

(2003) 05 MAD CK 0001

In the Madras High Court

Case No : A.S. No's. 972, 1020, 1021, 1022, 1084, 1116, 1139 and 1140 of 2001 and 536 and 537 of 2002, C.R.P. No. 3932 of 2001, CRP NPD No. 508 of 2003 and C.M.P. No. 17523, 18437, 18439, 18440, 22285, 19656, 20168, 20694, 20714 and 22603 of 2001, 4880, 5295, 1306

A.M. Shamsudeen

APPELLANT

Vs

A.M. Mohamed Salihu and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 23 Rule 1(3), Order 43 Rule 1, Order 45 Rule 1, 104

Constitution of India, 1950 — Article 226, 227, 32

Madras Prohibition Act, 1937 — Section 4A

Citation : (2003) 2 MLJ 526

Hon'ble Judges : T.V. Masilamani, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : S.F. Mohamed yousuf and A.B. Fathimasulthana in A.S. No. 972 of 2001, A.B. Fathima Sulthana in A.S. No. 1020 of 2001, V. Selvaraj, in A.S. No. 1021 of 2001, V.M. Rajavelu, C.Thirumaran and V.R. Thangavelu in A.S. No. 1022 of 2001, V.K. Vijayaragavan R. Rajaramani in A.S. No. 1084 of 2001, R.N. Amarnath, in A.S. No. 1116 of 2001, V. Raghavachari, V. Srimathi and Mr.V. Lakshminarayanan in A.S. No. 1139 of 2001, S.Y. Masood in A.S. No. 1140 of 2001, B. Thanikachalam, for N. Subramani, in A.S. Nos. 536 and 537 of 2002, T.R. Mani for P. Balasubramani, in C.R.P. No. 3932 of 2001 and Hema Sampath and R. Subramanian in C.R.P. NPD No. 508 of 2003, for the Appellant; E. Ravichandran, for R1 and R2 and V. Raghavachari, for R5 in A.S. No. 972 of 2001, V. Venkatasamy, for R2 and 7 in A.S. No. 1020 of 2001, E. Ravichandran, for R1 to 3, C. Thirumaran, for R5, 6, 8 and 9, R.N. Amarnath, for R13, V. Venkatasamy, for R33 and 28, S.Y. Masood, for R12, N. Subramani, for R18 and 19, R. Subramanian, for R23, S.F. Mohamed Yousuf and Fathima Sulthana for R20 and 39, Ar. L. Sundaresan, for R7 and V.M. Rajavelu, for R11 in A.S. No. 1021 of 2001, R. Subramanian, for R1 and 2, S.Y. Masood, for R4, R.N. Amarnath, for R5 in A.S. No. 1022 of 2001, C. Thirumaran, for R4 and 6 in A.S. No. 1084 of 2001, V.M. Rajavelu, for R4, S.Y. Masood for R5 and R. Subramanian, for R1 and 2 in A.S. No. 1116 of 2001, V.M. Rajavelu, for R4, P.N. Amarnath and N.Subramani for R5 and R. Subramanian, for R1 and 2 in A.S. No. 1140 of 2001, V. Selvaraj, for R4, S.F. Mohammed Yousif and A.S. Fathima Sulthana for R8 in A.S. Nos. 536 and 537 of 2002, G. Ravishankar in C.R.P. No.

Judgement

N.V. Balasubramanian, J.—There are ten appeals and two Civil Revision Petitions arising out of a common order passed by the learned

Principal District Judge, Thanjavur in O.S. No. 6 of 1970 dated 25.9.2001 wherein learned Scheme Judge (Principal District Judge, Thanjavur)

appointed certain trustees, both hereditary and non-hereditary, for the administration of a wakf, that is, M.K.N. Madarasa, Adirampattinam. The

appeals and Civil Revision petitions have been preferred by the persons who were not selected by the learned Scheme Judge, and we find it

almost a common feature that the unsuccessful candidates who were not selected approach this Court against the order of selection at every

selection made and the litigation goes on endlessly. It is painful to note that serious allegations and counter allegations have been made by one party

against the other and the Courts have interfered on more than one occasion to set right the affairs of the trust so that the trust is properly conducted

and the college and the school run by the trust are properly run. No doubt, it is recognised that aggrieved parties have the necessary right and

remedy to approach the higher courts, but the level of accusation made by one party against others, to say the least, is unmatched as seen during

the course of long arguments of the case. As already observed by us, it is not a new litigation as the non-selected candidates in the earlier years

also had knocked at the doors of the court on many occasions and the court had the opportunity, on more than one occasion, to decide the matter

on merits.

2. The history of the trust is narrated in an unreported judgment in C.R.P. No. 2646 of 1995 dated 14.12.1995 by Mr. M. Srinivasan, J. (as His

Lordship then was) and Mr. S.S. Subramani, J. On 16.2.1900 and 6.4.1901 two gift deeds in the nature of wakf had been created by one Haji

Khader Mohideen and his three brothers for the purpose of creating and managing a Veda Padasala in Arabic (it should be properly called,

"Madarasa") and extensive properties were also donated for the said purpose. The four brothers who are the donors constituted themselves as

trustees for life by way of documents wherein provisions were also made for their

successors.

3. During the actual working of the wakf, the provisions made in the document were found to be inadequate on many aspects for proper

management of the trust, and hence, a scheme suit was filed in O.S. No. 16 of 1943 on the file of the District Court, Thanjavur for preparation of a

scheme. A scheme decree was drawn by the District Judge, Thanjavur and under the said decree, provisions were made for the appointment of

three hereditary trustees, one from each of the three branches and also for the appointment of six non-hereditary trustees to be appointed by the

District Court. The scheme decree prepared in O.S. No. 16 of 1943 was subsequently found to be insufficient and consequently, another scheme

suit was filed in O.S. No. 21 of 1952 on the file of District Court, Thanjavur and a scheme decree was also passed in O.S. No. 21 of 1952.

4. Thereafter, the present suit in O.S. No. 6 of 1970 was filed before the District Court, Thanjavur for preparation of a scheme. Learned District

Judge, Thanjavur passed a decree modifying the earlier decree in O.S. No. 21 of 1952 and held that the proportion of hereditary and non-

hereditary in the Board of Management should be 2:1, and hereditary trustees should be appointed to hold the post for life and non-hereditary

trustees should be appointed for a period of five years.

5. The decree passed in the scheme suit was subject matter of appeal before this Court in A.S. No. 992 of 1978 1994 1 L.W. 18 JS and the

question that arose before the Division Bench of this Court was whether the term of office fixed by the learned District Judge is proper and in

accordance with the intention of the founders of the trust. The Division Bench of this Court held that a period of three years would be fixed in the

scheme for the office of both hereditary and non-hereditary trustees so that there would be uniformity in the appointment of trustees. The Court has

taken the above view on the basis that all the heirs in the line of succession will have an opportunity to serve in the trust and the intention of the

founders could not be achieved if the trustees were allowed to occupy the post for life. This Court also held that since there is a provision for

reappointment, any trustee who acquits himself or who has rendered noteworthy service is eligible for reappointment and there would be scope for

the Court to determine the performance of the hereditary trustees at periodical

intervals. Consequently, the decree passed by the District Judge, Thanjavur was modified by the judgment of this Court rendered in A.S. No. 992 of 1978 dated 5.8.1987.

6. Even before the framing of the scheme, the matters came before this Court and the reported decisions are found in 1994 1 L.W. and in

SHEIKH JALALUDEEN, S.M.S. & ANOTHER v. S.K. SHEIK JALALUDEEN & OTHERS 1994 1 L.W. 16, Ramaprasada Rao, J (as His

Lordship then was). considered one matter regarding the appointment made by order dated 16.8.1969. Immediately after framing of the scheme,

Sivasubramaniam, J. considered another matter in C.R.P. No. 3108 of 1988 1994 1 L.W. 24JS. Similarly, K.S. Bakthavatsalam, J. considered

another matter in C.R.P. No. 3127 of 1989, etc. Batch 1994 1 LW 25 and the order of K.S. Bakthavatsalam, J. went before the Supreme Court

in Civil Appeal Nos.3683 to 3690 of 1991 (reported in 1994 1 LW 40JS). The Supreme Court held that the trustees appointed should work up

to 31.5.1992 and the scheme Court was directed to complete the process of selection before 31.5.1992. After the decision of the Supreme

Court, learned scheme Judge called for applications and completed the selection process. That selection was challenged again before this Court in

C.R.P. No. 2719 of 1992. K. Venkataswami, J. considered the matter and dismissed by order dated 27.11.1992 1993 1 LW 502. Against that

order a SLP was filed before the Supreme Court.

7. The Supreme Court initially passed an order in SLP No. 16386 of 1992 directing that status quo should be maintained, and later directed that

the names of three persons should be excluded and the remaining persons should be allowed to continue in office. The Supreme Court also

appointed Mr. Justice V. Khalid, a former Judge of the Supreme Court as Chairman of the Board of Trustees to carry on the administration of the

trust. Mr. Justice V. Khalid who was appointed as Chairman had wide powers to suspend any resolution or decision of the Board of Trustees

which was considered to be not in the interests of the Trust leaving it open to the aggrieved person to move the Supreme Court against any such

decision taken by the Chairman. Mr. Justice V. Khalid was also directed to make recommendations regarding the management of the trust. Mr.

Justice V. Khalid assumed the office of Chairman on 15.4.1993 and he also filed

certain reports. Ultimately, he was relieved from the post. It is not necessary to refer to certain contempt proceedings initiated by the Supreme Court against the learned District Judge, Thanjavur. The Supreme Court, in a subsequent order, directed the District Judge, Thanjavur to hear the matter and accordingly, the learned District Judge passed an order and ultimately, the matter came before this Court by way of Civil Revision petition mentioned earlier.

8. That was the history of selection in the year 1992 and in respect of the selection in the year 1995, C.R.P. No. 2646 of 1995 was filed which was disposed of by Mr. Justice M. Srinivasan (as His Lordship then was) and Mr. Justice S.S. Subramani by judgment, dated 14.12.1995. Again in 1998, some of the non-selected candidates questioned the selection in a batch of Civil Revision petitions and Mr. Justice S.M. Abdul Wahab has considered them in C.R.P. No. 2845 of 1998, etc. batch. It is stated that as against the order passed by Mr. S.M. Abdul Wahab, J., at the instance of some of the persons, the matter was taken to the Supreme Court and the Supreme Court interfered in SLP No. 1556 of 2000, by judgment dated 25.2.2000.

9. We are now concerned with the order of the learned Principal District Judge, Thanjavur selecting six hereditary trustees and three non-hereditary trustees for the period from 28.9.2001 to 28.9.2004. The order was passed on 25.9.2001 and the order was questioned in the appeals, A.S. Nos. 972 of 2001, etc. batch. A learned Single Judge of this Court, by way of interim arrangement, appointed President, Vice President and Secretary among the trustees for the management of the affairs of the trust. That order was passed on 10.12.2001 and there was no stay of the operation of the order passed in the scheme suit. Learned Single Judge, by order dated 21.12.2001, held that since the person who was directed to act as President expressed his reluctance to continue as President, the Vice President and the Secretary would be the office bearers and they should discharge their functions in accordance with the scheme decree. Learned Single Judge in the same order, appointed Mr. Justice B. Akbar Basha Khadiri, a retired Judge of this Court to exercise supervisory control over the trust until the matters are disposed of finally.

