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O.S.A.Nos.17, 81, 128 and 222 of 2022

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.09.2022

DELIVERED ON: 28.04.2023

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

O.S.A.Nos.17, 81, 128 and 222 of 2022

and C.M.P.Nos.1874, 5850, 13443, 13534 & 13540 of 2022

O.S.A.No.17 of 2022

Mr.S.Jayachandran

...Appellant

vs.

1.Justice P.Shanmugam (Retd.). (Deleted)

Interim Administrator,

Pachaiyappa's Trust,

Pachaiyappa's College Campus,

Chennai – 600 030.

2.The Advocate General,

High Court of Madras,

Chennai – 600 104.

3.Mr.S.Arunagiri

4.Mr.V.Ramanathan

5.Mr.K.Hemanath



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6.Mr.R.Prabhakaran

7.Mr.V.Durai Mohan

8.Administrative General and

Official Trustee of Tamil Nadu,

High Court Campus, Chennai – 600 104.

(R1 deleted and vide Court order dated 13.04.2022

made in CMP.No.6485/2022 in OSA No.17/2022)

(R8 is impleaded as party respondent vide Court

order dated 13.04.2022 made in CMP.No.6486/2022

in OSA No.17/2022)

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule (1) of the Original Side Rule r/w Clause 15 of the Letters Patent Appeal, to set aside the Judgment and Decretal Order dated 30.11.2021 passed in Application No.2416 of 2019 with costs.

O.S.A.No.81 of 2022

Mr.R.Prabhaakaran

...Appellant

vs.

1.Justice P.Shanmugam (Retd.).

Interim Administrator,

Pachaiyappa's Trust,

Pachaiyappa's College Campus,

Chennai – 600 030.

2.The Advocate General,

High Court of Madras,

Chennai – 600 104.



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3.Mr.S.Arunagiri

4.Mr.S.Jayachandran

5.Mr.V.Ramanathan

6.Mr.K.Hemanath

7.Mr.V.Durai Mohan

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule (1) of the Original Side Rule r/w Clause 15 of the Letters Patent Appeal, against the Order and Decretal Order dated 30.11.2021 passed by the learned Judge in Application No.2416 of 2019 as a common order under on the file of the ordinary original civil jurisdiction.

O.S.A.No.128 of 2022

Dr.A.Srinivasan

...Appellant

vs.

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

2.Pachaiyappa's Trust Board,
rep. by Interim Administrator,
Thiru Justice P.Shanmugam,
Former Judge, High Court of Madras,
Office at Pachaiyappa's College Campus,
113, Harrington Road, Aminjikarai,
Chennai – 600 030.



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3.The Administrative General and
Official Trustee, High Court,
Chennai – 600 104.

4.Muhurtham Event Management Pvt. Ltd.,
rep. by M/s.Ravishanker and
N.Meenakshi Sundaram,
No.12, Plot No.4, 1st Main Road,
Thirupathi Nagar, Kolathur,
Chennai – 600 099.

5.Dr.R.Parabhaakaran

6.Mr.V.Ramanathan
Pachaiyappa's Trust Board,
Pachaiyappa's College Campus,
Poonamallee High Road,
Aminjikarai,
Chennai – 600 030.

7.Mr.V.Durai Mohan

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule (1) of the
Original Side Rule r/w Clause 15 of the Letters Patent Appeal, against the
Order and Decretal Order passed by the learned Judge dated 30.11.2021
made in A.No.1749 of 2019 and to set-aside the same.



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O.S.A.No.222 of 2022

S.Doraisamy

Advocate

YMCA Buildings,

N.S.C.Bose Road,

Chennai – 600 001.

...Appellant

vs.

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

2.Pachaiyappa's Trust Board,
rep. by Interim Administrator,
Thiru Justice P.Shanmugam,
Former Judge, High Court of Madras,
Office at Pachaiyappa's College Campus,
113, Harrington Road, Aminjikarai,
Chennai – 600 030.

3.Dr.R.Prabhaakaran

4.Mrs.A.Shanthi
Associate Professor,
C.K.N. College for Women,
Cuddalore,



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5.S.Jayachandran

Pachaiyappa's Trust Board,
Pachaiyappa's College Campus,
Poonamallee High Road,
Aminjikarai,
Chennai – 600 030.

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rule r/w Clause 15 of the Letters Patent Appeal, against Common Order in A.No.10097 of 2018 in O.A.No.283 of 2018 dated 30.11.2021 of the learned Single Judge.

