine Mad 936.
- Duraimurugan Versus State of Tamil Nadu reported in 2012 SCC OnLine Mad 1476.
- Shashikant Versus CBI reported in (2007) 1 SCC 630.

14.Mr.S.Udhayakumar, learned Government Advocate (Criminal Side) appearing for the respondent filed status report and submitted that a case in Crime No.17/AC/2021 has been registered, for offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988 and 13 r/w 13(2) r/w 13(b) of the Prevention of Corruption Act, 1988 as amended in 2018, against R.Elangovan/A1, former President of Salem Central Cooperative Bank and Chairman of Tamil Nadu State Apex Cooperative Bank and his son



E.Praveen Kumar/A2, Vice Chairman of the M/s.Swamy Ayyappan Educational Trust for holding disproportionate assets to the tune of Rs.3,78,31,755/- during the check period between 01.04.2014 and 31.03.2020. During investigation, proper authorization under Sections 17 and 18 of the Prevention of Corruption Act, 1988 obtained. It was suspected that A1 and A2 have acquired assets in the name of various persons in various places in and around Tamil Nadu and outside. Further, there is credible information that they have invested large amounts from the ill-gotten money, which are diverted to the accounts of College and Institution being run by the Trust. Under such circumstances, search was conducted in 37 places, who are closely related and associates to A1 and A2 including the Trust.

15.He further submitted that the Trust was registered on 22.09.2006, vide document No.117 of 2006 and its founder and Managing Trustee was N.Raju Mudaliyar, at that time, the total number of Trustees were seven. Through the amendment to the Deed of Trust, dated 03.02.2016 in document No.03 of 2016, A1-R.Elangovan, Banurekha and Kalyani were included. Through the resolution, dated 16.05.2017, R.Elangovan, the Managing



Trustee was given authority to manage, sign in bank accounts and to make changes and rectifications and make registration in the registration office and to represent and sign on behalf of all Trust members. The said R.Elangovan/A1 was given sole authority to run the Trust as Managing Trustee by amendment, dated 24.01.2020 in document No.2 of 2020. In the course of time, the said R.Elangovan/A1 had run the Trust with his family members. Prior to R.Elangovan/A1 becoming member of the Trust, the Trust was holding 17 acres of land. After R.Elangovan taking over the incharge of the Trust, he has accumulated above 234 acres of land during the period from 2017 to 2021. Further, the Trust has obtained building permission from the Assistant Director of Town and Country Planning, Trichy for constructing buildings to the extent of 14757.94 sq.mts for running MIT College of Agriculture and Technology. Further, there have been some more construction of new buildings for running MIT Arts and Science College for Women, MIT Bodhi Vidhyalaya CBSE School, MIT School of Nursing and MIT Center for Health Inspector and Boys Hostels and Cafeteria. The said constructions were started even prior to obtaining the permission and approval from the concerned authorities.



16.It is further submitted that huge sums of ill-gotten money invested on the College and Institutions of the Trust. Hence, it is necessary to find out the actual constructed area of the buildings, its value as well as the funds generated by the Trust through Donors/Voluntary Contribution/borrowing (through secured and unsecured loans) for constructing the same and to workout the disproportionate assets. Hence, it has become necessary to evaluate the buildings of the Trust and also to trail the funds generated by the Trust. To unearth the above details, evaluation of newly constructed Trust buildings through the Executive Engineer of PWD is necessary. He further submitted that the notice was served to R.Elangovan/A1 on 26.08.2022 and to his son E.Praveen Kumar/A2 on 24.08.2022 for the proposed evaluation on 30.08.2022. The said R.Elangovan/A1 citing semester examinations, dated 29.08.2022 requested to conduct the evaluation during holidays i.e., between 01.10.2022 and 08.10.2022. The Executive Engineer, PWD (C&M) proposed to conduct the evaluation on 11.09.2022 and notices were again served to both R.Elangovan/A1 and E.Praveen Kumar/A2. On 10.09.2022, one N.Arun, one of the Trustee of the Trust, the petitioner, through Mr.S.Sathish, Advocate by letter, dated 10.09.2022 requested to defer the above action and to afford him an opportunity to respond. It is was informed



that already notices in this regard were served to the Managing Trustee R.Elangovan and the Vice Chairman E.Praveen Kumar of the Trust. On 11.09.2022, the Executive Engineer, PWD (C&M), Trichy and his team came prepared for evaluating the Trust buildings in the presence of R.Elangovan, the petitioner and yet another Trustee. The said Advocate Mr.S.Sathish submitted another petition to defer the action informing that the petitioner needs to consult the other Trust members and requested time till 16.09.2022 and agreed for evaluation of the building from 17.09.2022 onwards. After getting concurrence, a proceedings was drawn by the Investigating Officer in presence of the Executive Engineer, PWD, R.Elangovan, Managing Trustee, who signed the proceedings in the capacity of the Managing Trustee of the Trust.