Learned Single Judge also directed the office bearers to keep the learned Judge

apprised of all matters and they should also obtain his guidance in this regard and report to him as per his directions. Learned Single Judge also held that it is open to the learned Judge (Mr. Justice B. Akbar Basha Khadiri) to make surprise visits and record as to what happened with regard to the functioning of the trust. Mr. Justice B. Akbar Basha Khadiri when he was functioning as Supervisor filed five reports. The second respondent in A.S. No. 1022 of 2001 M. Ahmed Ibrahim filed objections. Other trustees have also separately filed their objections. Subsequently on 4.6.2002, learned Single Judge issued further directions regarding admission of students in the college and schools. Mr. Justice B. Akbar Basha Khadiri, who was appointed as Supervisor, has requested that he may be excused from this matter. Learned Single Judge, by order dated 14.6.2002, felt that it is unfortunate that the learned Judge who was appointed as Supervisor was put to embarrassment and relieved him of the responsibilities. On 30.7.2002, a Bench of this Court in C.M.P. No. 18438 of 2001 held that pending disposal of the appeal, it would become necessary to administer the trust and to have effective control over the trust, stayed the appointment of existing trustees and the office bearers and appointed Mr. Justice A. Abdul Hadi, a retired Judge of this Court as Receiver to take control over the administration of M.K.N. Madarasa Trust of Adirampattinam. Learned Receiver was given full power in the matter relating to the administration and maintenance of the trust properties and all institutions under the trust. Pursuant to the order of this Court, Mr. Justice Abdul Hadi assumed Office and filed 13 reports and M. Ahmed Ibrahim (respondent No. 2 in A.S. No. 1022 of 2001) has filed objections to the reports. As already observed, other trustees also have filed their objections. Learned Supervisor and the learned Receiver have filed their remarks to the objections, for which M. Ahamed Ibrahim, Secretary and Dr. H. Abdul Hakeem, Vice President have filed their objections. The contents of the reports and the objections would be considered later.

10. Since there was a complaint that copies of the reports were not furnished, this Court passed an order permitting the party whosoever wants a copy of any of the reports to apply for certified copy of the report and the copy would be furnished. Accordingly, counsel appearing for the parties

have stated that they have received copies of the reports and there is no complaint regarding non-receipt of copies of the reports submitted either

by the learned Supervisor or by the learned Receiver.

11. We have already noted that there are 10 appeals preferred against the order of the learned Scheme Judge, Thanjavur and there are two

C.R.Ps. also filed against the same order. The following points arise for consideration:-

1. Whether the appeals are maintainable in law and whether the respondents are correct in contending that only C.R.Ps. are maintainable?

2. Who are the necessary parties in the C.R.Ps. if this Court holds that C.R.Ps. are maintainable?

3. What is the extent of jurisdiction of this Court?

4. Whether any ground has been made to set aside the selection made by the Scheme Court of the hereditary trustees and non-hereditary trustees?

5. What are the reliefs that can be granted?

First let us consider the question whether the appeals are maintainable in law.

MAINTAINABILITY OF THE APPEALS:

12. Learned counsel appearing for the respondents in the appeals, particularly Mr. T.R. Mani, learned senior counsel for the petitioner in C.R.P.

No. 3932 of 2001 has raised a preliminary objection that the appeals are not maintainable in law. Mr. Selvaraj, learned counsel appearing for the

appellant in A.S. No. 1021 of 2001 referred to the order of Mr. S.M. Abdul Wahab, J. rendered in C.R.P. No. 2845 of 1998, etc. batch dated

16.4.1999 and submitted that the learned Judge has held that the adjudication done by the learned Scheme Judge in the matter of selecting

candidates in hereditary and non-hereditary branches would determine the rights of the parties and since there is final adjudication of the claim of

the parties with reference to their rights to hold the office of Board of Trustees for a particular period, the adjudication would amount to a decree

and the proper remedy for the parties aggrieved would be to prefer appeal. Learned counsel therefore submitted that on the basis of the decision

of Mr. S.M. Abdul Wahab, J. in the C.R.Ps. above referred to, the appeals have been preferred.

13. We heard Mr. T.R. Mani, learned senior counsel and Mr. Selvaraj, learned counsel and other counsel appearing for the parties also. Learned

counsel for both the parties have expressed that they have no objection for this Bench to hear C.R.Ps. if the appeals are converted as C.R.Ps. and

they have addressed their arguments on merits of the case. Learned scheme Judge has passed the order on the basis of the powers reserved in

himself in the scheme decree itself and the order selecting candidates to represent hereditary and non-hereditary trustees or rejecting the candidates

in anyone of the groups has been passed on the basis of the scheme decree itself and not de hors the same.

14. In RANGANATHA v. KRISHNASWAMI AIR 1924 Mad 369, a Bench of this Court held that no distinction could be drawn between the

interpretation of an Act and that of a scheme u/s 92 C.P.C. and the District Court in such a scheme means not the person but the tribunal. The

scheme decree provides that the Board of trustees shall be constituted by the District Court, Thanjavur and the District Court is empowered to

take action to appoint members of the Board of trustees either suo motu or on application of the parties interested and the selection made by the

District Court shall be final subject to the powers of the High Court u/s 115 C.P.C. and Article 226 of the Constitution of India and that of the the

Supreme Court under Article 32 of the Constitution of India. We are of the view, it is only by exercise of the powers reserved in favour of the

scheme Court, the said Court selects persons to represent hereditary branch and non-hereditary branch and for the exercise of the power by the

Scheme Court, it is not necessary that there shall be an interlocutory application which would normally be filed in a suit for the grant of interim

injunction or for other interim reliefs pending suit. Since the scheme Court exercises the power under the scheme decree itself, the order is not

passed in an interlocutory application and we are of the view that the scheme Court was correct in passing the order in the scheme suit itself.

15. This Court in (Board of Control) Sri Thyagarajaswami Devasthanam Vs. Balayee Ammal and Others, has held that the question whether the

decree framing a scheme for a charitable trust is executable or not must depend on the language and on the scope of the decree or of that

particular part of the decree in respect of which the question arises and from the nature of the case such a decree may in part be declaratory and in

part directory and it may provide a specific procedure for carrying out particular provisions of the scheme and yet leave other provisions of the

scheme enforceable by execution. Hence, it is only in pursuance of the specific procedure provided in the scheme, the scheme Court is vested with

the power to select persons to represent hereditary and non-hereditary branches of trustees.

16. We are also of the view that the order passed by the scheme Court selecting persons to represent the hereditary branches and nominating

certain persons to represent non-hereditary branch does not amount to a decree. The expression, "decree" is defined in section 2(2), C.P.C.

which reads as under:-

(2) "decree" means the formal expression of adjudication which, so far as regards the court expressing it, conclusively determines the rights of the

parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. it shall be deemed to include the

rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. it is final when

such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

A careful reading of the definition clearly shows that decree must conclusively determine the rights of the parties with regard to all or any of the

matters in controversy in the suit and it may either be preliminary or final. We hold that by selecting certain persons to represent the hereditary

trustees, the rights of the parties with regard to all or any other matters in controversy in the suit are not decided as the controversy that arose in the

working of the scheme suit has already been decided by passing the scheme decree and that controversy no longer subsists. Though the order

passed by the scheme Court may have some impact on the rights of the applicants in the matter of selection to represent hereditary and non-

hereditary branches, by that process the controversy that arises in the suit is not determined. Therefore the order passed by the scheme Court is

not a decree within the meaning of section 2(2) CPC.

17. The Privy Council in S.J. BHOGILAL v. TEMPLE COMMITTEE 1925 PC 155 held

that orders passed relating to a scheme framed and sanctioned by the court in a scheme suit are not orders in execution of a decree and are not therefore appealable. The Privy Council held that the said orders are not decrees which are appealable. It is well settled that an appeal is a statutory right and the appeal is provided from an original decree u/s 96 CPC and since the order passed by the scheme court is not a decree, the order is not appealable u/s 96 CPC. It is also not one of the appealable orders provided under Order 43 Rule 1 CPC. In other words, the order passed by the scheme court does not decide the rights of the parties with regard to the matters in controversy in the suit. We have already held that there need be no interlocutory application before the scheme court for the exercise of the powers in the matter of selection. The scheme court also does not adjudicate any matter in controversy with reference to the suit. It is not an appealable order u/s 104 C.P.C. or anyone of the orders under Order 43 Rule 1 CPC. Section 105 CPC expressly provides that no appeal shall lie from any order made by the court in the exercise of original or appellate jurisdiction, save as otherwise expressly provided in the Code itself.

18. It is also relevant to notice here that Order 45 CPC deals with appeals to the Supreme Court and under Order 45 Rule 1 CPC there is a separate definition for the term, "decree" and the expression, "decree" is widely defined to include a final order also. The wide definition of the term, "decree" under Order 45 Rule 1 CPC is purposely made to provide for an appeal to the Supreme Court against an order and it is only by the expansive definition of the term, "decree" to include an order, an appeal would lie to the Supreme Court against a final order. The fact that an expansive definition of the term, "decree" is given in Order 45 Rule 1 CPC also gives a clue that for other purposes, an order passed without affecting rights of the parties as regards the subject matter of dispute in a suit is not a decree and it is only an order against which appeal is not maintainable.

19. It is relevant to mention here that in all the earlier proceedings with reference to the same trust, the parties have filed only C.R.Ps. and they have not preferred any appeal. The earliest order which is on our hands is the order in C.R.P. No. 2025 of 1960 dated 21.7.1961 1994 1

L.W.12 JS. Another significant aspect is that this Court has framed a scheme decree in A.S. No. 992 of 1978 by judgment dated 5.8.1987 (1994

1 L.W. 18 JS). There was also another C.R.P. No. 179 of 1979 filed against the order passed by the scheme Court appointing certain trustees in

pursuance of the scheme framed in the said suit. This Court disposed of both the appeal and the C.R.P. by a common judgment and the C.R.P.

was decided on merits of the matter. There are other C.R.Ps., namely, C.R.P. No. 3108 of 1988 dated 25.11.1988, C.R.P. Nos. 3127, 3205,

3210, 3211, 3277, 3280 and 3282 to 3299 of 1989 dated 8.3.1990, C.R.P. No. 2719 of 1992 dated 27.11.1992 and C.R.P. No. 2646 of

1995, etc. batch dated 14.12.1995.

20. We have taken pains to refer to earlier C.R.Ps. since Mr. S.M. Abdul Wahab, J. in C.R.P. No. 2845 of 1998, etc. batch dated 16.4.1999

has expressed a view that an appeal would be maintainable against the order of learned Scheme Judge selecting persons to represent hereditary

and non-hereditary branches as there is an adjudication of claims of the parties to the case with reference to their rights to hold the office of

trusteeship for a particular period. Learned Judge held that the adjudication would amount to a decree and not an order and the proper remedy for

the parties aggrieved would be to prefer an appeal. We are unable to approve the view of Mr. S.M. Abdul Wahab, J. that appeal would be the

proper remedy. Learned Judge, after quoting the definition of the term, "decree", has overlooked that under a decree there must not only be

adjudication and determination of rights of the parties, but there must also be adjudication with reference to all or any other matters in controversy

in the suit and the determination of rights of the parties on a subject matter of controversy in the suit is a pre-condition to regard an order as a

decree, and when the rights of the parties with reference to the controversy in the suit is not settled, the order is not a decree, and it is only an

order against which C.R.P. alone would lie and not an appeal. Learned Single Judge has also overlooked the earlier orders passed by Division

Benches and learned Single Judges of this Court rendered in C.R.Ps. with reference to the mode of selection of trustees to the same trust.

