
(1990) 03 MAD CK 0079
In the Madras High Court

A.M. Shamsudeen and Others		APPELLANT
	Vs	
The Dist. Judge and Others		RESPONDENT

Date of Decision : 05-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (1990) 2 MLJ 461

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—These 12 Civil Revision Petitions (except C.R.P. No. 3127 of 1989) are preferred under Article 227 of the

Constitution of India, challenging the appointment of trustees for the Trust called M.K.N.Madarasa of Adiramapatnam by the learned District

Judge, West Thanjavur of Thanjavur in O.S. No. 21 of 1952 as modified as S. No. 6 of 1970, dated 5.9.1989.

2. C.R.P. No.3127 of 1989 is filed for transferring the proceedings on the file of the first respondent herein, relating to the appointment of trustees

for the trust M.K.N. Madarasa of Adiramapatnam.

3. The Trust which is the subject matter of these petitions known as M.K.N. Madarasa of Adiramapatnam is a Muslim Trust with large

endowments created by one Haji Khader Mohideen Maracair and his three brothers under two deeds of endowment dated 16.12.1900 and

6.4.1901. Under the said deeds, the four donors constituted themselves as trustees for life and it was intended that their successors in their male line

should be hereditary trustees one from each of the three branches in the male line. As one of the brothers, namely, Haji Khader Mohideen

Maracair died without male issue, the endowments were managed by the three brothers and after their death by their respective eldest sons. In the year 1943, some interested Muslims of that locality filed a suit in O.S. No. 16 of 1943 on the file of the District Court at West Thanjavur at Thanjavur for framing a scheme for the management of the trust and a scheme was also framed by the Court on 21.2.1945 setting up a Board of nine trustees, three of whom were to be hereditary, one from each of the three branches of the original donors and the remaining six to be non-hereditary trustees to be selected by the District Court. Under the said Scheme, the period of office of the trustees for both hereditary and non-hereditary was fixed as three years. When it was found that the said scheme could not work satisfactorily, necessity arose for the interference of the Court and O.S. No. 21 of 1952 came to be filed before the District Court, West Thanjavur at Thanjavur. A fresh scheme was framed by the District Court, Thanjavur in the year 1954. In the said Scheme, the former scheme was modified and one important clause in the modified scheme was that even regarding appointment of hereditary trustees, the District Court should have the power to select proper fittest person from each branch and the interest of the Trust was to be the main consideration in the matter of appointment of hereditary and non-hereditary trustees. It was made clear in the said judgment that the need was compelling, but it would have to be postponed for some time till the arrears due to the trust by some of the hereditary trustees were cleared, Later in the suit O.S. No. 6 of 1970 after framing necessary issues and after considering the evidence, a decree was passed modifying the scheme decree in O.S.N6. 21 of 1952 by providing certain new clauses. The learned District Judge came to the conclusion that necessity trustees should be appointed to hold office for life and non-hereditary trustees should be nominated for a term of five years apart from introducing certain provisions in the scheme. Against the judgment in O.S. No. 6 of 1970, Appeal Suit No. 992 of 1978 and Civil Revision Petition No. 119 of 1979 came to be filed before this Court and by judgment dated 5.8.1987, a Division Bench of this Court, consisting of Sathiadev, J. (as he then was) and Sivasubramaniam, J. fixed a period of three years for the office of both hereditary as well as non-hereditary trustees so that there may be uniformity in the appointment of trustees.

4. In view of this, a notice was issued under Clause 4(a) to (d) of the Decree dated 10.3.1954 in Original Suit No. 21 of 1952 of District Court,

West Thanjavur at Thanjavur as modified by the decree dated 30.8.1978 in Original Suit No. 6 of 1970 of District Court, West at Thanjavur and

further amended by the decree dated 5th August 1987 in Appeal Suit No. 992 of 1978 of this Court, calling for applications for the appointment

of five hereditary trustees, two from each of the first two branches in the direct male line of the Founder's line, the first being that of M.K.N. Naina

Mohamed Labbai Maracair, the second branch being that of M.K.N. Ahmed Thambi Maracair and one hereditary trustee from the third branch

being that of Haji M.K.N. Sheik Salath Labbai Maracair and three non-hereditary trustees from among the Muslim residents of the panchayat area

of Adiramapattinam other than members of the male line of the three branches of the Founders. It is also stated in the notice that the hereditary and

non-hereditary trustees will hold office for a term of three years and applications are accordingly invited from the members of the families of the

founders and others for the said eight posts. In view of the orders of this Court in C.M.P. No. 18382 of 1987 dated 12.8.1988 the said notice

was issued by the order dated 26.10.1988 in O.S. No. 6 of 1970 on the file of District Court, West Thanjavur, Thanjavur. It is also stated in the

said notice that persons who had already applied for the said posts in pursuance of the notice dated 28.10.1987 need not apply afresh. The time

fixed for the receipt of the application was on 28.11.1988. It is further stated that the applications received thereafter will not be considered on any

ground. It is further considered by the District Judge, West Thanjavur, in open court at 12.00 noon on 28.11.1988 and that all the applicants shall

appear in person or through counsel before the District Judge, West Thanjavur on that day with prima facie evidence of the particulars in their

applications and the applications of the applicants who do not appear before the District Judge at that time will not be considered for appointment

and their applications will be rejected. Clauses 3 and 4 of the said notice issued on 26.10.1988 reads as follows:

...3. Only persons between the age of 25 and 65 and not indebted to the Trust will be eligible to hold office as hereditary trustees.

4. The applicants for the posts of non-hereditary trustees should be persons of known reputation and character with public spirit and be of the age

group between 35 and 70 years and they should also possess one or more of the following qualifications:

(i) Assessment to Income Tax of more than Rs.100/- per year in the year next preceding the year of nomination.

(ii) Assessment to kist water charges etc. of Rs. 100/- or more per annum in respect of lands as pattadars under Government in the year preceding the Year of nomination.

(iii) Assessment of property tax of Rs.25/- in respect of buildings registered in his name in the panchayat. of Adiramapattinam during the half year

preceding the year of nomination;

5. Certain proceedings which took place prior to the above mentioned notice may be briefly stated here:

After the judgment of this Court in Appeal Suit No. 992 of 1978 dated 5.8.1987, one Naina Mohamed Thambi and Abdul Aziz have filed an

application in I.A.No. 146 of 1987 before the District Court, West Thanjavur, Thanjavur for the appointment of Six hereditary trustees and three

non-hereditary trustees making necessary publicity in the local newspapers, that the said application was adjourned from time to time and on all the

hearings it was stated that the District Judge was saying that the fifth respondent, one of the hereditary trustees of the fifth branch and who is the

present Secretary and Correspondent of the Trust has to again apply for appointment and that he could be continued. The said suggestion was

opposed by the parties and on 23.10.1987, the District Judge, West Thanjavur at Thanjavur had openly expressed that there is no need to pursue

the application, that he himself would take necessary steps to appoint six hereditary trustees and three non-hereditary trustees as per this Court's

judgment dated 5.8.1987 mentioned above, and that he will make publication in "Indian Express and Dinamani" which are the leading newspapers

in Adiramapaftinarn and Thanjavur area and accordingly I.A. No. 146 of 1987 was not pressed. On 3.11.1987, the then District Judge, West

Thanjavur at Thanjavur informed the advocates that the publication in the "Indian Express and Dinamani" are costly and hence publication could be

made in "Dinamalar" and "Dinathanthi". Alleging that the then District Judge was biased and he was in favour of the fifth respondent, who is one of

the trustees and the present Secretary and the Correspondent of the Trust at

that time, a transfer application was filed before this Court u/s 24 of the CPC with regard to the appointment of trustees in O.S. No. 6 of 1970 to the file of any other District Court. K.M. Natarajan, J. in C.M.P. No. 18382 of 1987, on 12.8.1988 passed an order holding that the petition for transfer u/s 24 C.P.C. is maintainable, but dismissed the Civil Miscellaneous Petition directing the District Judge to issue fresh publication if necessary in consultation with both parties in one of the issues of Indian Express and Dinamani calling for applications in addition to the application which were already received. After that, further publication was ordered in one issue of "Indian Express" and "Dinamani" calling for further applications in addition to the applications already received by the said Court for consideration and disposal. It was stated that the last date for receipt of the applications was 28.11.1988. It is this notice which has been extracted in the earlier portion of this order. It seems that Civil Revision Petition No. 3108 of 1988 came to be filed before this Court for the very same relief of transfer of the proceedings relating to the appointment of trustees from the District Court, West Thanjavur at Thanjavur to any other court of competent jurisdiction. 3y order dated 25.11.1988, Sivasubramaniam, J. dismissed the said Civil Revision Petition observing thus:

“½Considering the submissions made by the learned Counsel for the petitioners and the learned Advocate General and the peculiar facts and circumstances of the case, I find that ends of justice would be met by directing the learned District Judge to decide the question by himself. If the learned District Judge feels that he is a very close friend of the said Mohamed Mohideen, he shall not proceed with the matter so that justice may appear to be done and the parties may not have an apprehension that some injustice has been done to them because of such a friendship. On the other hand, if the learned District Judge feels that he is not such a close friend of the said Mohamed Mohideen which will deter him from dispensing justice, it is open to him to proceed further in the matter in accordance with law. The stand taken by the learned Counsel for the petitioners in this regard is certainly a matter to be appreciated and now the matter is left to the good sense of the learned District Judge, who shall discharge his responsibility according to his conscience.