For Appellant : Mr.G.Murugendran in O.S.A.No.81/2022
and for 6th Respondent in O.S.A.No.17/2022
and for 3rd Respondent in O.S.A.No.222/2022
and for 5th Respondent in O.S.A.No.128/2022

Mr.R.Sankaranarayanan, Senior Counsel
for Mr.K.Gowtham Kumar in O.S.A.No.17/2022
and for R5 in O.S.A.No.222/2022
and for R4 in O.S.A.No.81/2022
and for R6 & R7 in O.S.A.No.128/2022

Mr.S.Doraisami, Senior Counsel
for Mr.Muthumani Doraisami in O.S.A.No.128/2022
Mr.S.Doraisamy, party-in-person in O.S.A.No.222/2022



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For Respondents : Mr.R.Shanmugasundaram, Advocate General

Assisted by Mr.A.Edwin Prabhakar

Special Government Pleader

and for R2 in O.S.A.Nos.17 & 81/2022

and for R1 in O.S.A.No.222/2022

and for R1 in O.S.A.No.128/2022

Mr.M.S.Krishnan, Senior Counsel

for Mr.Guru Dhananjay for R4 in O.S.A.No.128/2022

Mr.N.R.Elango, Senior Counsel

for Mr.S.Sai Shankar for impleading respondent

Mr.E.V.Chandru for R2 & R3 in O.S.A.No.128/2022

and for R8 in O.S.A.Nos.17 & 81/2022

COMMON JUDGMENT

(Judgment of the Court was delivered by T.RAJA, ACJ.)

The issue in the Intra Court Appeals is mainly concerned with the Management of Pachaiyappa's Charitable Trust (hereinafter referred to as Trust).

2.A philanthropist Pachaiyappa Muthaliyar had executed a Will in the year 1794 divesting his properties to various charitable purposes. Consequent to his death, the properties and the charities were managed by the executors of the Will. As dispute arose, the matter was seized by the



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then Supreme Court of Madras which had passed 4 decrees, 1st on 03.02.1826, 2nd on 23.10.1832, 3rd on 30.10.1832 and 4th and final decree on 06.08.1841. By the fourth and final decree, the then Supreme Court of Madras had held that the performance of charities in the Provinces should be under the direction of the Revenue Board, as provided by Regulation VII of 1817. Thereafter, the Revenue Board had framed a scheme and also rules for better management of the properties and the charities under the Will of Trust on 28.04.1842. The said scheme was again subject matter of applications before this Court and by order dated 12.02.1909, 19.07.1920, 16.07.1963, 04.01.2007 and 14.08.2008 and based upon the order passed thereon, the scheme underwent certain modifications. The last modification was made by the Division Bench of this Court in Intra Court Appeal Nos.47 and 58 of 2007 dated 24.09.2008 and by way of an application in O.A.No.283 of 2018, an injunction was sought for restraining certain individuals from calling for and conducting elections for the offices of the Trust. The said application along with Application No.2624 of 2018 had been disposed of by a learned Judge of this Court by order dated 14.06.2018 by appointing an Interim Administrator.



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3.Learned Interim Administrator had filed four detailed interim reports as to various aspects regarding the Trust. Various applications came to be filed before this Court seeking various reliefs including conducting of elections to the Trust, modifications of certain Clauses in the scheme made by the Division Bench. An application with regard to two of the Arangams viz., Anna Arangam and Amma Arangam had also been brought up by some of the members of the Trust. All these applications were taken up by a learned Judge and by order dated 18.12.2019 was inclined to dispose of all the applications with the following:

(a) The argument before Hon'ble Division Bench was without following Section 92 CPC route, whether such applications could have been filed. Hon'ble Division Bench observed that it could have been filed in terms of Section 92 CPC. The modifications sought by the applicants are in the nature of introducing totally new clauses for PCT. The substantive modifications / amendments are going to change the entire structure of bylaws and they should pass the test of section 92. If at all this court comes to a conclusion that modifications are necessary, then this court can pass orders with regard to electoral aspects. The applications for modifications are to be dismissed.

(b) No new material or pleadings are made. Paragraphs 109 and 111 of Hon'ble Division Bench order was adverted to, it was submitted that learned Advocate General is part of the scheme and therefore, there is no necessity that there should be a tenth person



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

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

(d) Modifications were never considered necessary from 2013 and no new material different from the one placed before Hon'ble Single Judge earlier which formed part of material placed before Hon'ble Division Bench was placed before this court to revisit the scheme. If it has to be done, it has to be done under section 92 CPC. Auditors appointed by this court earlier have approved the accounts and on this basis, returns have been filed. An opportunity to defend the case has to be given, necessary documents are to be proved by recording evidence and respondents may have to enter the box to explain / defend their cases.