21. As against the judgment of Mr. Justice S.M. Abdul Wahab in C.R.P. No. 2845 of 1998, etc. batch, an appeal was filed before the Supreme

Court. The Supreme Court in Civil Appeal No. 1556 of 2000 (between K. Naina Mohamed and S. Mohd. Mohideen & others), by judgment

dated 25.2.2000, has held that this Court exceeded its jurisdiction conferred u/s 115 CPC. It is also relevant to mention here that the Supreme

Court in the same judgment has held that the power of revision to be exercised by this Court is one u/s 115 CPC and not the power of appeal as

wrongly assumed by the learned Single Judge.

22. Mr. Selvaraj, learned counsel for the appellant in A.S. No. 1021 of 2001 submitted that it is only on the basis of the judgment of Mr. S.M.

Abdul Wahab, J. the parties have preferred the appeals. He submitted that they have pursued the matter diligently and bona fide and the period of

limitation is one and the same for filing C.R.P. as well as for filing appeal and since the matters are pending before this Court and interim directions

have also been granted in the matters, he prays that all the appeals may be converted into C.R.Ps. and all the appellants except in A.S. No. 1139

of 2001 have filed petitions to convert the appeals into C.R.Ps. in C.M.P. Nos. 6653, 6735, 6654, 6734, 5105, 6652, 6655, 6656 and 6651 of

2003.

23. We find that the appellants have diligently and bona fide pursued the matter before this Court and only on the basis of the judgment of Mr.

S.M. Abdul Wahab, J., they have preferred appeals. We have already held that the order of the scheme court is not a decree and only C.R.Ps.

would lie. Accordingly, we order the petitions, C.M.P. Nos. 6653, 6735, 6654, 6734, 5105, 6652, 6655, 6656 and 6651 of 2003 filed to

convert the appeals into C.R.Ps. and all the appeals except A.S. No. 1139 of 2001 are ordered to be converted as C.R.Ps. for the disposal of the

matter. Learned counsel for all the parties submitted that the matter may be heard by us on merits and accordingly, we heard the matter and

dispose of the same by this judgment. However, for the sake of convenience, the case numbers and the parties are referred to as if appeals are

dealt with.

PARTIES TO THE DISPUTE:

24. Mr. T.R. Mani, learned senior counsel has raised a point that in the C.R.Ps. filed, it would be enough to implead only the selected candidates

as party/respondents and it is not necessary to implead the objectors or any

other person who have preferred applications in the particular branch of trustees as party/respondents. Mr. V. Selvaraj, learned counsel, on the other hand, referred to the judgment of Division bench of this Court in C.R.P. No. 2646 of 1995, etc. batch, dated 14.12.1995 wherein this Court held that objectors should be made as parties. On the other hand, Mr. S.M. Abdul Wahab, J. in C.R.P. No. 2845 of 1998, etc. batch, by judgment dated 16.4.1999 held that there would be no error if the selected candidates alone are made as party/respondents and it is not necessary to include the objectors.

25. We heard Mr. T.R. Mani, learned senior counsel and Mr. Selvaraj, learned counsel and other counsel appearing for the parties. We are unable to approve the view of Mr. S.M. Abdul Wahab, J. that only selected candidates should be made as party/respondents in C.R.P. We are of the view that all other persons who have applied in a particular branch, either hereditary or non-hereditary, should be made parties in the C.R.P. If the selected candidates or objectors are alone made parties in the C.R.P. and if the Court finds that the selection is not proper and needs interference in the matter of selection of a particular candidate, other persons who have applied for in the same branch should be before the Court so that the Court would be in a position to appraise the merits and demerits of all the candidates and select anyone of them in the place of already selected candidate whose selection is found to be not proper. We hasten to add here that if the petitioners before the Court implead only persons who have taken active part before the scheme court in pursuing his application, when this Court, in the exercise of revisional powers, finds that a particular candidate is suitable for selection in the event of disqualification of a selected candidate, that particular candidate should be a party before this Court to ascertain his willingness to act as a trustee. Though the matter of selection is not a matter of lies between the parties and there is no adjudication of rights and liabilities of the parties in the matter of selection, we are of the view, under Order 1 Rule 10 CPC all necessary parties should be made party/respondents in the C.R.P. No doubt, it is not necessary for a revision petitioner to implead in his C.R.P. the applicants in other branches as their names are not to be considered in the matter of selection in a particular branch. Hence, we are of the view that

all persons who have preferred applications in a particular branch and whose names have been considered should be made parties in the C.R.P. so

that this court would be in a better position to assess the claims of the parties at the time of consideration of the C.R.P. Hence, we are unable to

approve the view expressed by Mr. S.M. Abdul Wahab, J. that only selected candidates should be made parties in the petition and it is not

necessary to include even the objectors.

26. We find in some of the appeals, the appellants or the petitioners, as the case may be, have included all the persons in all branches as

party/respondents. If all the persons who have preferred applications in all the other branches are impleaded as parties in all the appeals, it would

cause further delay in the adjudication of the petitions as service of notice on all the respondents impleaded consumes time and consequently there

will be inevitable delay in the finalisation of the proceedings. Hence, it is not necessary to include the applicants of other branches as

party/respondents in the C.R.Ps. and it will be sufficient that only those applicants in a particular branch who were either selected or rejected

should be made parties in the petitions.

JURISDICTION OF THE COURT:

27. We have already held that the proper remedy for the parties who have not been selected is to prefer a revision. The Supreme Court, with

reference to the same trust, in *Sheikh Jalaludeen, S.M.S. & another v. S.K. Sheikh Jalaludeen & others* 1994 I LW 14 JS dealt with the

jurisdiction of the court and held as under:-

Even if reasons which prevailed with the District Judge did not meet with approval of the High Court, it had no power to reverse the order of the

District Judge unless it was found that there was an error apparent on the face of the record or the District Judge had overstepped limits of his

jurisdiction or had arbitrarily or capriciously exercised his authority. The jurisdiction of the High Court being limited, an erroneous decision -

assuming that it was so rendered by the District Judge could not attract the exercise of the powers under Art. 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.

28. Mr. K. Venkataswami, J. (as His Lordship then was) in A. HALEEM AND 10 OTHERS v. M.S. TAJUDEEN AND 8 OTHERS 1993 I

LW 502 held that section 115 CPC would apply to a matter in which no appeal lies and where the legislature has provided no right of appeal and

where the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has

acted in the exercise of its jurisdiction illegally or with material irregularity, the revisional Court can interfere. Learned Judge also held that the High

Court has no power to interfere on the question of fact. Learned Judge held that in determining the correctness of the decision of the District Court,

this Court may have to go into the question of jurisdiction of the court and it has to determine the collateral questions upon the ascertainment of

which the decision as to jurisdiction depends. However, learned Judge cautioned that the Court does not act as a court of appeal so far as the

assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in

any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result

in grave injustice to a party.

29. Mr. S.M. Abdul Wahab, J. in his judgment in C.R.P. No. 2845 of 1998, etc. batch, dated 16.4.1999, has held that this Court has to exercise

appellate power. The Supreme Court in Civil Appeal No. 1556 of 2000 (between K. Naina Mohamed and S. Mohd. Mohideen & others), by

judgment dated 25.2.1990, while reversing the judgment of Mr. S.M. Abdul Wahab, J., interfered with the selection made with reference to

hereditary trustees and held that the High Court has no power to compare the merits and demerits of the individual candidates and to come to the

conclusion that a particular non-selected candidates would be better candidate than the selected candidates. The Supreme Court held that if the

comparison is made, it would amount to exceeding the jurisdiction conferred u/s 115 CPC and cannot be sustained. Hence, the jurisdiction of this

Court in interfering with the appointment made by the scheme Court is limited and this Court has to see whether the appointment by the scheme

Judge was made consistent with the provisions of the scheme decree and he has acted keeping in mind the interests of the trust in making the

selection and whether the qualifications of becoming a trustee are fulfilled and the selected trustees do not suffer from any disqualification. This

Court, in our view, has no jurisdiction to go into the relative merits and demerits of the candidates and substitute its own view for the view

expressed by the scheme court in the matter of selection of candidates in a particular branch.

30. Therefore, we are of the opinion, the view expressed by Mr. S.M. Abdul Wahab, J. is not sustainable and the Court has to exercise only the

revisional power and as observed earlier by the Supreme Court as well as by Mr. K. Venkataswami, J. (as His Lordship then was), this Court

cannot substitute its own view for the view expressed by the scheme Court in the matter of selection of parties. We are of the view that this Court

has limited jurisdiction to find out whether the selection by the scheme Court with reference to a particular branch was made keeping in mind the

interest of the trust.

QUALIFICATIONS FOR THE SELECTION OF TRUSTEES IN HEREDITARY BRANCH:

31. We have already held that there are three branches of the original trustees and the scheme court is required to select two individuals from each

branch and the hereditary trustees who are selected shall hold the office for a period of three years and the only qualification is that the applicants

must belong to the respective branches and there is no ceiling in age, no property qualification or no educational qualification. The only

disqualification is that the persons indebted to the trust are not eligible to hold the office of the hereditary trustees. There are no residential

qualifications in the sense that the hereditary trustees should be a resident of Adirampattinam. The scheme does not also prohibit the appointment

of same person consecutively. This Court, while framing the scheme in SHEIKH JALALUDEEN, S.M.S. & ANOTHER v. S.K. SHEIK

JALALUDEEN & OTHERS 1994 1 LW 18, held that all the heirs in the founder's family should have an opportunity to serve as a trustee and it

is open to the scheme Court to reappoint the same trustee if the trustee has

acquitted himself and rendered noteworthy service, and the performance would be criterion for reappointment. This Court held that in the case of deserving trustees it would be open to the scheme court to consider their case for reappointment and reappoint them also as trustees and there are no ceilings or restrictions in the matter of reappointment. The only disqualification in the case of hereditary trustees is that the candidate must not be indebted to the trust and if indebted, he is not eligible to be appointed as a hereditary trustee.

32. As far as non-hereditary trustees are concerned, they shall be nominated by the scheme Court for a period of three years and the scheme provides that the nomination shall be made among the Muslim residents of the Panchayat area of Adirampattinam. The members who are nominated should be the persons of known reputation and character imbued with public spirit and they must be in the age group between 35 and 70 years and they must be assessed to Income Tax or they must also be assessed to water charges and property tax, the details of which are set out in the scheme.

33. The scheme court, while selecting persons for hereditary trustees should keep in mind the objects of the trust and whether a person selected would further or promote the cause of the trust. They should not violate the express directions of the scheme. In so far as non-hereditary trustees are concerned, they must fulfill the conditions for appointment as non-hereditary trustees. They have no right of nomination. They cannot say that they are better qualified persons than a person nominated and hence, they have to be nominated. This Court does not go into the question of relative merits and demerits of the persons appointed as non-hereditary trustees by the scheme Court when the nomination is challenged by an unsuccessful candidate.