After this, I.A. No. 184 of 1988 came to be filed in O.S. No. 6 of 1970 on the file

of the District Judge, West Thanjavur at Thanjavur u/s 151 of

CPC to prescribe the procedure for selection of trustees enclosing a copy of the order passed by Sivasubramaniam, J. in C.R.P. No.3108 of

1988 on 25.11.1988. The then learned District Judge, Thanjavur took up the petition to file on 28.11.1988 and passed the following order

The Petition is filed and taken up to-day. Affidavit and copy of order in C.P.P.No.3108 of 1988 dated 25.11.1988 of High Court, Madras filed

along with the petition perused. Counsel for the petitioner and all the counsels on behalf of the applicants for the post of Trustees present in this

Court in the matter were all heard at length. Order pronounced. This Court is inclined to address to the High Court for transfer of the matter to any

competent Court for appointment of Trustees. Hence the further proceedings of this matter cannot be gone into. Separate letter may be submitted

to the High Court. Consequently, further proceedings in this matter shall stand adjourned SINE DIE.

The learned District Judge wrote a letter administratively to this Court also. Another petition was filed for the very same transfer of the proceedings

relating to the appointment of trustees on the file of District Court, Thanjavur to any other Court of competent Jurisdiction. In transfer Civil

Miscellaneous Petition No. 15677 of 1988, which came to be filed before this Court and on 29.11.1988, K.M. Natarajan, J. passed the order

thus.

The learned Counsel for the petitioner submits that in view of the order passed by the learned District Judge, that the matter may be transferred to

some other District Judge, he is not pressing this petition. Hence this petition is dismissed as not pressed.

After this, the registry of this Court, by order M.F.59/89-Judl.dt. 4.7.1989, directed the present District Judge, West Thanjavur at Thanjavur to

take up the proceedings with regard to the appointment of Trustees for M.K.N. Madarasa, Adhiramapattinam, Thanjavur District, pursuant to the

Scheme decree passed in O.S. No. 21 of 1952 as modified in O.S.No.6 of 1970 on the file of District Court, Thanjavur. The present District

Judge ordered notice on 31.7.1988 stating that the applications will be considered in open court on 29.8.1989 at 12.00 noon. I find that

I.A.No.216 of 1989 has been filed by one Abdul Azeez to permit him to go

through the particulars of the applications and records of the applicants for the appointment of trustees on 22.8.1989. I find from the file that the present District Judge, West Thanjavur, at Thanjavur heard the counsel and permitted the said petitioner to peruse the records in the presence of Personal Assistant to District Judge of West Thanjavur between 3.30 p.m. and 5.30 p.m. on 22.8.1989. The Learned District Judge, West Thanjavur at Thanjavur heard the petitioner and their advocates. The learned District Judge, West Thanjavur at Thanjavur passed the impugned order on 5.9.1989 appointing two hereditary trustees from the first branch, two hereditary trustees from the second branch and one hereditary from the third branch and three non-hereditary trustees to the above mentioned Trust.

6. It is necessary to state the salient features of the scheme decree in O.S. No. 21 of 1952 as modified in O.S. No. 6 of 1970. The important clause with which we are concerned is Clause 4(a) of the scheme.

Clause 4 of the Modified Scheme Decree, which is relevant for the facts of the case, originally framed in the year 1954 stood thus:

...4(a) The Trust and its properties shall vest in body of 9 (nine) trustees to be selected as indicated below. Only persons between the ages of 25

and 65 and not being indebted to the Trust will be eligible to hold Office. The Trustees shall hold office for a period of three years subject to the

age limit of 65. (b) Out of the nine trustees, three shall always be from the family of the founders, one from each of the three branches in the direct

male line the first branch being that of M.K.N. Naina Muhammed Levvai Maracaiyar, the second branch being that of Haji M.K.N. Sheik Salath

Levvai Maracaiyar. The trustees shall be selected by the District Judge of West Thanjavur under the scheme as indicated below. Preference shall

as far as possible be given to the persons next senior in ages to the trustees existing for the time being.

(c) The other six trustees known as Non-hereditary trustees shall be nominated. once in three years by the District Judge of West Thanjavur for the

scheme from among the Muslim residents of the panchayat area of Adirampattinam other than members in the male line of the three persons of

known reputation and character impugned (b): The members to be nominated shall be branches of the founders mentioned in Sub-clause with

public spirit; and they should possess one or more of the following qualifications:

(i) Assessment to Income Tax of more than Rs.100/- per year in the year next preceding the year of nomination. (ii) Who are pattadars under

Government in respect of lands assessed at Rs. 100/- or more for kist, water charges etc. in the year preceding the year of nomination or who pay

a melwaram of not less than Rs.150/- in the year next preceding the year of nomination in the case of occupancy ryots; or who in the case of

inamdars, if they pay a sum of Rs.50/- by way of Code, quit rent and the like;

(iii) Assessment of property tax to the value of Rs.25/- and more in respect of buildings registered in his name, in the panchayat during the half year

preceding the year of nomination. -

(d)(i) The present trustees shall vacate the office of trusteeship now. However, they shall be eligible for re-nomination to the Board of Trustees to

be constituted hereunder if they are otherwise qualified,

(ii) The first Trust Board under this scheme will be reconstituted by this Court by appointing the hereditary and non-hereditary trustees and they

will begin to function from a date to be fixed by this Court. The newly constituted Board shall hold Office for a period of three years from such

date. The decision of this Court regarding the constitution of the first Board under this scheme shall be final as regards the inclusion or omission of

any member in the Trust Board subject solely to the Jurisdiction of the High Court u/s 115, Civil Procedure Code, and Articles 226 of the

Constitution of India (1950) and to the Jurisdiction of the Supreme Court under Article 32 of the Constitution of India (1950).

(iii) The Succeeding Boards of Trustees will be constituted in a similar manner by this Court under the scheme by Selection, both of the hereditary

and the non-hereditary trustees. The District Court shall take action in that behalf either suo motu or on application by any party interested

ordinarily three months before the term of office of any Board of Trustees is due to expire. The court shall give due publicity of the proposed

selection and invite applications. The Selection by the Court shall be final subject only to the powers of the High Court u/s 115, Civil Procedure

Code, and Article 226 of the Constitution of India and of the Supreme Court under Article 32 of the Constitution of India. In making these

appointments the court shall relate each appointment to the particular vacancy

concerned.

I. Clause 4(a) the trust and its properties shall vest in a body of nine trustees to be selected as indicated below. Only persons not being indebted

to the trust will be eligible to hold office as hereditary trustees.

b) out of the nine trustees, six shall be selected by the District Judge West Thanjavur as hereditary trustees. Two from each of the three branches in

the direct sex male line of founders' families, the first branch being that of M.K.N. Naina Mohammed Lebbai Maracair the second branch being

that of M.K.N. Ahamed Thambi Maracair and the third branch being that of Haji M.K.N. Salath Lebbai Maracair. The hereditary trustees shall

hold office for life.

c) The other trustees known as non-hereditary trustees shall be nominated for term of five years, by the District Judge, West Thanjavur under the

schemes decree, from the muslim residents of the panchayat area of Adiramapattinam other than members to the male line of the three branches of

the founders mentioned in Sub-clause (b). The members to be nominated shall be persons of known reputation and character impugned with the

public spirit and be of the age group between 25 and 70 years and they should also be in possession or more of the following qualifications.

(i) Assessment of income tax of more than Rs.100/- per year in the year next proceeding the year of nomination.

(ii) Assessment to kist enter charges etc of Rs.100/- or more per annum in respect of lands as petitioner under Government in the year preceding

the year of nomination.