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

4.The said order was challenged by way of an Intra Court Appeal and a Division Bench of this Court by order dated 23.12.2020 had allowed the Intra Court Appeal by setting aside the judgment of the learned Judge dated 18.12.2019 with various directions and observations and remitted the applications back to the learned Single Judge. The directions issued by the Division Bench of this Court would be pertinent to be noted and the same are extracted hereunder:

133.We remit the matter to the learned Single Judge with a request that the learned Single Judge will have to revisit the matter in the light of the observations made herein above broadly in respect of the three issues of dispute that have been raised, namely, (i) the election of the Board of Trustees; (ii) the examination of the reasons and the need to modify the scheme if at all required; and (iii) the procedure, the form and substance of proceedings relating to the maladministration, mismanagement, managerial fraud or malfeasance arising out of the allegations made particularly with



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regard to the lease having been extended for being utilized for commercial purposes. There are other financial and administrative issues also referred to with regard to which allegations and counter allegations have been made, which may also have to be gone into provided such issues are raised in accordance with the procedure prescribed by law and in the event the same is found entertainable, then the examination thereof as per the settled procedure relating to trusts and disputes of the present nature.

134.We may, however, point out that the interim reports of the Administrator have alleged financial improprieties, but we find that the same is based on some reports that have been entertained by the Interim Administrator. In this regard, in our opinion, it would have been more appropriate for the learned Single Judge to have appointed an independent auditor/accountant to have probed into such allegations and in case an appropriate foundation was laid for the same on the basis of evidence available to forensically examine the correctness or otherwise of such allegations. The learned Single Judge having not done that has accepted the reports of the Interim Administrator to be correct in spite of objections having been taken to such allegations in the counter affidavits filed by the appellants.

135.Apart from this, we find that the learned Administrator has himself moved an affidavit in August, 2020 requesting that he may be relieved of his duties as an Interim Administrator. We accept this request and we relieve the Interim Administrator of his responsibilities and duties as desired by him. However, in order to ensure that the trust properties are managed properly, we direct that the entire management of the Pachaiyappa Trust shall now be



taken over by the Administrator General and Official Trustee of the Madras High Court, who shall in consultation with the Advocate General of the State take appropriate steps for administering the trust and its properties till the learned Single Judge finally decides the matter.

136.We may clarify that there were allegations and counter allegations with regard to the appointment of teaching staff, including Principals, in the institutions managed by the trust. The appointment of the teaching staff by the Board of Trustees and the management was questioned and to some extent it was undone by the Interim Administrator, and that was challenged in separate proceedings. On the other hand, the appellants have alleged that the Interim Administrator after taking over has made appointments that of Principal and other staff which was beyond his authority and is not in accordance with law. These issues have already been challenged in separate proceedings or may be subjected to challenge otherwise, with which we are not dealing with in the instant appeals. Accordingly, such issues relating to appointments or otherwise in the educational institutions and even for the purpose of managing the trust are left open to be decided in appropriate proceedings. The question of any de jure or de facto powers being exercised by the Interim Administrator in respect of such appointments shall be open to challenge and scrutiny in appropriate proceedings.

137.The matter shall now be listed before the learned Single Judge to whom the matter may be entrusted in accordance with the directions of the Chief Justice on the administrative side, with a



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request that the Bench concerned may proceed to examine and dispose of the matter expeditiously, preferably within three months.

5.On remittance, a learned Judge had passed orders on 30.11.2021 after hearing the respective parties. Learned Judge has deduced four issues, based upon the observations and directions of the Division Bench, as extracted hereunder:

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

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

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

(iv) financial and administrative issues qua PCT where allegations and counter allegations have been made in captioned applications to be gone into in accordance with the procedure prescribed by law and what would be adherence to settled procedure relating to disputes of this nature.