FIRST BRANCH: (hereditary)

34. In so far as first branch is concerned, seven persons have applied for consideration of their names to be appointed as hereditary trustees to represent the branch. Learned scheme Judge has appointed the first applicant, H. Farooq and the third applicant, M. Ahmed Ibrahim to represent the first branch. The appeals have been preferred by the non-selected candidates in A.S. No. 1022, 1116 and 1140 of 2001. As far as the

selection made by the scheme Court is concerned, we find that the first applicant, H. Farooq is a permanent resident of Adirampattinam and aged 45 years. Though he studied only up to 8th standard, he is found to be a person worth Rs. 2,50,000/- and he is interested in rendering public service and he has also produced certificate from the Village Administrative Officer regarding the value of the property owned by him. He has not performed as a trustee earlier.

35. The seventh applicant in that branch, by name, N. Ahmed Rasheed has raised objections stating that the first applicant is running Gambling House and the certificate given by the Village Administrative Officer is not correct. The same objections were reiterated by the fourth applicant and sixth applicant and others have not raised any objection. The scheme Court found that there is absolutely no evidence to show that the first applicant is running a Gambling House at Adirampattinam and rejected the objection raised by the seventh applicant. The scheme Court also found that the value of the property would be more than Rs. 2,50,000/- which is the value given by the Village Administrative Officer, if the value of the land is also taken into account. The scheme Court found that the father of the first applicant was appointed as trustee and there are no serious objections for the selection of the first applicant as a trustee.

36. As far as the third applicant, M. Ahmed Ibrahim is concerned, the scheme Court found that he is residing in Adirampattinam and he has not performed as trustee at any point of time earlier and he is a firm believer in Islam and its principles. The scheme Court found that he is eligible to be considered for the appointment of hereditary trustee and accordingly, he has been appointed.

37. In the objections filed by the fourth applicant, one of the objections raised against Ahmed Ibrahim was that he got two family cards and in one card, the address is shown as 20A, V.O.C. Street, Adirampattinam and in the other family card the address is shown as No. 4A, Nadu Street Melpuram, Adirampattinam. Counsel appearing for Ahmed Ibrahim has produced the Xerox copies of the two family cards and submitted that the objection raised has no substance as one card bearing No. 18/G/021216 was issued in the name of one Katheeja ammal and the other card bearing No. 18/Y/140683 was issued in the name of M.Ahmed Ibrahim. Though

in the family card issued in the name of Katheeja ammal, the name of Ahmed Ibrahim is found, it is stated that Katheeja ammal is his mother-in-law. In so far as the objection that in the family card issued to Katheeja ammal wherein the name of Ahmed Ibrahim is found is concerned, there is no evidence to show that the name of Ahmed Ibrahim found in her family card represents the same Ahmed Ibrahim found in the family card issued in the name of Ahmed Ibrahim. There is also no evidence to show that he is responsible for the issue of two family cards one in his name and the other in the name of Katheeja ammal including his name in the other card. Hence, the objection with regard to the issue of two family cards has no substance and it is rejected.

A.S. No. 1022 of 2001:

38. As far as the appeal in A.S. No. 1022 of 2001 is concerned, it is filed by the fourth applicant in the first branch. He was found to be 66 years old. Learned counsel for the appellant has produced some evidence to show that the fourth applicant is a permanent resident of Adirampattinam and he has also produced certain certificates issued by Masjidunnoor Mosque. His name was considered during earlier appointment and rejected on the ground that he was a drunkard. The scheme Court found that he was having drinking habit and hence, he was not fit to be appointed as a trustee. The scheme Court was of the view that only persons of character should be appointed as trustees and a person with drinking habit may not devote his full attention for the improvement of the trust. We therefore hold that the rejection of the fourth applicant, namely, Abdul Azeez is proper.

39. Though there is some substance in the arguments of the learned counsel for the appellant that his claim was earlier rejected only on the ground that his elders were appointed as hereditary trustees, it is seen from the earlier order that the fact that he has a drinking habit was also taken into consideration for the rejection of his application, though it was not the sole ground. Learned counsel submitted that as far as the fourth applicant is concerned, there is no proof to show that he has the habit of drinking and he referred to the copies of his passport and telephone bills and the certificate issued by Masjidunnoor Mosque and submitted that he is the Executive Committee member of the said Mosque and he rendered social

service. As already observed by us, this Court is not inclined to go into the merits and demerits of the candidates and one factor that was taken

into account by the scheme Court is that he is in the habit of drinking which was noticed in the earlier proceedings also. The Scheme Court found

that the person with drinking habit may not serve the trust efficiently. We hold that the rejection of the application of the appellant cannot be said to

be made on irrelevant grounds. As far as the evidence of drunkenness is concerned, the earlier proceedings would be a piece of evidence for the

scheme court to form an opinion. Hence, we hold that the rejection of the appellant's application is proper. Consequently, A.S. No. 1022 of 2001

is liable to be dismissed.

A.S. No. 1116 of 2001:

40. This appeal is preferred by the sixth applicant and he was rejected on the ground that he was a trustee earlier and since he is a businessman, he

may not be able to devote his full time in the management of the trust. Mr. Selvaraj, learned counsel referred to certain documents to show that the

sixth applicant was a trustee and he is a member of Shamsul Islam Sangam and he is a member of Adirampattinam Rural Development

Association. It is stated that he is a member of Athirai Consumer Protection Committee. He has also produced the certificate issued by the Village

Administrative Officer to show the extent of the property possessed by him. Learned counsel submitted that when he acted as a trustee from 1995

to 1998 he improved the trust and constructed several buildings for the development of the trust. He also referred to the report of Mr. V. Khalid,

J. wherein the sixth applicant was described as a trust-worthy person and submitted that the report of Mr. V. Khalid, J. should have been taken

note of in considering the application of the sixth applicant for his reappointment to the Board of trustees. He submitted that he has rendered

commendable service to the trust and hence, his name should have been considered.

41. We find that the scheme court has taken into account the business activities of the sixth applicant. The scheme court has also taken into

account the fact that he acted as a trustee earlier and then rejected his application. The scheme court has not violated any of the express directions

of the scheme decree and we hold that the order of the scheme court in rejecting

the application of the sixth applicant is sustainable and no interference is called for.

A.S. No. 1140 of 2001:

42. This appeal is preferred by the fifth applicant, Abdul Kadher. His brother is the first applicant, Farooq. His application was rejected on the ground that the name of his brother Farooq has been selected as one of the hereditary trustees and their father was also a trustee. Further it was found that the appellant was also a trustee earlier. Counsel for the appellant submitted that he is a permanent resident of Adirampattinam and he is a qualified person and he is a member of Consumer Protection Council and he is a member of Mohideen Jumma Palli Muhalla Committee. He has produced evidence to show that he has been rendering social service. He has also produced evidence to show that during his period, he has performed commendable services for the improvement of the trust. Counsel submitted that he studied up to S.S.L.C. and owns property and he was also a trustee earlier and his experience in the matter of administration of the trust should have been taken into consideration. It is seen that the first applicant was selected from the family of the fifth applicant and he was a trustee earlier. Though it is stated that he was not a trustee for a full term, namely, a period of three years, considering some of the objections raised against him, the scheme court rejected the application of the appellant. We do not find anything wrong in rejecting the application of the appellant and the order rejecting his name does not call for any interference and this appeal is liable to be dismissed.

II BRANCH: (Hereditary)

43. As far as the second branch is concerned, there are nine applicants and the learned scheme Judge has selected the first applicant, Mohammed Salih and the third applicant M.A. Ahmed Anas. Now let us consider the basis on which the learned scheme Judge has selected the applicant Nos.1 and 3. As far as the first applicant, Mohammed Salih is concerned, he is aged 50 years and studied up to S.S.L.C. and he has produced evidence to show that he got property worth nearly Rs. 13 lakhs and he has also produced evidence to show that he is paying property tax. The fourth applicant who is appellant in A.S. No. 1021 of 2001 has preferred an objection stating that the first applicant has not produced patta and

other documents in support of his educational qualifications and except the certificate given by the Village Administrative Officer, the first applicant

has not produced any evidence to show that he is a man of means. However, the first applicant has also filed relevant documentary evidence for

the purchase of the property and for his educational qualifications and he is not indebted. Learned scheme Judge has found that the first applicant,

namely, Mohammed Salih has produced evidence to show that he owns property and he is aged 50 years and he studied up to S.S.L.C. and felt

that he would improve the trust, if he is appointed as a trustee. On that basis, the learned scheme Judge selected the first applicant as a trustee.

44. As far as the third applicant, Ahmed Anas is concerned, he has produced documentary evidence to show that he is residing in Adirampattinam

and he is aged 53 years and studied up to P.U.C. and he is having property worth nearly Rs. 50 lakhs. He has produced evidence from the Village

Administrative Officer to show that he is in possession of the property and the value of the property. He has also produced evidence from Shamsul

Islam Association of Adirampattinam.

45. So far as the objection raised by the fourth applicant, Jamaludeen, who is the appellant in A.S. No. 1021 of 2001 is concerned, the brother of

the third applicant, by name, M.A. Ashraf was a trustee and his brother married the sister of one S. Mohammed Mohideen who was the Secretary

of the trust and a suit has been instituted in O.S. No. 114 of 1998 on the file of Subordinate Judge's Court, Pattukkottai against Mohammed

Mohideen and his brothers, Mohammed Aslam, S.J. Mohammed Jaleel, S.J. Abdul Hasan and S.J. Ahmed Ansari on the ground that they have

encroached upon the property belonging to the trust and the suit is pending and if Ahmed Anas, brother-in-law of Mohammed Mohideen is

selected as a trustee, it would hinder the progress of the pending suit instituted by the trust. The third applicant has filed a written reply stating that

there would be no hindrance for the prosecution of the suit, if he is appointed as a trustee. Learned scheme Judge has found that the third

applicant, Ahmed Anas has produced evidence to show the property owned by him and he is aged only 53 years and studied up to P.U.C.

Learned scheme Judge held that the fact that his brother was a trustee earlier is not a ground to reject his application. Learned scheme Judge felt

that by selecting the third applicant, he would act for the furtherance of the objects of the trust and in this view of the matter, she selected the third

applicant as one of the trustees to represent the second branch of hereditary trustees. It is only on the above basis, learned scheme Judge has

selected the applicants 1 and 2 to represent the second branch of hereditary trustees of the trust. The selection is challenged in five appeals.

A.S. No. 1021 of 2001:

46. This appeal is preferred by the fourth applicant in the second branch. Learned scheme Judge rejected his application on the ground that he was

a building contractor and suffered sentence under the Madras Prohibition Act and he is a member in several Associations and aged 63 years.

Learned scheme Judge took into account these factors and held that the appellant may not be able to devote his full attention in the development of

the trust and hence, his application was rejected.

47. We heard Mr. Selvaraj, learned counsel for the appellant. The first submission of Mr. Selvaraj is that the learned scheme Judge was not

correct in holding that he was sentenced under the provisions of the Madras Prohibition Act. Learned counsel referred to the Xerox copy of the

order in C.C. No. 3888 of 1965 dated 11.6.1965 on the file of the Sub-Magistrate's Court, Tindivanam. The complaint preferred by the Sub

Inspector of Police, Mailam in Crime No. 184 of 1965 was that on 10.10.1965 at about 9 p.m. at Perumpakkam village in a tourist bus the

accused, Jamaludeen son of Ahamed Thambi was found in a state of intoxication having consumed liquor and thus, the accused committed an

offence u/s 4-A of the Madras Prohibition Act. Learned Sub-Magistrate, in his order, has stated that the accused was questioned and he has

admitted the offence and accordingly, the accused was convicted and sentenced to pay a fine of Rs. 40/- in default to undergo rigorous

imprisonment for six weeks. Learned counsel submitted that the order has not been produced by the other side to disqualify the appellant and not

even a copy of the order was produced before the learned scheme Judge. He submitted that when the appellant applied for the selection of

trustees for the term 1998-2001, the Xerox copy which is now produced was also produced before the scheme Judge and the learned scheme

Judge seems to have placed reliance on the Xerox copy of the order of the Sub-

Magistrate in the earlier proceedings. He further submitted that the Xerox copy of the order produced before the scheme Judge in the earlier proceedings is not a genuine one on which scheme Judge should not have placed reliance as the occurrence is said to have taken place on 10.10.1965, but the order of the Sub-Magistrate was passed earlier on 11.6.1965. He submitted that there is nothing to connect the appellant with Jamaludeen, the accused in Crime No. 184/65. Counsel for the appellant also produced before us the Xerox copy of the order said to have been produced before the learned scheme Judge in the earlier proceedings.