(iii) Assessment to property tax to the value of Rs.20/- in respect of buildings registered in his name in the panchayat during the hold year

proceedings the year of nomination.

4(a) (i) The first set of hereditary and non-hereditary trustees under the amended scheme shall be appointed by the District Judge of West

Thanjavur, within three moths from this date in the manner prescribed in Clauses 4(b) and 4(c) Supra. The present Board of Trustees shall

continue in office till new trustees are selected and appointed. The decision of this Court regarding the constitution of the first Board under this

Scheme shall be final. As regards the inclusion or omissions of any member in the trust board subject solely to the jurisdiction of the High court u/s

115 Civil Procedure Code, the Article 226 of the Constitution of India (1950) and to the jurisdiction of the Supreme Court under Article 32 of the

Constitution of India (1950) 4(d) (ii) The succeeding Board of trustees shall also be constituted in a similar manner by the court under the scheme

by selection of both hereditary and non-hereditary trustees. The District Court shall take action in that behalf either suo motu or on application by

any party interested, ordinarily three months before the office of any Board of Trustee is due to expire. The court shall give due publicity to the

proposed selection and invite applications. The Selection by the court subject only to the powers of the High Court u/s 115 CPC and Article 226

of the constitution of India and of the Supreme Court under Article 32 of the Constitution of India. In making these appointments, the court, shall

relate each appointments to the particular vacancy concerned....

In Appeal suit No.992 of 1978, which is filed against O.S. No.6 of 1970, a Division Bench of this Court, has fixed the term of office for both

hereditary and non-hereditary trustees for a period of three years. As I have already stated above, applications were called for filling up of

vacancies by the District Judge, West Thanjavur at Thanjavur. 15 applications were received for filling up of two hereditary trustees from the first

branch. For filling up of two hereditary trustees from the second branch, 12 applications were received. For filling up of one hereditary trustee

"from the third branch, 7 applications were received. For filling up six vacancies from the non-hereditary trustees, 47 applications were received.

So far as the appointment of hereditary trustees from the first branch is concerned, only 10 applications were considered, while others were absent

and they were rejected. Out of this, one A. Haleem and M.A. Abdul Raheem were appointed. Out of the said applications three persons have

came up before this Court preferring C.R.P. Nos.3290, 3281 and 3296 of 1989. They are filed by M.S. Thajudeen, N. Abdul Aziz and N.

Mohamed Mohideen respectively. So far as Mr.M.S.Thajudeen, the petitioner in C.R.P. No.3280 of 1989 is concerned, the learned District

Judge has taken note of the fact, that the applicant is a permanent resident of Tuticorin that he cannot function as a trustee to the Trust at

Adiramapattinam, mat he encroached a park in Adiramapattinam, that a case in O.S.No.667 of 1982 was pending against him and that it was not

denied by the applicant concerned and as such his application was rejected. So far as the application of Mr. Md. Moideen, the petitioner in

CRP.No.3296 of 1980 is concerned, the learned District Judge has taken note of the fact that he is only 33 years old, that a middle-aged man with

certain amount of experience shall be preferable and as such his application was rejected. So far as Mr. N. Abdul Azziz, the petitioner in C.R.P.

No.3297 of 1989 is concerned, it is stated by the learned District Judge that he is an industrialist, that he is an Income Tax assessee, and that he is

holding a liquor permit On the ground that he is holding a liquor permit, his application was rejected. So far as Mr. A. Haleem, who has been

appointed as one of the hereditary trustees, the learned District Judge has taken note of the fact that he has been connected with the Trust from the

year 1963. On the ground that the said A. Haleem is doing excellent work in the interests of the Trust, he has been appointed by the learned

District Judge. The learned District Judge has taken note of the judgment of the Supreme Court in CA.No.602 of 1961 to arrive at this decision.

So far as one M. Abdul Raheem, who has been appointed as one of the hereditary trustees in the first branch, is concerned, the learned District

Judge has taken note of the fact that he is having a rice mill, that he is paying a kist of Rs.100/- that he is an elder member in the first branch and

that he is a person who lives on the bonds of tenets of Islam. The objection raised that he is not the owner of the rice-mill is rejected by the learned

District Judge.

7. With regard to the appointment of hereditary trustees of the second branch is concerned, 12 applications were received and two applications

were rejected as the applicants were not present. Only ten applications were considered and two hereditary trustees were appointed. Out of the

eight unsuccessful applicants, four applicants viz. A.M. Naina Mohamed Thambi, S.A.M. Samsudeen, S.A.M. Jamaludeen and A.M. Samsudeen

have filed CRP.Nos.3295,3298,3299 and 3205 of 1989 before this Court.

8. So far as Mr. A.M. Samsudeen, the petitioner in CRP. No.3205 of 1989 is concerned, his application was rejected on the ground that he is

involved in a case in O.S.No.6 of 1988 on the file of District Munsif Court, Pattukottai with regard to demolition of founders' tomb and that he

was involved in another civil case in O.S.No.667 of 1982. The learned District

Judge has taken note of. the fact that both cases are pending disposal and rejected his application.

9. So far as Mr. A.M. Naina Mohammed Thambi's application is concerned, (the petitioner in C.R.P.No.3295 of 1989 before this Court) his

application was rejected on the ground that he was involved in C.C.No.190 of 1966 on the file of Judicial Magistrate Court, Nagapattinam and

has paid a fine of Rs.50/-

10. So far as Mr. S.A.M. Samsudeen, the petitioner in CRP No.3298 of 1989 is concerned, his application was rejected by the learned District

Judge on the ground that he is a voter in Madras Harbour Constituency, that he is a resident of Muthialpet and that he could not come to

Adirampattinam to look after the Trust.

11. So far as Mr. S.A.M. Jamaludeen, the petitioner in C.R.P. No. 3299 of 1989, is concerned, his application was rejected by the learned

District Judge on the ground that he is a resident of Madras and that he has been convicted for a prohibition offence. The learned District Judge

has further observed that a person who owns liquor shops and who consumes liquor should not be appointed as a trustee to the Trust like this.

12. With regard to the appointment of A.M. Mohammed Ibrahim, one of the hereditary trustees in the second branch, is concerned, it is seen that

the said applicant is an existing, trustee. Taking note of the fact that the said A.M. Mohammed Ibrahim had lot of interest in the administration of

Trust and he is a responsible man for the efficient management of the Trust, he has been appointed as one of the hereditary trustees in the second

branch.

13. So far as the application of Mr. M.A. Asraf is concerned, the learned District Judge has taken note of the fact that he had studied upto H.S.C.

that he had property worth about Rs.20,00,000/- that he pays Rs.130/- as kist and that he wants to serve in the Trust. The learned District Judge

appointed him as one of the hereditary trustees in the second branch, stating that there is no infirmity in the said application.

14. Coming to- the third branch, out of 7 applications received, two applicants were rejected as the applicants were not present. Only 5

applications were considered for filling up of one vacancy in the third branch. Two unsuccessful applicants, K.S. Sharfudeen and K.S. Abdul

Shukoor have filed C.R.P.Nos.3210 and 3211 of 1980 before this Court. Their applications were rejected on the ground that they are permanent

residents of Madras and they will not take sufficient interest in the administration of Trust which is in Adiramapattinam. The person who is

appointed is one N. Mohammed Umar an existing trustee since 1978. The learned District Judge has taken note of the fact that he is administering

the Trust efficiently for the past ten years and accordingly appointed him.

15. Coming to the appointment of three non-hereditary trustees, it is seen that 37 persons had applied and out of the said 37 applications 19

applications were rejected since 18 applicants were not present and one reported to be dead. 18 applications were considered. Out of the

rejected applicants, one Mohammed Meera Sahib has filed a C.R.P. No. 3294 of 1989 before this Court. His application has been rejected by

the learned District Judge purely on the ground that he is a practising Doctor and it is not possible for Doctors like him, to have any time to look

after the affairs. So far as the application of one N.A. Jaleel, the petitioner in C.R.P.No.3277 of 1980 is concerned, his application has been

rejected on the ground that he is not a resident of Adirampattinarr.... So far as the application of one M.A.H. Mohideen, the petitioner in

C.R.P.No.3282 of 1989 is concerned, his application has been rejected on the ground that he had been detained under COFEPOSA Act during

the year 1976 and that he is not a fit person to be considered for the appointment of non-hereditary trustees. The learned District Judge has

appointed one M.A.M. Batcha Maracair who was working as trustee in the said Trust for the past 15 years. The learned Judge has taken the note

of the fact that during the period of the said M.A.M. Batcha the said Trust has progressed a lot He appointed him as one of the non-hereditary

trustees. With regard to appointment of one N.K. Mohammed Zaccaria, the learned District Judge has taken note of the fact that though he has

studied upto 7th standard, he wants to serve the Trust and as such he appointed him as one of, the non-hereditary trustees to the said Trust The

other person, who was appointed as one of the non-hereditary trustees to the Trust is one M. Abdul Majeeth. The learned District Judge has

rejected the contention that he has not served in any public Institution and has held that he must be given an opportunity to serve in a Trust like this.