6.Heard Mr.G.Murugendran, learned counsel for the appellant in O.S.A.No.81 of 2022 as well as for R6 in O.S.A.No.17 of 2022, for R3 in



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O.S.A.No.222 of 2022 and for R5 respondent in O.S.A.No.128 of 2022 and Mr.R.Sankaranarayanan, learned Senior Counsel for Mr.K.Gowtham Kumar, learned counsel for the appellant in O.S.A.No.17 of 2022 as well as for R5 in O.S.A.No.222 of 2022, for R4 in O.S.A.No.81 of 2022 and for R6 & R7 in O.S.A.No.128 of 2022 and Mr.S.Doraisami, learned Senior Counsel for Mr.M.Muthumani Doraisami for appellant in O.S.A.No.128 of 2022 and Mr.M.S.Krishnan, learned Senior Counsel for Mr.Guru Dhananjay, learned counsel for R4 in O.S.A.No.128 of 2022. Mr.E.V.Chandru, learned counsel for R2 & R3 in O.S.A.No.128 of 2022 as well as R8 in O.S.A.Nos.17 & 81 of 2022 and Mr.N.R.Elango, learned Senior Counsel for Mr.S.Sai Shankar for impleading respondent in O.S.A.Nos.17 & 81 of 2022 and Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.A.Edwin Prabhakar, learned Special Government Pleader for R2 in O.S.A.Nos.17 & 81 of 2022 as well as for R1 in O.S.A.Nos.222 & 128 of 2022 and Mr.S.Doraisamy, party-in-person for appellant in O.S.A.No.222 of 2022.

7.It is to be noted that the main contention raised by the respective counsels, both before the learned Judge as well as before us, was to how a scheme that has been framed in respect of a Public Charitable Trust could



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be made by simpliciter applications to the decree passed by the then Supreme Court of Madras or had it to be by way of a suit to be instituted under Section 92 of C.P.C., 1908. It was observed by us that the arguments made before us were similar to the arguments that had been advanced before the learned Judge who had in detail extracted the contentions of the respective counsels in the respective applications. Hence for brevity, we do not propose to extract the contentions of the respective counsels before us.

8.Learned Judge after analysing various aspects in issue had held that a modification of a scheme could be made only under Section 92 C.P.C. To arrive at such a conclusion, the learned Judge had held that the allegations and counter allegations by the respective parties by applications could not be decided summarily. Only by way of evidence that could be gone into in a full trial. It was also held that if it is to be made by way of an application, this Court would be flooded with applications by individual members, but whereas when a suit is to be instituted it has to be instituted, by minimum two persons having common object and such suit could only be instituted either by the permission from the learned Advocate General or by filing an



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application of leave to sue before this Court.

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9.The reliance placed upon a judgment of the Hon'ble Apex Court in Raje Anandrao's case was distinguished by the learned Judge by analysing the said judgment and have distinguished it by holding that in the aforesaid judgment, a scheme framed under Section 92 provided a Clause for modification of the scheme by way of an application. Therefore, he had held that the applications cannot be a source of modification of a scheme.

10.We are in full agreement with the findings and reasonings of the learned Judge on that aspect. We would also further wish to add one other reason to hold that the modification of a scheme could only be by way of a suit under Section 92 C.P.C., in respect of the Trust in issue.

11.It is an admitted case that the then Supreme Court of Madras as early as in the year 1826 to 1841 had passed four decrees in respect of properties and charities of Pachaiyappa Muthaliyar given under his Will of the year 1794. It is further pertinent to note that by the fourth decree dated



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06.08.1841 had issued directions that the charities should be under the directions of the Revenue Board as provided under regulation VII of 1817.

12.It is also an admitted fact that the Revenue Board had also issued proceedings dated 28.04.1842, wherein after extracting the detailed reports of the Master and the learned Advocate General of this Court and the various directions issued by the then Supreme Court of Madras based on such report and considering the circumstances prevailing then, had framed a detailed scheme as well as rules for management of the Trust. It would be relevant to note that while framing the said scheme, the Board of Revenue held that the Management of the Trust should be “***Subject nevertheless to the general Superintendence of the Board of Revenue of Fort Saint George as provided by the said Regulation VII A.D of 1817, or any future act or Regulation of Government to be made in such behalf, and to all and every the provision of such acts Regulations***”.

13.It is also an admitted fact that when the Board of Revenue had passed the said order, the Civil Procedure Code, 1908 was not in existence. The said statute had come into force only in the year 1909. The Civil



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Procedure Code under the provisions of Section 92 provides for a superintendence of a Public Charitable Trust. Hence, these reasonings could also be taken into account to strengthen the view of the learned Judge, as the scheme framed by the Board of Revenue has in clear terms indicated that the superintendence of the Trust would be subject to any future Act.

14.Having come to the conclusion that a scheme/Management of the Trust could only be visited by invoking Section 92 of Civil Procedure Code, whether the learned Judge was right in holding that as regards to the issue 1 and 2 modifications could be made in the applications as a one time measure taking into the exigencies, will have to be analysed.