17.He further submitted that the said N.Arun, in his letter to the respondent, dated 10.09.2022 and 11.09.2022 admitted that they have received the summon asking them to provide certain information and further added that detail reply in this regard follows. Hence, the contention of the petitioner that the Trust members were not served with the notices and summon, is not proper and not sustainable. The notices, under Section 91 of Cr.P.C., were addressed to the Managing Trustee of the Trust and the same



was served on 30.08.2022 to the Vice Chairman. He further submitted that

the above case pertains to disproportionate assets amassed by R.Elangovan/A1 in his name and in the name of his family members and others and the information is that ill-gotten money has been diverted and invested to the College and Institutions being run by the Trust. Hence, the respondent Police needs to collect details from the Trust, which in its exclusive possession and that would facilitate to arrive at a just conclusion in the ongoing investigation. The said R.Elangovan and his son E.Praveen Kumar agreed for evaluation of the building and to submit documents. On the contrary, through N.Arun, the Trustee/petitioner, have filed these petitions as though their right under Article 20(2) of the Constitution of India is being infringed. Further, the evaluation of building is not in violation of Vigilance Manual. He further submitted that the evaluation of the building is part of the investigation in case of disproportionate assets which cannot be termed as compulsory extractions of incriminating statements or communications and violation of Article 20(3) of the Constitution of India. He further submitted that to bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. In support of his submission, the learned



Government Advocate (Criminal Side) relied on the decision of the Hon'ble Apex Court in the case of “***State of Bombay Versus Kathi Kalu Oghad and others reported in AIR 1961 SC 1808***”, wherein the Constitutional Bench had given guidelines in this regard.

18.This Court considered the rival submissions and perused the materials available on record.

19.A case in Crime No.17/AC/2021 has been registered, for offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988 and 13 r/w 13(2) r/w 13(b) of the Prevention of Corruption Act, 1988 as amended in 2018, against R.Elangovan/A1, former President of Salem Central Cooperative Bank and Chairman of Tamil Nadu State Apex Cooperative Bank and his son E.Praveen Kumar/A2, Vice Chairman of M/s.Swamy Ayyappan Education Trust for holding disproportionate assets to the tune of Rs.3,78,31,755/- during the check period between 01.04.2014 and 31.03.2020. During the check period, the said R.Elangovan/A1 was the Trustee of the Trust and thereafter, Managing Trustee. His son A2 was the



Trustee and thereafter, Vice Chairman of the Trust. A1's wife, his daughter-in-law and his close acquaintance have become Trustees during the relevant period. It is to be seen that the Trust initially was holding 17 acres of land, which swelled into 234 acres during the relevant period. Initially, construction of MIT College of Agriculture and Technology in Mangalam Village in S.F.Nos.66/2, 3A, 3B, 71/2 & 71/3 Mangalam Panchayat, Thathaiyengar Pettai Panchayat Union, Musiri Taluk, Trichy District was done. Thereafter, additional constructions of new buildings for running MIT Arts and Science College for Women, MIT Bodhi Vidhyalaya CBSE School, MIT School of Nursing and MIT Center for Health Inspector and Boys Hostels and Cafeteria are done.

20.The petitioner is a Trustee and member of the Trust. A1 is the Managing Trustee/Chariman and A2 is the Vice Chairman, against whom investigation under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and 13(2), 13(1)(e) of the Prevention of Corruption Act, 1988 and 13 r/w 13(2) r/w 13(b) of the Prevention of Corruption Act, 1988 as amended in 2018 is in progress. Section 13(1)(e) of the Prevention of Corruption Act, 1988 defines '*if a public servant or any person on his behalf, is in possession or has, at any time during the period of his office,*



been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income'. Hence, it is imperative on the accused person to satisfactorily account all pecuniary resources or property disproportionate. The specific case of the prosecution is that several hundred acres of land were purchased in the name of the Trust and thereafter, construction of several huge building incurring heavy expenditure. Hence, the sources for purchase of the land and for construction of buildings necessarily to be ascertained and verified, for this purpose, calling of documents from the Trust and evaluating the buildings, are imperative. In this case, the Managing Trustee of M/s.Swamy Ayyappan Educational Trust received the notice under Section of Cr.P.C., but failed to respond the same.

21In the case of “***Abraham Memorial Educational Trust and others Versus C.Suresh Babu reported in 2012 (5) CTC 203***”, it is held that the Public Charitable Trust falls within the definition of a person. It is relevant to extract paragraph Nos.22, 23, 26 & 27 held as follows:-

“22.Now, let us examine the question as to whether such a Public Charitable Trust has been recognised as a juristic person for the purpose of Negotiable Instruments Act.



The term person has not been defined in the Negotiable Instruments Act. Therefore, one has to again look for the definition in the General Clauses Act. Section 2(42) of the General Clauses Act defines the term 'person' as follows:

“Person” shall include any Company or association or body of individuals, whether incorporated or not.”

Similarly Section 11 of the Penal Code, 1860 also defines the term 'person' as follows:

“Section 11. “Person”.— The word “person” includes any Company or Association or body of persons, whether incorporated or not.”