16. So far as C.R.P. No. 3127 of 1980 is concerned, that vacancy has not been filled up and at that stage proceedings were stayed before the

learned District Judge, West Thanjavur, Thanjavur.

17. I have considered the list of persons who have been selected and rejected by the learned District Judge.

18. Mr. K.T. Paul Pandian, the learned Counsel appearing for the petitioner in C.R.P.No.3205 of 1989, and for certain other petitioners,

contends that no procedure has been formulated "by the learned District Judge, West Thanjavur at Thanjavur for selection of the trustees and that

the summary procedure adopted by the learned District Judge has deprived the petitioners of having any reasonable opportunity. The learned

Counsel further contends that the learned District Judge has not passed the orders in a bona fide manner. Referring to I.A.No. 184 of 1988 filed

before the learned District Judge, for framing certain guidelines with regard to the appointment of. trustees, the learned Counsel argues that

consideration with regard to each individual did not take place in court and that the adjournments asked for before the learned District Judge were

not given. The main attack of the learned Counsel is that when applications were called for in open court and when allegations and counter-

allegations were made no opportunity was given to rebut the allegations by the petitioners. The learned Counsel further argues that though affidavits

have been filed after last hearing, they were not taken note of by the learned District Judge, and that an objection was taken with regard to the

conduct of the proceedings itself and the learned District Judge rejected the prayer in toto. The learned Counsel further argues that in so far as

CJRP.No.3205 of 1989 is concerned, a reading of the order itself shows that the learned District Judge has accepted the allegations made against

the petitioner and that the finding of the learned District Judge, on the face of it, is not legal. The learned Counsel goes to the extent of saying that

the learned District Judge has not understood the scheme at all, and that the learned District Judge has relied upon only the capacity to recite Holy

Koran and prayer is a must. The learned Counsel further argues that insofar as one N. Abdul Aziz, the petitioner in C.R.P. No. 3297 of 1980 is

concerned, though the holding of liquor permit has been denied and an affidavit has been filed to that effect, that fact has not been considered by

the learned District Judge. Mr. K.T. Paul Pandian, the learned Counsel argues that the findings of the learned District Judge are perverse on the

face of it, that the scheme u/s 92 of CPC will be considered as a decree, that though the court has acted under a decree, it acts as a Civil Court,

and as such it does judicial function, that when executing a judicial function, it has to observe the principles of natural justice and that it has not been

done in this case. The learned Counsel refers to the decision in Ranganatha Thathachariar v. Krishnaswami Thathachariar AIR 1924 Mad 369 : 47

Madras 139 for the proposition that u/s 92 C.P.C. the court exercises judicial function, under a decree. The learned Counsel also refers to another

judgment of a single judge which is reported in Lakshmana v. Govindam A.I.R.1939 Mad 969 : 939 (2) M.L.J. 475 for the proposition that it is a

court and not a persona designata. The sum and substance of the argument of Mr. K.T. Paul Pandian, the learned Counsel for the petitioners is

that as a court, the learned District Judge ought to have followed the principles of natural justice and that he ought to have followed the procedures

scrupulously before selecting the trustees to the Trust. In this connection, the learned Counsel also refers to Section 141 of C.P.C. and contends

that if the District Court acts as a civil court, all provisions of CPC are applicable and as such Order VII and Order VIII C.P.C. have to be

applied, so far as the applications for the appointment of trustees are concerned. The learned Counsel further argues that the learned District Judge

has not exercised its jurisdiction properly and has not appreciated the scheme fully. The learned Counsel further argues that preference should be

given to male descendents of the three branches and that the learned District Judge has not done so. The learned Counsel also refers to the original

trust deed dated 16.12.1900 and also the judgment of the Appeal Suit No. 992 of 1978. The learned Counsel further argues that everyone has got

a right to be considered for the appointment of trustee in three branches and that everyone has to be given opportunity as far as possible.

19. Mr. K.T. Paul Pandian, the learned Counsel specifically condemns the conduct of the learned District Judge, after making him as a party

person in all the Civil Revision Petitions. The learned Counsel further refers to ground numbers 9,13, 14, 15, and 24 and argues that the attitude of

the learned District Judge is not worth mentioning and that the recalcitrant attitude of the learned District Judge is not expected of judicial officer.

The learned Counsel also argues that the learned District Judge is biased and has decided the matter with pre-determined approach.

20. Insofar as C.R.P.No.3127 of 1989 is concerned, the learned Counsel argues that an opportunity was asked for in this case, that an

opportunity was given and that the learned District Judge with undue haste took the counsel to task which is not befitting of a District Judge.

21. Mr. Chandru, the learned Counsel appearing for petitioners in C.R.P. Nos. 3294, 3295 and 3296 of 1989 contends that the learned District

Judge has not followed the uniform procedure, that a reading of the order shows that the reasons given for rejection of the applicants are not

relevant, that the learned District Judge has preferred certain norms for appointment of trustees, that the effect of the present order is that four

persons, who were in service are selected once again and that the monopolistic attitude of the learned District Judge should be cut down. The

learned Counsel points out that all the educated persons (Doctors) are eliminated on the simple ground that they will not have time to look after the

trust The learned Counsel further contends that in so far as the petitioner in C.R.P.No.3298 of 1989 is concerned, he has not been convicted. The

learned Counsel also contends that an affidavit has been filed denying that the applicant has been convicted and that the learned District Judge has

not taken note of it The learned District Judge also contends, that the application of one Md. Mohideen, the petitioner in C.R.P.No.3296 of 1989

has been rejected on the ground of age and that no uniform procedure has been set down by the learned District Judge in this regard.

22. Mr. R.N. Amarnath, the learned Counsel for the petitioners in C.RP.Nos.32773282,3298 and 3299 of 1989 are concerned, contends that the

petitioner in C.R.P.No.3205 of 1989 has been rejected for extraneous reasons and mat though the applicant has filed an affidavit that he was

never convicted of a prohibition offence, it has not been looked into by the learned District Judge. The learned Counsel also contends that one

M.A.H. Mohideen the petitioner in C.R.P.No.3282 of 1989 is concerned, he was not detained under COFEPOSA Act but he was detained only

under MSA and that an affidavit has also been filed to that effect. The learned Counsel argues that the learned District Judge has not taken that fact

into consideration.

23. Mr. T. Vanamamalai, the learned Senior Counsel appearing for Rule 4 in C.R.P.No.3127 of 1989, Rule 2 in C.R.P.No.3205 of 1989, Rule 7

in C.R.P.No.3210 of 1989, and Rule 9 in C.R.P.No.3282 of 1989 contends that the Civil Revision Petitioners do not dispute about the selection

of trustees from the said three branches, i.e. there is no dispute about the number, of person; selected from each branch. Referring to Clause 4(d)

(iii) of the Scheme, the learned Counsel argues that as per the above mentioned clause, that only a suit for removal of the trustees has to be filed

once the trustees are appointed under the Scheme and that filing a Civil Revision Petition under Article 227 is not the remedy. The learned Counsel

refers to Clause 4(a)(i) of the Scheme. The learned Counsel strenuously contends that the petitioners cannot bring up this matter before this Court

under Article 227 of the Constitution, that what is sought to be achieved is the removal of trustees, and that they have to be removed only by filing

a suit as per Clause 4(d)(iii) of the Scheme. The learned Counsel refers to the decisions in Bishan Das and Others Vs. The State of Punjab and

Others, and in S.K. Mitra v. R.C. Dey A.I.R.1951 Mad 558 for this proposition. The learned Counsel further argues that this Court cannot go into

the infringement of private rights and that what all this Court can consider is the interest of trust referring to the decision in Kamudavalli and

Another Vs. P.N. Purushotham, the learned Counsel argues that the motive behind the filing of Civil Revision Petitions by the petitioners is that all

applicants want to become trustees to the Trust enforcing a private right. The learned Counsel also refers to an unreported decision of the Supreme

Court in S.M.S. Sheikh Jalaludeen and Anr. v. S.K. Sheik Jalaludeen and Ors. (Civil Appeal No. 602 of 1961) dated 16.1.1962 with regard to

the same Trust, and contends that if the above mentioned judgment is taken into consideration, these Civil Revision Petitions filed, under Article