48. We hold that the submission of Mr. Selvaraj, learned counsel is well founded. The criminal case took place in the year 1965. Even assuming that he was convicted in 1965, it is not a ground to hold that his name should not be considered for ever, if there are no further violations of law by the appellant. The scheme decree only provides that if a trustee is convicted for imprisonment, he ceases to be a trustee, but that clause does not mean that the person convicted should not be considered for ever, if there are further improvements in his conduct subsequently.

49. Learned counsel for the respondents referred to the judgment of Mr. S.M. Abdul Wahab, J. in C.R.P. No. 2845 of 1998, etc. batch dated 16.4.1999, particularly, paragraph 59 of the judgment wherein the counsel for the appellant herein had admitted that the appellant was convicted, but his only contention was that he did not suffer any imprisonment. He also referred to the arguments addressed by the counsel for the appellant before the learned Single Judge in C.R.P. No. 2845 of 1998, etc. batch that under clause 4(E) of the scheme only when the trustee is sentenced to undergo imprisonment, he shall cease to be a member of the trust. He also referred to the observation of the learned Single Judge in the said judgment wherein he has stated that the appellant herein was convicted for an offence under the Prohibition Act.

50. Learned counsel for the respondents also referred to the judgment of the Division Bench of this Court in C.R.P. No. 2646 of 1985, etc. Batch dated 14.12.1995, particularly paragraph No. 52 of the judgment wherein the learned Judges have observed that the appellant in his reply has admitted that he was once convicted, but he has stated that other persons

having similar disqualification have been permitted to act as trustees and submitted that since there is an admission as regards the conviction in the earlier proceedings, there is no necessity for the respondents to adduce further evidence to prove the previous conviction. We are unable to accept the submission of the learned counsel for the respondents. It is axiomatic that it is always open to the appellant to withdraw the admission earlier made, that too, in an earlier proceedings and when he withdraws the admission, it is necessary for the objector to prove the fact of conviction by proper evidence on record. Since the counsel for the appellant has questioned the genuineness of the copy of the order passed in C.C. No. 3888 of 1965 by the Sub-Magistrate, Tindivanam, it is for the objectors to prove the same. Further, we have, by order dated 9.4.2003, directed the Principal District Judge, Cuddalore and the Principal District Judge, Villupuram to forward the entire case records and judgment dated 11.6.1965 in C.C. No. 3888 of 1965 on the file of Sub-Magistrate's Court, Tindivanam. We also directed the Sub-Inspector of Police, Mailam, whose name is shown as complainant, to forward the case records in Crime No. 184 of 1965 relating to C.C. No. 3888 of 1965.

51. Learned Principal District Judge, Villupuram has submitted that the entire case records in C.C. No. 3888 of 1965 on the file of Sub-Magistrate's Court, Tindivanam have already been destroyed and no relevant records or registers are available in the Court. We have also obtained a report from the learned Judicial Magistrate No. 1, Tindivanam whereby the Judicial Magistrate has stated that even the destruction register has been destroyed. Learned Principal District Judge, Cuddalore has forwarded the direction of this Court to the Judicial Magistrate No. 1, Tindivanam and she has sent her reply to the Principal District Judge, Villupuram. The Inspector of Police, Mailam has also submitted that the entire records relating to Crime No. 184 of 1965 have been destroyed and they are not traceable. Learned Principal District Judge, Villupuram has also submitted that even a copy of the judgment rendered in C.C. No. 3888 of 1965 is not available.

52. We are of the view that it is not advisable to destroy the entire case records and the subordinate courts should maintain in safe custody at least one authenticated copy of each judgment or a permanent register containing the

details of cases and with the advance technology, the relevant information can be easily stored in computer also and retrieved whenever required. However, the fact remains that the entire records in C.C. No. 3888 of 1965 have been destroyed and it is clear that the case records have been destroyed even before the institution of the present proceedings in the scheme Court. We are therefore of the view that if the records have been destroyed before the commencement of the proceedings and if an authenticated copy of the order is not available or produced, it would not be open to the party to rely upon the Xerox copy of the order, particularly when the other party objects to the same. We are therefore of the view that it is not open to the Court to rely upon the Xerox copy of the order which does not contain the details regarding the date of application for copy of the order and when the copy was furnished to the applicant. Though in the earlier proceedings learned Single Judge as well as Division Bench of this Court proceeded on the basis that the appellant herein was convicted, since it is stated that the Court has not gone into the question regarding the genuineness of the document in the earlier proceedings, we are therefore of the view that the observation made in the earlier proceedings would not constitute a res judicata in the present proceedings when the genuineness of the copy of document is questioned by the appellant herein.

53. Learned scheme Judge also committed an error in holding that the appellant is a contractor as it is seen from the documents produced by the appellant that he is only described as a person having experience in civil engineering work and possessing good knowledge in the subject. We have gone through the copies of various documents produced by the appellant and we have already observed that this court has no jurisdiction to go into the merits and demerits of the applicants and if the selection has been done on proper grounds, this Court may not interfere with the selection, though the appellant might be better qualified than the persons who have been selected. We are of the view that even on one or two grounds relied upon, the learned scheme Judge was not correct in rejecting a particular application, that would not constitute a ground to set aside the selection as this Court has to see whether the selection of the candidates is proper and whether the scheme Judge has violated the express provisions of the

trust in making the selection. Though the learned scheme Judge might have committed one or two mistakes in rejecting the application for selection, which might happen in considering the case of large number of applicants, we hold that this Court may not interfere in the selection and it is not possible to hold that instead of selected candidates, non-selected candidates should have been selected. Accordingly, this appeal is liable to be dismissed.

A.S. No. 1139 of 2001:

54. We find that the appellant has not filed any petition to convert the appeal preferred by him as C.R.P. Hence, this appeal is liable to be dismissed on the ground that it is not maintainable in law. Since we have heard learned counsel for the appellant on merits, we are disposing of the case also on merits.

55. This appeal is filed by the fifth applicant, by name, Mohammed Farooq. He has furnished his credentials for consideration of his claim that he is

aged 66 years and studied up to B.A. and he is having property at Adirampattinam worth Rs. 70 lakhs and property at Chennai worth Rs. 75

lakhs. He is the Vice President of Adirampattinam Educational Trust and he is the Secretary and Correspondent of Abdul Hakim Hindu Muslim

High School. He is the Vice President of Imam Shafi Matriculation Higher Secondary School, Adirampattinam and he is the Committee Member in

Shamsul Islam Sangam and Treasurer in M.E.A.S.I. Matriculation High School, Chennai and Executive Committee Member of Chekadi Mosque,

Adirampattinam. It is stated that he is the permanent resident of Adirampattinam. His application was rejected on the ground that he is already

Secretary, Correspondent and Vice President in various organisations in Chennai as well as Adirampattinam and he is carrying on business in

Chennai and hence, he may not be able to devote his full time for the trust.

56. We heard Mr. Lakshmi Narayanan, learned counsel for the appellant. He referred to the letter of the Registrar of Anna University wherein the

appellant was appointed as a member, Project Evaluation Committee of the Department of Printing Technology, Anna University and considering

the reputation of the appellant he submitted that the Anna University appointed him as a member of the said committee and there are no reasons

for rejecting his application on the ground that he is a person carrying on

business at Chennai.

57. We have already observed that it is for the scheme Judge to consider the merits and demerits of the applicants and so long as the relevant

consideration was taken into account in the matter of selection, this Court may not interfere in the process of selection, even though the rejected

candidates may be better qualified or more experienced than the selected persons. Though the appellant might have better credentials, the

Supreme Court in Civil Appeal No. 1556 of 2000, by judgment dated 25.2.2000, has held that this Court may not consider the merits and

demerits of the candidates and substitute its own view in the selection made by the scheme Judge. Accordingly, this appeal is dismissed both on the

ground that it is not maintainable in law and also on merits.

A.S. No. 537 of 2002:

58. The appellant is the applicant No. 8 in the second branch of hereditary trustees. He has given his qualifications in the application preferred to

consider his claim to select him as one of the hereditary trustees. His application was rejected on the ground that he is only aged 31 years and

permanently settled at Chennai and employed at A.R. Travels, Chennai. Counsel for the appellant submitted that the appellant is interested in social

service and he is a member in Athirai Pathulmal Committee and he has taken active part in social welfare programmes and he is a permanent

resident of Adirampattinam. He also referred to the certificate given by A.R. Travels to the effect that the appellant was not an employee in that

concern. Learned counsel for the appellant also referred to the sale deed dated 22.6.1996 showing that he is a permanent resident of

Adirampattinam. We find that his application was rejected as he is aged only 31 years and there is every possibility to consider his case for

selection in future. Though there is no evidence to show that he is employed in A.R. Travels, Chennai, one of the reasons that he is aged 31 years

is a relevant consideration for rejection of his candidature.

A.S. No. 536 of 2002:

59. This appeal is preferred by the seventh applicant, A.M.S. Shihabudeen. We find that the learned scheme Judge has committed a serious error

in holding that he is son of A.M. Shamshudeen (9th applicant). The seventh applicant is not son of 9th applicant, but he is son of one late A.M.

Shamshudeen. It is also stated that his father never acted as a trustee of the trust. Though that part of the reasonings of the scheme Judge is not correct, the other reasonings given by the learned scheme Judge for rejecting his application are that he is aged only 36 years and there are opportunities for him to contest for selection in future and he has not furnished the details of his business. We hold that though the first part of the reasonings of the learned Scheme Judge is not correct, the other part of the reasonings given for rejecting his application cannot be said to be irrelevant as he has not produced the details of business carried on by him.

A.S.972 of 2001:

60. This appeal is preferred by the 9th applicant, by name, A.M. Shamsudeen in the second branch of hereditary trustees and his application was considered by the scheme Judge in her order, in paragraphs 86 to 93 and she rejected the same on the ground that the appellant, without obtaining prior permission of the Wakf Board, had exchanged a property belonging to the Wakf and he is a permanent resident of Chennai and he is carrying on business and he has not produced any material to show that he improved the trust property when he was member of the Board of trustees from 1992 to 2001 and a civil suit is also pending against him with reference to the exchange of the property. It is on the above reasonings, learned scheme Judge rejected the application of the appellant.