15.Learned Judge had given three reason as to why he had as a one time measure seeks to modify the schemes as regards to issues 1 and 2 alone.

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



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then learned Judge, firstly was not in conformity with the provisions of Section 92 of Civil Procedure Code, 1908.

(b) The Division Bench had held that the learned Judge had overlooked the binding effect of the judgment dated 24.09.2008 of the then Division Bench.

(c) The Division Bench in its order dated 23.12.2020 had held that the learned Judge has modified the scheme by a summary procedure, denying the opportunities which had caused serious prejudice to the appellants therein.

17.It is pertinent to note that the election to the Board of Trustees has been envisaged under the scheme by the Board of Revenue as early as in the year 1842 and the scheme has been modified time and again by various orders of this Court till the year 2008. Learned Judge having come to the conclusion that a scheme could be modified only by invoking Section 92 of Civil Procedure Code ought not to have transgressed his own decision and modified the scheme in respect of conducting of elections by modifying certain eligibility conditions which had been part of the scheme as modified by a Division Bench in its judgment of the year 2008. Further, the decision



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of the learned Judge and the reasoning given in support of such a decision is also in contravention of the observation made by the Division Bench in its order dated 23.12.2020.

18.In the light of the aforesaid reasonings, we are unable to sustain the order of the learned Judge in respect of issue Nos.1 and 2. The Trust is being presently managed by AGOT of this Court in consultation with the learned Advocate General. Considering the responsibilities and the functioning of both the offices of AGOT and the learned Advocate General, we are of the view that a Trust shall be administered by a former Hon'ble Judge of this Court. Therefore, we appoint Hon'ble Mr.Justice.S.Jagadeesan, a retired Judge of this Court, as Administrator of the Trust. Learned Administrator shall take over the charge from the AGOT forthwith. Learned Administrator shall consider various applications that were dealt with by this Court which had culminated to the present Intra Court Appeal and also issue a general publication calling upon the members of the Trust as to their views on the existing scheme as framed by the Division Bench of this Court in its order dated 24.09.2008 and shall take appropriate steps in respect of framing a scheme to the Trust if it is found necessary. We leave it open to



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the learned Judge Administrator to do the needful for the Pachaiyappa Trust by holding election to the office bearers and also leave it open to fix-up his remuneration as the Judge Administrator deems fit.

19.Now coming to the next issue viz., the prayer for cancellation of registered Lease Deed in respect of Anna Arangam and Amma Arangam are concerned, the learned Judge had not decided the issue, however, had relegated the parties to a suit to be filed in this regard.

20.We find no error in the order of the learned Judge in relegating the parties to a suit.

21.A perusal of the application filed by the applicant in that regard would show that the lease had been given pursuant to the offer received based upon a tender invited by the Trust. The applicant had also relied upon a Report filed by the Interim Administrator in respect of the said two Arangams. He had also alleged various violations of permission from the Housing Board, the Pollution Control Authority, the Directorate of Collegiate Education for construction of Arangams and the permission of



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this Court to grant lease of the Trust property. He would allege that the Trust could not have ventured upon into a commercial activity which would affect the interest of the Trust. He had also alleged that the Trust is incurring a loss by leasing out the same to a private organization. From the reading of the affidavit, there has been no complaint of maladministration or malice in the granting of lease by way of registered instrument which was sought to be cancelled.

22.At this juncture, it is useful to refer to the judgments of the Hon'ble Apex Court in *Charan Singh and Another vs. Darshan Singh and Others* (1975 (1) SCC 298) and *Vidyodaya Trust vs. Mohan Prasad R and Others* (2008 (4) SCC 115), wherein the Hon'ble Apex Court in clear terms had held that when a declaration of individual or personal right or the personal right of any other person is sought to be questioned in respect of a Trust, then it will not have the character of Section 92 CPC. In view of such declaration of law by the Hon'ble Apex Court, the application filed by the applicant would not be maintainable. He may file an independent suit seeking for such a relief. Hence, we do not find any infirmity with the order of the learned Single Judge in that aspect.



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23.In fine, the appeals are disposed of in the above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed, if any.

(T.R., ACJ.) (K.B., J.)
28.04.2023

Index: Yes/No

Speaking Order:Non-Speaking Order
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To

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

2.Administrative General and
Official Trustee of Tamil Nadu,
High Court Campus, Chennai – 600 104.



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T.RAJA, ACJ.
AND
K.KUMARESH BABU, J.

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Pre-delivery Common judgment in
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28.04.2023