227 of the Constitution have to be dismissed. The learned Counsel further argues that what all the procedure adopted in the earlier years has been

followed in this year also, for appointment of trustees to the said Trust With regard to the power of this Court under Article 227 of the

Constitution, the learned Counsel refers to the following decisions:

(1) Waryam Singh and Another Vs. Amarnath and Another,

(2) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and

Appeals, Assam and Others,

(3) Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale,

(4) Smt. M.M. Amonkar and Others Vs. Dr. S.A. Johari,

(5) Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala,

On the facts of the case, the learned Counsel contends that insofar as the persons for the appointment of trustees are concerned, the learned

District Judge has taken note of the fact that one candidate has been functioning as a trustee in the said Trust for a very long time and that the

District Court has not adopted different yardsticks for different people as contended by the Civil Revision Petitioners. The learned Counsel further

argues that the learned District Judge has compared the qualifications on different categories and that the comparisons made by the Civil Revision

Petitioners are not correct. With regard to the contentions that the procedure adopted by the learned District Judge is wrong and that the

behaviour of the learned District Judge in the Court, is bad, the learned Counsel argues that the allegations made by the revision petitioners against

the learned District Judge are wrong, that it is well settled that what happened in the Court is a matter to be found out only from the judgment and

that the judgment alone is final. The learned Counsel refers to the decisions in Virabhadra Rao v. Sakalchand 1951 (1) M.L.J.244 in Perumal

Gounder v. Easwara Kander 89 Law Weekly 198 and in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, for this propositions.

The learned Counsel draws the attention to the fact that one N. Abdul Aziz, the petitioner in C.R.P.3297 of 1989 was holding a liquor permit on

the day of hearing was not denied either by the said applicant or by the counsel appearing for him, that this fact was recorded by the learned

District Judge and that it cannot be disputed before this Court. The learned Counsel further argues that with regard to appointment of non-

hereditary trustee, also, the fact that one H.A.H. Mohideen, the petitioner in C.R.P.No.3282 of 1989 was detained under "COFEPOSA" Act

was not denied on the day of hearing and that a Government Order was produced before the District Judge and only on 30.8.1989 an affidavit has

been filed that the said M.A.H. Mohideen has been detained u/s 12-A of Emergency Act. The learned Counsel further argues that the learned

District Judge has selected the best out of the applicants, that nothing can be said against the persons selected by the learned District Judge except

that they are continuously holding the office for a very long time. The learned Counsel further argues that the guidelines asked for by the revision

petitioners, if framed, cannot be valid in law that the very same procedure which has been adopted for all these years has been followed in this year

also and that there is no reason to evolve the guidelines. The learned Counsel further argues that the printed notice shows as to what has to be

done. He also contends that by way of guidelines, what the revision petitioners ask for is a modification of a scheme, that the revision petitioners

want to add something to the scheme without applying u/s 92 of CPC and that it cannot be done. The learned Counsel also refers to a judgment of

a Division Bench of this Court which is reported in A.K.D. Rangaswami Raju Vs. The Municipal Chairman and Others, for this proposition.

24. With regard to I.A.No. 184 of 1988 on the file of the District Court, West Thanjavur, Thanjavur the learned Counsel argues that it was filed

before the previous District Judge, that the pendency of the said I.A. No. 184 of 1988 was not brought to the notice of the Court by the revision

petitioners herein. The learned Counsel further argues that the order in I.A.No.216 of 1989 passed on 28.11.1988, which was filed praying to

peruse the records, did not mention about the pendency of the said I.A. No. 184 of 1988 on the file of the District Court, West Thanjavur at

Thanjavur. With regard to Section 141 of Code of Civil Procedure, the learned Counsel argues that the expression used is ""District Judge"" in the

Scheme. The learned Counsel refers to the decision in Ranganatha Thathachariar v. Krishnaswami Thathacharia AIR 1924 Mad. 369 : 47 Madras

139. The learned Counsel further argues that in the instant case, the Scheme does provide for guidelines for appointment of trustees to the said

Trust and that there is no need for guidelines. Referring to Clause 4 of the Scheme, the learned Counsel argues a reasonable, fair and just

procedure was adopted by the learned District Judge. The learned Counsel further refers to the decisions in Jagmohandas v. Jamnadas AIR 1965

Guj 181 and in S.V. Mandlik Vs. The Borough Municipality, and argues that when the expression was ""District Judge"" the District Judge has acted

as a "persona designata" and not as a Court. The learned Counsel further argues that the principles of natural justice are not violated and that there

is no material to show that an adjournment was sought for. The learned Counsel further argues that records themselves speak about the parties

intention to stall the proceedings. The learned Counsel further argues that in I.A.216 of 1989, time was granted by the learned District Judge to

peruse the records, that nobody prevented the revision petitioners herein from asking time and as such there is no violation of principles of natural

justice in this case as contended by the learned Counsel for the revision petitioners.

25. Mr. R. Krishnamurthy, the learned Counsel appearing for the 5th respondent in C.R.P.No.3127 of 1989, and the third respondent in C.R.P.

No. 3205 of 1989 contends that the process of selection of hereditary trustees for the appointment, is a problem for the Presiding Officer and that

this is an Institution where every appointment was questioned by somebody or other at some stage or other. The learned Counsel refers to the

order of K.M. Natarajan, J. in Transfer C.M.P. No. 18382 of 1987 dated 12.8.1988 and the order of Sivasubramaniam, J. in C.R.P.No.3108 of

1988 pointing out that making allegations against the Presiding Officer is not new, so far as this Institution is concerned. With regard to the

appointment of trustees, the learned Counsel argues that various allegations are made in the petitions against the Scheme Court and that the

decision in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, is the answer to say that what happened in Court the order is final.

The learned Counsel further argues that what has been recorded by the learned District Judge is final, that it has not been denied at the stage of

hearing, that impleading the Presiding Officer as a party-respondent in a personal capacity would not make any difference and that any affidavit

filed on any ground in revision here on merits cannot be granted at this stage. With regard to the question whether the District Judge is acting as a

"persona designata" or as Court, the learned Counsel relies upon the decision in Ranganatha Thathachariar v. Krishnaswami Thathachariar AIR

1924 Mad 369 : 47 Mad139 relied upon by Mr. K.T. Paul Pandian and Mr. N.T. Vanamamalai and Clause 10 of the Scheme and argues that

Scheme Court has to be taken not as a Court but as "persona designata". The learned Counsel further refers to the decision in Shah Jagmohandas

Purshottamdas and Another Vs. Jamnadas Vrajlal Gandhi and Others, and contends that a reading of Clause 4 of the Scheme shows that the

Presiding Officer, the District Judge in this case, is only a "persona designata" and not a Court in this case. This learned Counsel further refers to

the earlier judgment of Supreme Court in which the term "District Judge" is used, and referring to the decision in Ramchandra Aggarwal and

Another Vs. State of Uttar Pradesh and Another, and Section 141 of CPC for the proposition that the District Judge in this case, is acting only as

a "persona designata" and not as a Court. The learned Counsel further argues that the principles of natural justice have not been violated in this

case, that whatever opportunity possible was given and that the contentions raised by the learned Counsel for revision petitioners are purely

imaginative and not proved. The learned Counsel further refers to a decision in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative

Bank Ltd. and Another, with regard to the power of this Court under Article 227 of the Constitution and contends that the High Court cannot

withdraw a case from the Tribunal.

26. Mr. Balasubramanyam, the learned Counsel appearing for the fifth respondent in C.R.P.No.3205 of 1989 contends that under Article 227 of

the Constitution this Court cannot transfer C.R.P., that if it is transferred to some other court it will amount to lack of jurisdiction and the entire

public was given a notice that the applications have to be reached on or before 27.1.1988 before the District Court, West Thanjavur at Thanjavur.

The learned Counsel further argues that LA. 184 of 1988 on the file of District Court, West Thanjavur at Thanjavur is not pending, that it has been

disposed of, that if a procedure is prescribed it will amount to amending the Scheme and that I.A. No. 184 of 1988 was not brought to the notice

of the Court when the case was heard.