61. Mr. Selvaraj, learned counsel for the appellant has made elaborate arguments in the appeal. He referred to the report of Mr. Justice V. Khalid in paragraph No. 23 and the judgment of Division Bench of this Court in C.R.P. No. 2446 of 1995 dated 14.12.1995 and submitted that the appellant herein was found to be fit to act as a trustee by this Court in the earlier proceedings and he has also performed well during his tenure as trustee. Learned counsel referred to certain photographs found in pages 173 to 175 of the typed-set of papers and submitted that several improvements have been made in the college buildings in library block and Boys Higher Secondary School and Girls Higher Secondary School. Learned counsel also referred to the details of the additions made to the buildings and submitted that the total value of the additions made to the buildings would come to Rs. 2,01,54,008/-. As far as exchange of wakf property is concerned, learned counsel submitted that the Wakf Board

ratified the action of the Board of Trustees in the exchange of property which was done for the benefit of the trust. Learned counsel submitted that

the exchange itself took place in the year 1995 and the same objection was raised and rejected in the earlier proceedings. Learned counsel

referred to the guideline value of the property and submitted that the exchange was done at more than the guideline value prescribed. Learned

counsel also referred to other credentials and services rendered by the appellant. He also referred to the appreciation letter given by M.K.N.

Madurasa, Khadir Mohideen Girls Higher Secondary School Campus, Adirampattinam and submitted that the appellant constructed the first floor

of the building and made improvements and his efforts have been appreciated and recognised. We find that the learned scheme Judge felt that new

blood should be inducted by replacing persons who earlier acted as trustees with a view to give a chance to new aspirants. We hold that there is

nothing wrong in the view taken by the learned scheme Judge.

62. Though there is some force in the arguments of Mr. Selvaraj, learned counsel for the appellant that the appellant had made improvements to

the trust property, yet, it is impermissible for him to continue for ever as a trustee and necessarily he must give way to the younger people to serve

as trustees in the wakf. It is stated that with reference to the exchange of wakf property it was ratified by the Wakf Board, but the order of

ratification was not produced. We hold that the learned scheme Judge was correct in her observation that prior to the exchange, the necessary

prior permission should have been obtained either from the Wakf Board or from the scheme Court. Moreover, he was a trustee for three terms

and it is stated that proceedings are also pending against him in connection with the affairs of the trust. Though he might have rendered valuable

services to the trust and contributed liberally and improved the general conditions of the institutions, we are of the view, in limited revisional

jurisdiction exercised by us, we cannot hold that the rejection of the application was done on improper grounds. Though learned counsel for the

appellant was correct in his submission that the scheme does not provide for residential status as one of the qualifications and there is no bar

against reappointment of a trustee if he has rendered lot of services to the trust, the scheme Court has rejected his application on the score that the

appellant has not obtained prior permission of the scheme Court or the Wakf Board when certain properties of the wakf were exchanged and certain proceedings are pending against him. The scheme Court has gone through all material evidence produced by the appellant including the materials where his services have been appreciated by several independent persons and the certificate given by the Village Administrative Officer and other records showing that he is a man of means and yet, rejected the same. This shows that the scheme Court applied its mind and rejected the case of the appellant. We are therefore not inclined to interfere.

III BRANCH: (Hereditary trustees)

63. There are two C.R.Ps. namely, C.R.P.3932 of 2000 and C.R.P. No. 508 of 2003 and one appeal, A.S. No. 1084 of 2001 filed against the selection of hereditary trustees made in the III branch. Now we consider first A.S. No. 1084 of 2001. As far as third branch is concerned, there are nine applicants and K.S. Abdul Kareem (5th applicant) and M.U. Naina Mohammed (7th applicant) were selected. As far as the selected candidates are concerned, the 5th applicant Abdul Kareem is a permanent resident of Adirampattinam. He is aged 45 years and he is having property at Adirampattinam and he has business at Adirampattinam itself. The 9th applicant has raised objections stating that his brother K.S. Sarbudeen was a member of the Board of trustees earlier and Abdul Kareem is well disposed in favour of the first applicant Mohamed Moideen and he has no status in the society and he is not a believer in Islam. In the reply Abdul Kareem has stated that it is not correct to state that as a brother of third applicant, he would favour Mohammed Moideen and it is also not correct to state that he would hinder the proceedings pending against Mohammed Moideen. The scheme Judge found that there are no serious objections against his appointment and he was not a trustee earlier and hence, the scheme Judge selected the fifth applicant as one of the trustees to represent the third branch.

64. As far as the 7th applicant, M.U. Naina Mohammed is concerned, the scheme Judge found that he is aged 30 years and he is a permanent resident of Adirampattinam and he is a member of Durgai Amman Milch Buffalo Society and there is no proof to show that he is carrying on business at Chennai along with one Mohammed Abubackar. Considering his

young age, learned scheme Judge selected the seventh applicant as another trustee to represent the third branch.

65. As far as A.S. No. 1084 of 2001 is concerned, it is preferred by Mohammed Aslam, the 4th applicant who is aged 50 years and studied up to

9th standard and owns property worth Rs. 15 lakhs and he is an Income Tax assessee. He has produced the certificate given by the Village

Administrative Officer and kist receipts. His candidature was opposed by 8th applicant as well as 9th applicant. According to the appellant, his

father was the founder of Kadher Moideen College, one of the institutions at Adirampattinam and his father was a trustee of the Board for nearly

30 years as founder-member of the college and he has donated lands also. Learned counsel for the appellant referred to the certificate issued by

the Village Administrative Officer as well as ration card to show that he is a permanent resident of Adirampattinam and also the certificate given by

Mohideen Jumma Palli Muhalla Committee to show that he is a Committee Member of the said Committee. Learned counsel submitted that he is

the direct male descendant of the founder of the trust and his father started the Boys Higher Secondary School, Girls higher Secondary School as

well as College and he is an educated man and he rendered sacrifices to promote education in the area and hence, the application of the appellant

should have been considered by the scheme Judge more favourably.

66. The scheme Judge, while rejecting the application of the appellant has taken into account two factors; (i) his father was a trustee for nearly 35

years and his brother Mohammed Moideen was a trustee for six years; and (ii) a suit is pending against the appellant and his brother Mohammed

Moideen in O.S. No. 114 of 1998 and the suit was filed on the ground that there was some encroachment of wakf property by Mohammed

Moideen, the brother of the appellant. Learned scheme Judge took into account the observation made in C.R.P. No. 2646 of 1995, etc. batch to

hold that he is not a person to keep confidence and hence, his application was rejected.

67. We are of the view that the fact that his family has represented the III branch for sufficiently long time is not a relevant circumstance. Though

the appellant's father was the founder-member of the college and donated his lands for starting the institution, that is not a ground to hold that one

of his sons should claim as a matter of right that he should be a member of the Board of Trustees.

68. As far as the first reason given by the scheme Judge that his father was a trustee for a period of 35 years and his brother was a trustee for a period of 6 years is concerned, we are of the view, that may not be relied on to reject the application preferred by the appellant. Though there can be no right or expectation on the part of an applicant that he should be selected as a trustee because his father was the founder member of the institution, the scheme Court should consider the credentials of the applicant independently and merely because his father or any other family member was a trustee earlier, that would not constitute a sufficient ground to reject his application. In so far as the other reasoning given by the scheme Judge that in C.R.P. No. 2646 of 1995, etc. batch, it was held that the appellant has revealed the information regarding the issuance of signed blank cheques and that would amount to abuse of confidence reposed on him as a receiver is concerned, we find that the incident occurred prior to 1995 and the allegation was that the appellant went to the college office where he found 46 signed blank cheques and revealed the information regarding the signed blank cheques to the person who opposed the appointment of fourth respondent in C.R.P. No. 2646 of 1995 which would amount to abuse of confidence. We hold that the incident took place prior to 1995 and an isolated act is not a relevant circumstance to reject his application in the year 2001 and it would not constitute a permanent scar to disqualify the appellant for ever.

69. The next reasoning given is that while considering the application earlier, this Court rejected the application on the ground that the family of the appellant was responsible for some monetary loss to the trust and all the members agreed to jointly contribute the same. This Court in C.R.P. No. 2646 of 1995, etc. batch, by judgment dated 14.12.1995 also noticed an agreement arrived at between the brothers wherein the parties agreed to partition the properties and in the partition, Mohammed Moideen felt that there was possibility of some future loss that might fall upon him and he desired that the loss should be shared by the brothers and accordingly, the partition agreement was arrived at and the appellant also signed the agreement. This Court felt that any misdeed of one member of the family would bind and would operate as against others.

70. Learned counsel referred to the order dated 8.8.2001 passed by the Principal District Judge, Thanjavur in I.A. No. 195 of 1994 in O.S. No.

6 of 1970 wherein the learned Principal District Judge found that the Trust Board failed to prove that the accounts produced by the Mohammed

Moideen are not correct and there is difference between the income and the expenditure and Mohammed Moideen has misappropriated the

amount. Learned scheme Judge also found that the allegation of misappropriation made against Mohammed Moideen was not true and he could

not be directed to pay any amount to the trust. In fairness, learned scheme Judge should have referred to the order passed in I.A. No. 195 of

1994 while considering the application of the appellant for the selection to the Board of trustees. Since the learned Scheme Judge has held in I.A.

No. 195 of 1994 that the allegation of misappropriation made against Mohammed Moideen was not proved and there was no question of loss and

consequently, there would be no loss to Mohammed Moideen which should be shared by his brothers, we hold that the scheme Judge has

committed an error in relying upon the order in C.R.P. No. 2646 of 1995, etc. batch.

71. Counsel for the appellant also referred to the Annual Report of the Khadir Mohideen College, Adirampattinam on the 48th College Day and

Founder's Day 2002-2003 wherein it has been stated that the Receiver Mr. Justice Abdul Hadi has appointed one Mohammed Aslam as Estate

Manager to look after the lands and other properties of the trust and the Estate Manager took necessary legal steps to vacate the encroachers. He

also referred to the letter of the learned Receiver appointing the appellant as Estate Manager to look after the affairs. He therefore submitted that

his services have been appreciated and his name may be considered. We have already held that we cannot appraise the merits and demerits of the

candidates in the limited revisional jurisdiction.

72. One other reason given is that the suit has been instituted against the appellant and his brother Mohammed Moideen and also other brothers in

O.S. No. 114 of 1988 and if the appellant is appointed as a trustee, it would be a hindrance to prosecute the civil suit, O.S. No. 114 of 1998. We

hold that the reasoning of the scheme Judge is correct and if the appellant is appointed as one of the trustees, he will be the plaintiff and also

defendant in the suit, O.S. No. 114 of 1998 and there will be a possibility of the suit being not prosecuted by the Board of trustees diligently. We

find no infirmity in the view taken by the scheme Court. In this view of the matter, we hold that the rejection of the application of the appellant is

justified and needs no interference.

C.R.P. No. 3932 of 2001:

73. This C.R.P. is filed by the first applicant, Mohammed Moideen in the third branch. His credentials and qualifications are set out in paragraph-

95 of the order impugned and the objections against the petitioner are found in paragraph Nos.96 to 101. Learned scheme Judge has found that he

was a trustee for the period from 1986 to 1992. Learned scheme Judge also found that certain proceedings for misappropriation of amount have

been taken against the petitioner and the proceedings were rejected by the scheme Judge in I.A. No. 194 of 1995 in O.S. No. 6 of 1970 by order

dated 8.8.2001.