23. Undoubtedly, in both the enactments, the definition is inclusive. It is a well settled law, if the Legislature has used only an inclusive definition, the list enumerated in the definition clause shall not be treated as exhaustive. Applying the Doctrine of “ejusdem generis” and going by the purpose and context, while interpreting the definition clause, it is for the Court to bring in any other similar artificial person into the ambit of the term 'person' as made in Section 3(42) of the General Clauses Act and Section 11 of the I.P.C. It is, of course true, that the term 'Trust' has not been expressly included in Section 2 of the General Clause Act. As we have already noticed, a Trust enjoys various rights and discharges various obligations like that of other institutions enumerated under Section 2(42) of the General Clauses Act, as well as, Section 11 of the Penal



Code, 1860. Therefore, applying the Doctrine of ejusdem generis, I have no hesitation to hold that a Public Charitable Trust falls within the definition of the term 'person' as defined in Section 11 of the Penal Code, 1860 and Section 3(42) of the General Clauses Act.”

“26.At this juncture, we may notice that all the enactments including Negotiable Instruments Act, herein above referred to/dealt with are pre-Constitutional enactments which came into being during colonial period, but adopted subsequently. The Constitution of India, which is a vibrant document under whose authority and recognition these enactments have to march forward, tacitly, has recognised an artificial person like a Public Trust as a juristic person. This is evident from the fact that certain Constitutional rights have been given to such artificial persons. For example, Article 300-A speaks of right to property as follows:

*“Article 300-A. Persons not to be deprived of property save by authority of law.—
No person shall be deprived of his property save by authority of law.”*

Under this Article, right to own property has been given to all persons, which include a Public Trust as well. Under the Transfer of Property Act, right to transfer of such property by a Public Trust has been recognised. Thus, in the



post Constitutional scenario, a Public Charitable Trust has been unequivocally recognised as a juristic person.

27.From the foregoing discussions, it is manifestly clear that the moment a Trust (organisation) is formed with an obligation attached to the same, an artificial person is born and because such artificial person is recognised by law, conferring upon such artificial person right to own property, to enjoy certain other rights and also to discharge certain obligations, it attains the status of a “juristic person”. Thus, a Trust, whether private or public, is a juristic person who can sue/be sued or prosecute/be prosecuted.”

22.Further, in ***Abraham Memorial Educational Trust*** case (cited supra), it had held that '*the Trusts, either public or private, which are created by the founder/founders, there can be no controversy that such Trusts have been recognized by law and the society as juristic person.'*

23.Admittedly, the Trust is not named as accused in the FIR in Crime No.17/AC/2021. This being so, the objection of the petitioner for issuance of summon and notices calling upon the Trust to provide documents, is not sustainable.



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24.As regards evaluation of Trust buildings, there cannot be any objection, if a person is an accused or not an accused. A case of disproportionate asset has been registered against R.Elangovan/A1, a Public Servant and his son E.Praveen Kumar/A2 and the investigation is in progress. It is relevant to extract Section 2(h) of Cr.P.C:-

“(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.”

25.Thus, during investigation, collection of evidence by the Investigating Agency cannot be interfered with. The petitioner's contention that evaluation of building and other immovable properties of public servant can alone be carried out and not of others, particularly, the Trust, is not proper. In this regard, the learned Senior Counsel relying on the paragraph Nos.73 and 81 of the Vigilance Manual, is not sustainable. The Vigilance Manual is only an internal instructions for the purpose of conducting investigation in a case of evaluation of building. The evaluation of building is an important criteria to workout disproportionate assets of the accused. The



investigation is after all collection of evidence and materials, which cannot be thwarted or objected citing internal instructions. Hence, the investigation to be carried out as per Chapter XII of Code of Criminal Procedure and as per provisions of Prevention of Corruption Act, 1988. Further, the statutory presumption is against the person, who is in possession of disproportionate assets. It is the duty of the Investigating Officer to conduct investigation in the manner it requires, of course, following the procedures contemplated under law.

26.In view of the above discussions, this Court comes to the conclusion that the investigating officer, taking steps for evaluation of building, that to, in a case of disproportionate asset, cannot be objected. Hence, evaluation of buildings of the Trust by the officials of the Public Works Department in presence of witnesses, is proper and the same cannot be objected. The petitioner can participate in the same if he desires so.

27.In the result, all the Writ Petitions lack merit for consideration and hence, the same are deserved only to be dismissed and, are dismissed.



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Consequently, the connected Miscellaneous Petitions are closed. No costs.

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11.10.2022

Index : Yes/No
Internet: Yes/No

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To

1.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
½, Kamatchiamman Kovil Street,
Karungalpalayam,
Erode, Tamil Nadu – 638 003.

2.The Public Prosecutor,
High Court, Madras.



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W.P.Nos.24785, 24788 & 25535 of 2022

M.NIRMAL KUMAR, J.
vv2

PRE-DELIVERY ORDERS IN
W.P.Nos.24785, 24788 & 25535 of 2022

11.10.2022