27. Mr. K.T. Paul Pandian, the learned Counsel appearing for the revision petitioners in C.R.P. No. 3205 of 1989 replies that the Scheme uses

the word "District Court" and as such the contention of the learned Counsel for the respondent, that the District Judge acts only as a "persona

designata" is not correct. The learned Counsel further argues that it is only a "Court" and so Section 141 C.P.C. applies. The learned Counsel

refers to Clause 3(iii) of the Scheme, the term "District Court" and "District Judge" used in Clause 12 of the Scheme. The learned Counsel refers

to Section (2) 4 of C.P.C. which defines "court" and also refers to a judgment of

a Full Bench of this Court which is reported in Parthasarathi

Naidu v. Koteswara Rao 46 MLJ. 201 : 78 I.C. 98 AIR 1924 Mad 561 which is approved by Supreme Court in The Central Talkies Ltd.,

Kanpur Vs. Dwarka Prasad, with regard to the power of the District Judge acting as a persona designata or as a Court. The learned Counsel

replies that the power exercised by the learned District Judge is a judicial function, referring to the decision in Shah Jagmohandas Purshottamdas

and Another Vs. Jamnadas Vrajlal Gandhi and Others, , and as such the learned Counsel argues that the learned District Judge ought to have

acted with all fairness and the principles of natural justice have to be followed. The learned Counsel referring to the decision in B. Sivaram Dubai v.

R. Rajagopala Misra 128 I.C. 515 AIR 1930 Mad 918 argues that a suit has to be filed for questioning the appointment of trustees or a petition

for amendment has to be prescribed in the guidelines. The learned Counsel further argues that this is a case based on the bias of the Presiding

Officer and it is open to this Court to scrutinise the records and arrive at a conclusion whether the contention of the revision petitioners is right or

not. The learned Counsel further argues that the learned District Judge has not sent the complete records and notes. The learned Counsel points

out that on 31.8.1989 after the date of hearing four persons had on 31.8.1989 after the date of hearing four persons had filed affidavits, that three

of those applications were not taken note of the fact by the learned District Judge, with regard to the appointment of non-hereditary trustees and

that even in the order passed on 5.9.1989 the learned District Judge has not taken note of the affidavit filed by one M.A.H. Mohideen, the

petitioner in C.R.P.No.3282 of 1989 that he is not detained under COFEPOSA Act but only under Emergency Act The learned Counsel also

replies that no reasonable opportunity has been given to the revision petitioner and that it amounts to violation of principles of natural justice. The

learned Counsel refers to the decision in R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid, for this proposition. The learned Counsel further

argues that no procedure was fixed in the scheme to consider the applications and that Clause 4(d)(iii). Provides that this Court can interfere with

the decision of the Scheme Court, if it is perverse. The learned Counsel refers to the decision in Venkatlal G. Pittie and Another Vs. Bright Bros.

(Pvt.) Ltd., for this proposition.

28. Mr. Chandru, the learned Counsel appearing for the revision petitioners contends that the District Court has acted only as a Court and not as a

persona designata. The learned Counsel refers to a decision in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, and

contends that the High Court can do the function of a Tribunal under Article 227 of Constitution referring to the decision in *Navichandra*

Shakerchan Shah v. Ahmedabad Co-o. Ltd. (1979 (1) L.L.J. 60. The learned Counsel argues that the High Court can pass an order what the

lower Tribunal could have passed. The learned Counsel further argues that the procedure to select the trustees alone is needed and no modification

of the Scheme is needed as contended by the learned Counsel for the respondents. The learned Counsel also pointed out that the learned District

Judge has relied upon the xerox copies of the record and that it is not correct. The learned Counsel further contends that insofar as the revision

petitioner in C.R.P.NO. 3295 of 1989 is concerned, an affidavit has been filed on 29.8.1989 itself and that it has not been taken note of by the

learned District Judge.

29. I have given a careful consideration to the arguments advanced by Mr. K.T. Palpandian, the learned Counsel for the revision petitioners in

certain cases, Mr. N.T. Vanamamalai, the learned Senior Counsel for certain respondents, Mr. R. Krishnamurthy, the learned Counsel appearing

for certain respondents, Mr. Balasubramanyan, the learned Counsel a for certain respondents in certain C.R.Ps and Mr. Chandru, the learned

Counsel appearing for certain petitioners in certain C.R.Ps. The important point that arises for consideration in these cases is whether the District

Court, acting under the Scheme in question, is a persona designa or a Court. In *Ranganatha Thathachariar v. Krishnaswami Thathachariar* ILR

Vol. XLVII Mad 130 a Division Bench of this Court has held as follows:(at p. 143)

That, it is conceded, depends first on whether the position of the District Court under the Scheme, Clause(10), is that of persona designata and not

of a Court which will, in case its order is appealable under any appropriate provision of law, be subject to our appellate jurisdiction. The test to be

applied has been considered fully in a recent decision, *C.K. Ramaswami Goundan Vs. Muthu Velappa Gounder and Others*, which was followed

in Rao Bahadur K.S. Venkatarama Aiyar Vs. Janab V. Hamid Sultan Maracayar Sahib Bahadur and Others, and there is no necessity to add

anything to that statement of the law, except that no distinction can be drawn between the interpretation of an Act, which was then in question and

that of the scheme before us. There is accordingly first the consideration that a the procedure to be followed in the Court's exercise of the power

conferred by the Scheme is not specified therein, the applicability of its ordinary judicial procedure must be presumed and also, as follows from

National Telephone Company Ltd. v. Postmaster General 1913 A.C. 546 of the law relating to appeals from its ordinary decisions....

In the very same judgment Venkatasubba Rao, J. observed (at p.140) as follows:

I also agree that the Court exercised its powers as a Court of law and not as a persona designata...

In Lakshmana Pillai and Others Vs. Govindam Pillai and Others, Burn, J. a single Judge of this Court following the decisions of the Division Bench

of this Court, cited supra, has held as follows:

...A Judge or a Court carrying out the provisions of a scheme decree acts as a Court and not as a persona designata....

As such, it is made very clear that a Court, under a Scheme framed u/s 92 of Code of Civil Procedure, acts as a Court and not as a persona

designata. I do not think any other decision need be referred to, on this point.

30. It is worthwhile to note that even in a case of the very same Trust, on an earlier occasion, K.M. Natarajan, J. considered this question in

C.M.P. No. 18383 of 1987 in Tr. C.M.P. No. 18383 of 1987 and by order dated 25-3-1988, the learned Judge has held as follows:

...The position of the scheme Judge cannot be equated with the Rent Controller and the Appellate Authority and in any event it cannot be said that

he is a persona designata. He is exercising the power as District Judge u/s 92 C.P.C. and not under any other Act½

31. In my view, even assuming that the learned District Judge is a persona designata, he is bound to follow the principles of natural justice. I do not

think that there can be any difference for ""court"" or for ""persona designata"" with regard to the principles of natural justice.

32. Coming to the arguments that Section 141 C.P.C. will apply or not, to the facts of these cases, I do not think it is necessary to go into the

question because of the view I take in this matter.

33. The sum and substance of the argument of the counsel for the revision petitioners is that no opportunity was given to the applicants. The

complaint of the revision petitioners herein is that the case was taken up for hearing on a particular day, that the counsel on both sides were heard

on that day, that each application was considered on merits, that allegations and counter-allegations were made against the applicants in open

Court and that no opportunity was given to the revision petitioners to rebut the allegations made in the open Court. The sum and substance of the

contention of the learned Counsel for the revision petitioner is that all of a sudden a document was taken out and shown against an applicant and

that the learned District Judge has held that he was accepting the said document as proved. According to the petitioners counsel that even in the

case of rebuttal, the petitioners were given time to file affidavits to rebut their cases and that they were not taken note of by the learned District

Judge. The contention of the revision petitioners is that they were not given an opportunity to rebut the allegations and that itself is in violation of

principles of natural justice. The revision petitioners requested the learned District Judge to adopt a procedure for considering the applications for

the selection of the appointment of trustees to the Trust. The counsel for the petitioners argues that I.A. 184 of 1988 which has been filed by the

applicants before the previous District Judge has not been considered by the successor who had passed the impugned order. I have already

extracted the order passed by the learned District Judge in I.A. 184 of 1988 in the earlier part of this order. On a careful reading of the said

Order, I find that I.A. 184 of 1988 (on the file of District Court, West Thanjavur at Thanjavur) has not been disposed of by the. previous District

Judge and that what all he has done is that he adjourned the matter sine die on the ground that he had addressed a letter to this Court.

34. In the Report Part-II which has been produced before me, sent by the District Judge, Thanjavur to this Court on 27-1-1990, in para 3 it has

been stated as follows:

...In that LA. 184/88 my learned predecessor has passed final orders indicating his intention not to proceed further, by himself in that matter and

pronouncing that a letter will be addressed to the High Court for necessary

orders of transfers of the matter from his file. Hence, I submit that I.A.