74. One reason given for rejecting the application is that the suit in O.S. No. 114 of 1998 is pending for causing trespass into the wakf property

and since the suit is pending, the case of the petitioner cannot be considered for reappointment. The submission of Mr. T.R. Mani, learned senior

counsel is that the court has given a clean chit in I.A. No. 194 of 1995 by order dated 8.8.2001 and all the objections raised against his

appointment were rejected while considering the said application. As far as the suit is concerned, learned senior counsel submitted that it is a

preventive action taken by A.M. Shamsudeen, 9th applicant in second branch and the suit was also dismissed as withdrawn. He submitted that

the suit is based only on allegations and it has no foundation and the allegations made in the suit have to be proved and after the withdrawal of the

suit, the allegations are not there and the mere allegation that he has trespassed into the wakf property is not a ground to disqualify him unless there

is a finding of trespass into the wakf property. Learned senior counsel submitted that the petitioner has given 26 acres of land to the wakf and on

the basis of baseless and unfounded allegations, the petitioner cannot be disqualified. Learned senior counsel submitted that the suit has been

instituted against the petitioner at the instance of the 9th applicant in the second branch, A.M.Shamsudeen to prevent the petitioner from being a

trustee and considering the qualifications and credentials of the persons selected, the petitioner's case stands on better footing than others and his name should have been considered instead of other two persons.

75. We are unable to accept the submission of Mr. T.R. Mani, learned senior counsel. We have already held that we are sitting in revision and this

Court is not inclined to go into the question whether there was trespass into the wakf property or not and it is a matter that should be decided by

civil court or other authorities under the Wakf Act as the case may be. The fact remains that O.S. No. 114 of 1998 was pending on the file of Sub

Court, Pattukkottai when the application preferred by the petitioner for reappointment as a trustee came up for consideration. We have already

held that the same person cannot figure as the plaintiff as well as the defendant in a suit and if the petitioner is selected and appointed as one of the

trustees, he would occupy a dual role as plaintiff and defendant in the same suit. We therefore hold that the learned scheme Judge was correct in

rejecting the application of the petitioner on the ground that the suit filed against the trespassing into the wakf property was pending against the

petitioner and if the petitioner is appointed, it would constitute a real hindrance for proper pursuit of the suit. We therefore hold that the rejection of

the petitioner's application on the ground of pendency of suit against him is correct and it cannot be faulted with. Accordingly, the C.R.P. is liable

to be dismissed.

C.R.P. No. 508 of 2003:

76. This C.R.P. is preferred by the non-selected third applicant in the third branch. His qualifications are that he is aged 48 years and he is a

permanent resident of Adirampattinam and studied up to 10th standard and has property at Adirampattinam. It is stated that he has property at

Chennai worth Rs. 25 lakhs and is carrying on business at Chennai, the value of which would be nearly Rs. 1 crore. He is an Income Tax assessee

and he is interested in rendering public services and hence, he prayed that his name should be considered. There were objections against this

applicant by fourth applicant Mohammed Aslam and 9th applicant, N.K. Naina Mohammed. The case of the petitioner was rejected on the

ground that he has not produced any evidence in support of his property and he was appointed as a trustee earlier and certain proceedings were

also pending against him in connection with the exchange of wakf property during his tenure as a trustee. It is against this order, the present C.R.P.

is filed.

77. We heard learned counsel for the petitioner. Learned counsel submitted that there is no prohibition against reappointment of a trustee.

According to the learned counsel, there are only allegations against the petitioner and there is no evidence to prove that the allegations are true and

hence, there is no bar to reappoint the petitioner as a trustee. We find that the learned scheme Judge has given valid reasons that the petitioner has

not produced any evidence in support of his property statement and certain proceedings are pending against him in respect of certain acts done by

him during his tenure as trustee earlier. Though counsel for the petitioner is right in his submission that there is no prohibition for his reappointment,

however, since it is found that the proceedings are pending against him, the learned scheme Judge was correct in rejecting his application. We do

not find any infirmity in the order passed by the learned scheme Judge and accordingly, the C.R.P. is liable to be dismissed.

NON-HEREDITARY TRUSTEES:

A.S. 1020 of 2001:

78. This appeal is preferred by the 14th applicant in the non-hereditary branch. He is aggrieved by the selection of the first respondent,

Dr.H.Abdul Hakeem who is applicant No. 5 before the scheme Court. It is stated that the first respondent is aged 41 years and he studied up to

M.B.B.S. and he is practising at Adirampattinam and he is having property and he is interested in rendering social service. The scheme Court

found that the first respondent is a doctor practising at Adirampattinam and he is a young man and he would devote his remaining time for the

improvement of the trust and there is possibility for the first respondent to do hard work and there is possibility for him to improve the educational

institutions and hence, he was nominated as one of the trustees in the non-hereditary branch.

79. The appeal has been preferred by the rejected candidate, by name, Asana Maricayar, the 14th applicant. It is stated that his application was

rejected on the ground that he is aged 80 years and he may not devote his time for the improvement of the trust. We heard learned counsel for the

appellant. We are of the view that the scope of the revision petition is very limited. As far as the nomination of non-hereditary trustees is concerned, the scheme Judge has the complete discretion to nominate anyone of the qualified persons to represent the branch. So long as the discretion is not exercised arbitrarily, this Court may not interfere. The applicants who have applied for non-hereditary trustees have no right of appointment as non-hereditary trustees and it is for the scheme Judge to consider the case of the applicants and choose and nominate anyone of them to be the trustee. Therefore we are of the view that when the scheme Judge has considered all the aspects of the matter and found that the first respondent who is a middle aged person with good educational qualifications would be the proper person for nomination, this Court, in revision, is not inclined to interfere with the same. Even if the appellant herein is a better qualified person other than the person nominated, this Court is not inclined to consider the merits and demerits of the selected candidates and the non-selected candidates in the matter of selection of the non-hereditary trustees and reject the selection on the ground that a better qualified persons available in the non-selected group should have been nominated.

80. Learned counsel for the appellant took pains to submit that the appellant would be in better position to devote his time for the improvement of the trust. We are of the view that it is purely on the basis of the subjective satisfaction arrived at on the objective materials, the learned scheme Judge has nominated one of them as trustee in the non-hereditary branch. In this view of the matter, this appeal is liable to be dismissed.

81. Normally we would have disposed of the appeals or C.R.Ps. as the case may be, and would not have interfered with the order of selection both in the case of hereditary and non-hereditary trustees. However, certain disturbing things have taken place during the pendency of the appeals before this Court. In the batch of appeals, the first appeal was filed as A.S. No. 972 of 2001 on 18.10.2001 and in the petition for stay, this Court ordered notice by order dated 19.10.2001. Similarly, a petition was filed for the appointment of a receiver in some other appeal and Mrs. Prabha Sridevan, J., by order dated 10.12.2001, appointed one of the trustees, namely, M.M. Abdul Jabbar as the President, another, by name, Dr. H.

Abdul Hakeem as the Vice President and one M. Ahmed Ibrahim as the Secretary. By a subsequent order dated 21.12.2001, the learned Judge

appointed Mr. B. Akbar Basha Kadhiri, J. a retired Judge of this Court as Supervisor to exercise a supervisory control over the Matharasa Trust

and the learned Single Judge also directed the Office bearers to keep the learned Secretary apprised of all the matters and also obtain his guidance

in this regard and report to him as per his directions. The Supervisor, Mr. B. Akbar Basha Kadhiri, J. has filed five reports for which objections

were filed by the respondents. He was in the office for a period of six months from 12.1.2002 to 12.6.2002 and he narrated seven instances in

which his directions were flouted even in the short period.

82. A reading of the reports shows that Ahmed Ibrahim, who was one of the office bearers, viz., Secretary, has flouted the directions of the

learned Supervisor on more than one occasion. It is not necessary to set out the details of the directions in extenso. In short, the learned Supervisor

has stated that he assumed the supervisory control over the trust on 12.1.2002 and proceeded to Adirampattinam and stayed at Pattukottai. From

the remarks submitted by the learned Supervisor, we find that even during his first visit to Adirampattinam the learned Supervisor found that there

was a division between the members the Trust Board as a result of which certain disciplinary proceedings were initiated against some of the staff

members of the college. Hence, the learned Supervisor directed the Secretary, Ahmed Ibrahim to withdraw the disciplinary proceedings. Learned

Supervisor found that in spite of his specific directions, Ahmed Ibrahim has flouted his oral instructions given to him. It is stated that the learned

Supervisor also issued directions to Ahmed Ibrahim to recall the order placing some of staff members under suspension and asked him to issue an

order of reposting. The Secretary recalled the order, but what was undone by the Secretary on the basis of the instructions of the learned

Supervisor was virtually redone by way of a resolution of the Board, excepting cancellation of the suspension order. Learned Supervisor also

reiterated that the agenda sent to him was not discussed at all and one of the trustees informed him that he was threatened to sign the Minutes

book. He found that in the Minutes book, four persons did not sign and one group has passed the resolution uninfluenced by the instructions given

by him. He also referred to the demolition of the building in Cheellathur village. In the report, learned Supervisor has stated that the trustees"

meeting could not be held at Adirampattinam as he underwent a surgery and took rest at Krishnagiri and he could not travel to Adirampattinam.

He also stated that Ahmed Ibrahim met him and informed that adequate arrangements were made for convening a meeting at Krishnagiri, however,

he received a telegram from Ahmed Ibrahim stating that most of the trustees are not in favour of holding the meeting at Krishnagiri. Learned

Supervisor in his remarks has stated that he found from the telegram and letters that Ahmed Ibrahim played a double game. Learned Supervisor

has stated that it was not the first time that Ahmed Ibrahim was flouting the directions of the learned Supervisor. He also made complaints

regarding the admission process of the students in the colleges. He has stated that the admission process was not done properly. Hence, he has

stated that the Secretary Ahmed Ibrahim disobeyed his directions and he requested that he may be relieved from further embarrassment.

83. That was the position with reference to the learned Supervisor (Mr. Justice Akbar Basha Khadiri). Things also did not improve when this

Court by order dated 30.7.2002 appointed Mr. Justice Abdul Hadi, a retired Judge of this Court as Receiver to control over the administration of

the trust. Learned Judge also filed 13 reports for which objections were filed by the second respondent and other trust members. Learned

Receiver (Mr. Justice Abdul Hadi) in his first report, has stated that he did not meet the Secretary in the office. He has also indicated that the trust

administration was actually controlled by some other person and third parties were interfering with the administration of the trust. He has also

reiterated that there was a payment of Rs. 3 lakhs to Ahmed Ibrahim by one Raja at the time of his appointment. The said Raja filed an affidavit

before this Court stating that he has not paid a sum of Rs. 3 lakhs to Ahmed Ibrahim, but he has not stated in his affidavit that he did not inform the

learned Receiver that he paid Rs. 3 lakhs to Ahmed Ibrahim. Learned Receiver (Mr. Justice Abdul Hadi) in his remarks has stated that Raja told

him that he paid a sum of Rs. 3 lakhs to Ahmed Ibrahim for securing employment and he has also stated that Raja met him subsequently and

informed that he was forced to give an affidavit stating that he did not make the said payment and in such circumstances, learned Judge stated, he

could not say where lies the truth without proper investigation. Ahmed Ibrahim has filed an affidavit dated 12.5.2003 stating that Raja never contacted the learned Receiver at any point of time as stated in the remarks of the learned Receiver and he is also enclosing the affidavit of Raja wherein he has specifically stated that he never contacted the Receiver over phone at any point of time. We have gone through the records and find that no such affidavit has been filed by Raja before this Court. However, we are not going into the factual details and this is a matter which, in our opinion, calls for a detailed investigation into the facts.