184 of 1988 appears to have been disposed off by the final orders passed by my learned predecessor on 28-11-1988½

In para 4 of the said Report, the learned District Judge has stated thus:

...I submit that when the appointment of Trustees numbering eight were pending before me, no representation was made before me that this I.A.

184 of 1988 is still pending before me or that I should prescribe a procedure to be followed either on that application or independent of that

application. However, I have followed the procedure in conformity with the principles of law and procedure laid down in the scheme decree in

O.S. 21/52 as amended by O.S. 6/70 of the District Court, Thanjavur and in the earlier proceedings of the superior Courts arising in this matter,

besides following the principles of natural justice....

With regard to the averment that the learned District Judge has not considered the affidavits filed after the hearing dated 29-8-1989, the learned

District Judge has stated in para 8 of the Report (Part-II) as follows:

...After the conclusion of arguments on 29-8-1989, the order of appointment of trustees were pronounced on 5-9-1989. There was no petition by

any of the petitioners, to reopen the matter in the meantime. There was also no request by any one beyond 29-8-1989 in Court, seeking

permission to reopen the case to file reply affidavits. But it appears now that some applicants have filed affidavits on 31-8-1989 in the office

without any petition to reopen the case. The affidavits said to have been filed on 31-8-1989 in the office seem to have been filed without notice to

other applicants and those affidavits were also not sent to me along with the bundle for consideration. The existence of those affidavits came to my

knowledge only at the time of submission of the records to the High Court, Hence, I had no opportunity to go through the contents of these

affidavits....

The above extracted portions of the Report (Part-II) submitted by the learned District Judge before this Court, clearly support the arguments of

the learned Counsel for the petitioners that no proper procedure has been prescribed for selection of the trustees for the said Trust! If not, even

assuming that a procedure cannot be framed, an order ought to have been passed by the learned District Judge before the selection of the trustees

to the said Trust. It is seen from the report of learned District Judge that certain affidavits have been filed after the hearing date and that they have not been looked into by him before passing the order. Though the learned District Judge has given certain reasons for not having an opportunity to look at them, I am not convinced with the reasons assigned by him.

35. At the same time, I am not inclined to accept the arguments of the learned Counsel for the revision petitioners that the learned District Judge

has predetermined the matter. In my view, wild allegations are made against the learned District Judge which has no basis at all. A reading of the

order of the District Judge dated 5-9-1989 does not show that he has taken a partisan attitude towards anybody. Actually, the learned District

Judge has inducted new blood in every branch and also has taken some of the existing persons. That is the yardstick he has mainly adopted. It is

well settled, sitting under Article 227 of the Constitution/it is not open to this Court to enter into that question. It has been held so by the Supreme

Court in an unreported decision in S.M.S. Sheikh Jalaludeen and Anr. v. S.K. Sheikh Jalaludeen and Ors. Civil Appeal No. 602 of 1961 dated 16-

1-1962. The Supreme Court in the case of the above mentioned case, the case of the very same Trust, has held as follows:

...In our view the High Court in setting aside the order of the District Judge has assumed jurisdiction with which it is not invested. Article 227 of the

Constitution by the first clause provides:

Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction." It

occurs in a fascicule of articles enumerating the powers of the High Court: It does not, however, define the quality or restrictions on the exercise of

the power. The power conferred by Article 227 is one of the superintendence over courts and tribunals in the territories in relation to which the

High Court exercises jurisdiction. This power though judicial as well as administrative, is not appellate, nor even revisional. The power has to be

exercised sparingly and in appropriate cases in order to keep the subordinate courts within the bounds of their authorities and not merely to correct

errors of fact or law. "See: Waryan Singh v. Amarnath AIR 1954 S.C. 565 In exercise of this power the High Court cannot seek to reappraise

evidence on which the conclusion of a subordinate Court or tribunal is based, nor

even to correct mere errors of law. But in appropriate cases, the High Court may rectify errors apparent on the face of the records, or set aside orders made in erroneous assumption on refusal to exercise jurisdiction or in the arbitrary or capricious exercise of authority vested in a subordinate court or tribunal....

In the very same judgment, the Supreme Court has further observed as follows:

...The jurisdiction of the High Court being limited, an erroneous decision assuring that it was not rendered by the District Judge could not attract the exercise of the powers under Article 227, thereby authorising the High Court to reverse the decision and to substitute its own judgment on a re-appraisal of evidence. The powers which the High Court claimed to exercise was, in substance, appellate, but the High Court was not invested with the power either under the scheme or any law, to set aside the orders of the District Judge exercising authority under the scheme merely because it thought that the order was vitiated on account of error in appreciation of evidence....

So, I am not inclined to go into the merits or demerits of the cases on hand on the appointments made.

36. I do not accept the arguments of the learned Counsel for the revision petitioners that the learned District Judge is biased against the applicants.

As I have already stated, a reading of the order of the learned District Judge, which has been extracted in the earlier portion of this order, shows

nothing of this sort. Except the fact that the learned District Judge has not taken care to dispose of LA. 184 of 1988 before passing the order, and

also not taking note of the affidavits filed after the date of hearing, I do not find any infirmity in the order passed by the learned District Judge.

37. A reference to the decision in P.N. Dua Vs. P. Shiv Shanker and Others, was be made. In the above mentioned case, the Supreme Court, has

observed that "any criticism about the judicial system or the judges which hampers the administration of Justice or which erodes the faith in the

objective approach of Judges and brings administration of Justice into ridicule must be prevented." The Supreme Court has further observed that

"judgment can be criticised, the motives of the Judges need not be attributed, it brings the administration of justice into deep disrepute and that the

faith in the administration of justice is one of the pillars through which democratic institution functions and sustains." In *Ambard v. Attorney General for Trinidad and Tobago* (1986 AC. 322 - AIR 1936 P.C. 141 Lord Atkin observed as follows:

...Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men...."

As such, I do not find any bias or-pre-determined approach of the learned District Judge in the selection of the trustees to the Trust.

38. I am not able to accept the argument of Mr. K.T. Paul Pandian, the learned Counsel for the revision petitioners that the learned District Judge

has taken a recalcitrant attitude which is not expected of a judicial officer. Simply because the learned District Judge has not framed the procedure

as asked for by the applicants in I.A. No. 184 of 1988 (on the file of District Court, Thanjavur) it cannot be said that the District Judge has acted

in a biased manner. In my view, the learned District Judge has decided the case on merits taking into consideration the available records before

him. As I have already stated I am not inclined to go into the merits of the application.

39. I am not able to agree with the contention of the learned Counsel for the respondents that if a procedure is prescribed it would amount to

amend the scheme decree. Clause 4 of the decree, as extracted above, gives the power to the District Court to select the trustees that too, after

giving due publicity in newspapers and after inviting applications. What has to be done with the applications when lot of applications are received,

is a matter to be decided by the Scheme Court. In these cases, some instances have been pointed out that allegations are made in open court

against certain applicants and that they are not able to rebut it immediately. It is seen from the District Judge's report that though an opportunity

was given to them to file affidavits, those affidavits have not been looked into by the learned District Judge. As such, it cannot be said that when a

procedure is prescribed, to consider the applications, it will amount to amending the decree.

40. I am not able to agree with the contention of Mr. N.T. Vanamamalai, the learned Counsel appearing for the respondents, that what the revision

petitioners fight for is a "private right." The learned Counsel complains that the applications were not considered after giving some reasonable

opportunity. The main complaint of the revision petitioners are based on the violation of principles of natural justice. I think that all these Civil

Revision petitions (except C.R.P. No.3127/89) can be disposed of only on that ground, without going into other contentions raised by the learned

Counsel appearing for the respondents.

41. It is well settled that what happened in the court is a matter to be found out only from the judgment and that judgment alone is final. There is no

doubt about it. In the Report submitted by the learned District Judge before this Court, it has been categorically stated about the pendency of

I.A.184 of 1988 and also about the affidavits filed after the date of hearing. As such, there is no point in relying upon the decision for the

propositions that the judgment is final with regard to the happenings in Court.

42. If there is a violation of principles of natural justice, this Court can interfere with the order of the lower court, under Article 227 of the

Constitution.

43. Now a reference to the judgments of the Supreme Court, which is reported in Waryam Singh and Another Vs. Amarnath and Another, and

other judgments may be usefully made. In the case above mentioned, the Supreme Court has observed as follows:

...This power of superintendence conferred by Article 227 is, as pointed out by Harries C.J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee,

to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not

for correcting mere errors.

In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, the same view expressed in the

above mentioned decision was reiterated. In India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, the Supreme Court has held as

follows:

...The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not

conferred a right of appeal and made the decision of the Subordinate Court or tribunal final on facts...

It is true that in D.N. Banerji Vs. P.R. Mukherjee and Others, it has been held by the Supreme Court that if there is a grave miscarriage of justice

or flagrant violation, this Court can interfere with under Article 227 of the Constitution. It is also well settled that if the lower court has not

misdirected itself either on law or on fact, then this Court cannot interfere with under Article 227 of the Constitution. From the facts which I have

already stated above, and also from the submissions of the learned District Judge, in the Report filed before this Court, I am of the view that all the

applicants have not been given a fair opportunity to rebut certain allegations made against them, when the applications were taken for hearing. A

reference to the judgment of the Supreme Court may be usefully made here. The Supreme Court in R. Viswanathan Vs. Rukn-ul-Mulk Syed

Abdul Wajid, after referring to Section 13 of CPC observed as follows: (at P.24)

...But it is the essence of a judgment of a court that it must be obtained after due observance of the Judicial process, i.e., the Court rendering the

judgment must observe the minimum requirements of natural justice--it must be composed of impartial persons, acting fairly, without bias, and in

good faith, it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case½

The Supreme Court has further observed as follows:

...As observed by Charwell. J. in Robinson v. Fenner 1913 (3) K.B.835In any view of it, the judgment appears, according to our law, to be

clearly wrong, but that the course is not enough Godard v. Gray "1870 (6) Q.B. 139 and whatever the expression "contrary to natural justice"

which is used in so many cases, means (and there really is very little authority indeed as to what it does mean), I think that it is not enough to say

that a decision is very wrong, any more than it is merely to say that it is wrong. It is not enough, therefore, to say that the result works injustice in

the particular case, because a wrong decision always does". A judgment will not be conclusive, however, if the proceeding in which it was

obtained is opposed to natural justice½

In similar circumstances the Supreme Court in a case which was reported in Nirankar Nath Wahi and Others Vs. Fifth Additional District Judge,

Moradabad and Others, set aside the judgment of Allahabad High Court which arose under Article 227 of the Constitution of India. In that case,

the High Court refused to interfere with the findings of the lower court under Article 227 of the Constitution. But the Supreme Court in the above

mentioned case set aside the order of the High Court passed under Article 227 of the Constitution of India on the ground that no reasonable

opportunity was given by the learned District Judge in that case. In the above mentioned case, the Supreme Court observed as follows:

...Justice", we do not tire of saying, must not only be done", but "must be seen to be done". And yet at times some Courts suffer from temporary

amnesia and forget these words of wisdom. In the result, a Court occasionally adopts a procedure which does not meet the high standards set for

itself by the judiciary½

44. A reference to the judgment of a constitution Bench of the Supreme Court, may also be usefully made. In *Chandavarkar Sita Ratna Rao Vs.*

Ashalata S. Guram, the Supreme has observed as follows: (at p. 122)

...As mentioned herein before two questions require consideration--how far and to what extent in exercise of its jurisdiction under Article 226 or

227 of the Constitution and in this respect regarding power to deal with factual findings, the jurisdiction of the High Court is akin both under

Arts.226 and 227 of the Constitution, can the High Court interfere with the findings of fact? It is well-settled that the High Court can set aside or

ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly

have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well

settled. In *D.N. Banerji v. P.R. Mukharjee* AIR 953 S.C. 58 it was laid down by this Court that unless there was any grave miscarriage of justice

or flagrant violation of law calling for intervention it was not for the High Court under Arts.226 and 227 of the Constitution to interfere. If there is

evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the

power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the

appropriate authorities.... Yet all these are for the Court's finding facts and if such fact-finding bodies have acted properly in law and if the findings

could not be described as perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding, such

findings should not be interfered with within the exercise of the jurisdiction by

the High Court under Article 226 and 227 of the Constitution.

In case of finding of facts, the Court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be

made to the observations of this Court in AIR 1975 1297 (SC) where this Court observed that the High Court could not in the guise of exercising

its jurisdiction under Article 227 convert itself into a Court of Appeal when the legislature has not conferred a right of appeal. The High Court was

not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J. as the learned Chief

Justice then was, observed at page 1301 on the report as follows: "The Special Civil Application preferred by the appellant was admittedly an

application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that

article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is all

settled by the decision of this Court in Waryam Singh and Another Vs. Amarnath and Another, that the:

...Power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to

be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for

correcting mere errors...." This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora and

Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and it was pointed out by Sinha J. as he then was speaking on

behalf of the Court in that case: "It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial

or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may

extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution the

power of interference is limited to seeing that the tribunal functions within the limits of its authority.

45. The history and the development of the writ of certiorari, and scope and ambit of its application have been emphasised by Lord Denning in R.

v. Northumber Land Compensation Appeal Tribunal, Ex parte Shaw 1952 (1) All. E.R. 122. It is not necessary to reiterate these. But the Courts

must guard themselves against the error mentioned by Morris, L.J. in the said decision at page 133 to use the power under Article 227 as the

cloak of an appeal in disguise. The writ of Certiorari does not lie in order to bring up an order or decision for rehearing of the issues raised in the

proceedings. These inhibitions are more often than not transgressed by the Courts in exercise of jurisdiction under Article 227.

In this connection reference may also be made to the observations of this Court, in Harbans Lal Vs. Jagmohan Saran, See in this Connection the

observations of this Court in Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, ; Smt. M.M. Amonkar and

Others Vs. Dr. S.A. Johari, and also the observations of this Court in Harbans Lal v. Jagmohan Saran.

It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the

evidence if justice so requires it if there is any mis-direction in law or a view of fact taken in the teeth of pre-ponderance of evidence. But the High

Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut

down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the

jurisdiction of the interior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of

injustice See : Trimbak Gangadhar Telan (Supra).

Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion, therefore, in the facts and circumstances of this

case, on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon

appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the appellate bench came to another

conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of

evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the constitution. On the first point, therefore, the High Court

was in error½

As such, I am of the view, taking into consideration of the facts of the case, that the principles of natural justice have not been followed by the

learned District Judge and no proper opportunity has been given to all the applicants when selecting the trustees to the trust In this view of the

matter, I set aside the order of the learned District Judge and remand the case back to the file of the District Court, Thanjavur for considering the

applications afresh after giving proper opportunity to all the applicants.

46. With regard to C.R.P. No. 3127 of 1989, it is to be seen that notice was ordered on 31.10.1987, and hearing was fixed on 7.11.1989 and all

the applicants were asked to be present in Court on that day. In I.A.No.237 of 1989 (on the file of District Court, Thanjavur) time was granted

and the matter was adjourned. I.A.238 of 1989 was filed before the District Court, Thanjavur and it was allowed and the matter was posted to

17.1.1989. All the documents were perused on 23.11.1989 and it was posted for arguments on 27.11.1989. At this juncture, the C.R.P.No.3127

of 1989 came to be filed before this Court, praying for transfer of the case to some other Court.

47. I do not think any ground for transfer for the case has been made out I am able to agree with the argument of Mr. K.T. Paul Pandian, the

learned Counsel for the revision petitioner, that the learned District Judge has taken a partisan attitude in this matter. Actually, the learned District

Judge has given adjournments to the. petitioner in this case. I do hope the learned District Judge, Thanjavur at Thanjavur will give full opportunity

to the revision petitioner in this case also in considering his application also as in other cases. As such, I do not find any ground for transfer is made

out by the revision petitioner for transferring the case from the file of the learned District Judge, Thanjavur. I do not find any reason to interfere with

the order of the Court below under Article 227 of the Constitution. Consequently, C.R.P. No. 3127 of 1989 stands dismissed.

In the view that I have taken, I do not think it necessary to go into other questions raised by the learned Counsel on both sides.

In view of my conclusions stated above, C.R.P. No.3127 of 1989 is dismissed and all other Civil Revision Petitions are allowed, setting aside the

order of the learned District Judge West Thanjavur at Thanjavur dated 5-9-1989,

and the matters are remanded back to the District Court, West

Thanjavur at Thanjavur for considering the applications afresh for the selection of the trustees to the said Trust, after giving opportunity to all the

applicants. The learned District Judge, West Thanjavur at Thanjavur is directed to dispose of the applications on or before 30th April 1990 and

appoint new trustees. I do hope the revision petitioners and respondents will co-operate with the District Judge, West Thanjavur at Thanjavur to

get the trustees appointed for the said Trust, in the interests of the Trust. However, there will be no order as to costs.