84. The report of the learned Receiver cannot be overlooked and the report, in our view, deserves respect. Since we are not inclined to go into the question whether the money was actually paid or not, we are not expressing any opinion on this issue.

85. Ahmed Ibrahim has filed his objections in the form of an affidavit denying all the allegations levelled against him. We have gone through the affidavit filed by Ahmed Ibrahim and a reading of the affidavit shows that he is not only throwing the blame on the learned Supervisor as well as on the learned Receiver, but also attributed motive to the Supervisor as well as the Receiver in getting co-operation from the former Secretary, A.M.

Shamshudeen. In the affidavit, he has stated he has not received copies of the reports at any point of time. The above allegation is palpably false.

Though it is stated that he was not furnished with copies of the reports, it is stated that the reports were perused by the parties when the matter

came before the learned Single Judge and on some occasion, Ahmed Ibrahim also expressed his regret for his action. Further, we have passed a

specific order to the effect that it is open to the parties to apply for copies of the reports and the learned counsel for Ahmed Ibrahim submitted that

he received copies of the reports and hence, the allegation in paragraph-4 of the objection filed by Ahmed Ibrahim that he has not received copies

of the reports is not correct. Ahmed Ibrahim has filed a further affidavit dated 12.5.2003 wherein he has given details with reference to each

allegation made against him and he has stated that he has acted to the best interests of the trust and he has not violated the directions of the

Supervisor at any point of time.

86. We have gone through the affidavit of Ahmed Ibrahim carefully. We are not

impressed by the denial of the allegations made against him. We are of the view that Ahmed Ibrahim has no authority to disobey the directions of the learned Receiver or the learned Supervisor, as the case may be. The Receiver or the Supervisor appointed is an officer of this Court and Ahmed Ibrahim has not only disobeyed the directions given by the learned Supervisor, but he is also questioning the jurisdiction of the learned Supervisor to issue such directions. We are of the view, it is not open to him to question the authority of the learned Supervisor and if he is aggrieved by the directions of the learned Supervisor, he should have approached this Court and obtain necessary direction and it is not open to him to sit in appeal over his directions and disobey the directions of the learned Supervisor and question the directions of the learned Supervisor as if they were issued without authority. The reports of the learned Supervisor as well as the learned Receiver indicate that Ahmed Ibrahim is not fit to be appointed as a trustee at all and he is not denying the directions issued by the learned Receiver or the learned Supervisor. He disobeyed the directions which means that he is not a person who obeys the law and such a person should not have been selected at all and the conduct of the Secretary, Ahmed Ibrahim clearly shows that he is not fit to continue as a trustee. Hence, his selection is set aside.

87. It is also relevant to mention here that the learned Supervisor in his remarks forwarded to the objections filed by Ahmed Ibrahim has stated that he is very much hurt by the malicious allegation of his co-operation with Shamshudeen. He has stated that a person lacking in truth, education and conscience should throw wild allegations against a retired Judge of this Court and the allegations are wild and without any basis. He has also requested that this Court must direct Ahmed Ibrahim to pay compensation apart from tendering apology. We therefore direct Ahmed Ibrahim that he must tender apology to the learned Supervisor expressing his regret on the allegations made against the learned Supervisor and with a serious warning we close the proceedings against Ahmed Ibrahim.

88. As far as the members of the trust are concerned, Mr. Justice B. Akbar Basha Kadhiri has stated that there are two groups, one group consisting of five persons and another consisting of four persons. The main submission of Mr. Selvaraj, learned counsel is that a resolution dated

15.1.2002 was passed to withdraw the suit in O.S. No. 114 of 1998 on the file of the Subordinate Judge, Pattukottai and the suit has been

withdrawn only to benefit Mohammed Moideen, first applicant in third branch and his brother Mohammed Aslam, fourth applicant in the same

branch. He has also referred to the objections raised against the selection of Mohammed Anas, third applicant in the second branch wherein it is

stated that his brother has married the sister of Mohammed Moideen and if Mohammed Anas is selected as a trustee, there would be hindrance in

the prosecution of the suit which is found justified by the withdrawal of the suit. He submitted that when the appeals preferred by Mohammed

Moideen and Mohammed Aslam are pending, the suit filed against them was withdrawn only with a view to show that the suit was not pending

against the two persons. He has also submitted that there is an interpolation in the resolution dated 15.1.2002 including the topic regarding

withdrawal of the suit O.S. No. 114 of 1998 as item No. 3 of the agenda and the trustees have chosen to introduce a new agenda with reference

to the withdrawal of the suit, O.S. No. 114 of 1998. He also referred to the report of the learned Supervisor and submitted that the trustees

disobeyed the directions of the learned Judge in respect of convening of meeting at Krishnagiri. He submitted that the building belonging to the trust

was demolished without permission of the authorities and the fact that things were done during the pendency of the suit clearly shows that five

persons who have signed the resolution are not fit to continue as trustees. In so far as other four trustees are concerned, he submitted that they

have not signed the resolution and hence, they need not be disturbed. Mr. Selvaraj, learned counsel also submitted that notice of the meeting has

not been served as required under Clause 6(B) of the scheme decree which requires minimum not less than 7 days prior notice to be given and the

Secretary has failed to maintain the records as required under clause 6(G) (ii) (iii) of the scheme decree.

89. Counsel for the respondents, on the other hand, submitted that both the Supervisor and the Receiver have not commented as regards the

withdrawal of the suit and the suit was withdrawn only on the basis of legal opinion obtained and the suit was withdrawn only to approach the

Tribunal constituted under the Wakf Act and it was done in a bona fide manner.

90. We have called for the records from the learned Receiver and the learned Receiver has forwarded the original Minutes book and the notice for

the meeting. It is seen that the resolution was passed on 15.1.2002 withdrawing the suit O.S. No. 114 of 1998 and it is stated that the case should

be filed before the Thanjavur Tribunal and the Secretary has the power to conduct the case before the Tribunal. It is relevant to mention here,

Mrs.Prabha Sridevan,J., by order dated 21.12.2001 appointed Mr.Justice B.Akbar Basha Kadhiri as Supervisor. It is stated by the learned

Supervisor that he assumed the supervisory control of the trust on 9.1.2002. Though the learned Supervisor assumed office on 9.1.2002 and the

resolution was stated to have been passed on 15.1.2002, the learned Supervisor was not informed about the resolution. We have called for the

original records in O.S. No. 114 of 1998 and it is seen from the plaint that the suit was instituted on 7.9.1998 with the prior permission granted by

the scheme Court dated 24.8.1998. We have seen the written statement filed and the defendants have raised a plea that the suit property is not a

wakf property. There is also a plea that the civil Court has no jurisdiction after the enactment of Wakf Act, 1995. The written statement was filed

before the Court on 4.2.2002 and on 20.2.2002, an application was filed under Order 23, Rule 1 (3) CPC to withdraw the suit with liberty to file

a fresh suit on the same cause of action. Learned Subordinate Judge ordered notice fixing the hearing date on 22.4.2002. On 9.4.2002 an

application was filed to consider the application to withdraw the suit emergently and that petition was ordered on 9.4.2002. On the same day,

learned Subordinate Judge passed an order permitting withdrawal of the suit with liberty granted to the plaintiff to institute a suit on the same cause

of action. It is relevant to mention that the petition to withdraw the suit was filed on 20.2.2002, but the members of the trust have not apprised the

learned Supervisor of the pendency of the suit, nor they informed him about the proceedings taken by them to withdraw the suit and they have also

not produced any evidence or material to show that after 9.4.2002 they have taken steps to initiate proceedings under the Wakf Act.

91. It is also relevant to mention here that the learned Supervisor was in charge of the administration of the trust from 12.1.2002 to 12.6.2002 and

this Court has appointed Mr. Justice Abdul Hadi, a retired Judge of this Court as Receiver on 30.7.2002. There is no evidence at all to show that

the Board members have either approached the learned Supervisor or the learned Receiver for taking proceedings under the Wakf Act and the elected members have not produced any material to show that they have taken any action under the Wakf Act during the interregnum period between 13.1.2002 to 29.7.2002.

92. We are not expressing any opinion on the question whether the civil Court has the jurisdiction or the Chief Executive Officer under the Wakf

Act has the jurisdiction to remove the encroachment when the trust claims that the property in question is a wakf property. We see from the

sequence of events, it is apparent that the suit was withdrawn by the trustees only to get over the plea that the suit for encroachment is pending as

against Mohammed Moideen and his brother Mohammed Aslam and the trustees, by withdrawing the suit, have submerged the interests of the

trust and they have acted to promote benefit to private individuals so that the private individuals may put up a plea before this Court that no suit is

pending against them regarding encroachment of the wakf property. It is not a solitary or an isolated act. Learned Supervisor has commented that

when the Secretary was directed to drop certain proceedings, the Secretary dropped the proceedings, but a resolution was subsequently passed

by the Board of Trustees undoing what was done in compliance of the direction of the learned Supervisor. We are of the view that the Board of

Trustees cannot pretend ignorance of the directions of the learned Supervisor to drop the proceedings to the Secretary Ahmed Ibrahim when he

himself was a member of the Board of Trustees. The instances pointed out by the learned Supervisor show that the committee members violated

his directions to hold a meeting at Krishnagiri and they were against the holding of meeting at Krishnagiri in spite of specific directions by the

learned Supervisor. We are not able to appreciate the plea taken by Ahmed Ibrahim in his affidavit that when the trust members expressed that

they were seeking clarification of the High Court for convening the meeting at Krishnagiri, he requested the learned Supervisor to defer the meeting

till the clarification was issued by the High Court and hence, the meeting could not be held at Krishnagiri.

93. A point was raised during the course of arguments as to whether there was any interpolation in the resolution passed on 15.1.2002. We called

for a report from the Forensic Science Department and the Director, Forensic Science Department, Chennai, by letter T. No. 2745/2003, dated

6.5.2003 has forwarded a report of the Experts in a sealed cover wherein it is stated thus:

1. The red enclosed writings stamped and marked A, D1 and D2 have all been written by one and the same person.

2. The tint of ink used for making the interlineated red enclosed writings stamped and marked D1 and D2 is different from the tint of ink used for

making the red enclosed writing similarly stamped and marked A.

The Experts have also given the reasonings for their opinion in the Reasoning Sheet which is attached to the report.

94. The sealed cover containing the report of the Forensic Science Department, Chennai was opened in the Open Court in the presence of the

counsel for both the parties on 9.5.2003. We have perused the report as well as the Reasoning Sheet. Counsel appearing for both the parties also

perused the report and the copy of the report was also furnished to the counsel for both the parties. Ahmed Ibrahim in his affidavit dated

12.5.2003 has raised certain objections regarding the report of the Forensic Science Department. Similarly, Mohammed Salihu has filed his

objections to the report of the Forensic Science Department. In the order passed by us on 9.5.2003, we have made it clear that if any party

desires to file objections, they should file the same on or before 12.5.2003 and if no objection is filed on or before 12.5.2003, it would be taken to

mean that the parties have no objection to the report of the Forensic Science Department.

95. We have gone through the objections filed by Ahmed Ibrahim and Mohammed Salihu. It is relevant to mention here that the learned Receiver

has also forwarded the Agenda Book for the meeting held on 15.1.2002 and in the Agenda Book, it contains a reference to the notice issued for

the meeting held on 15.1.2002, but the details of the notices sent for other meetings are absent. In the Agenda Book, there is a reference to an

earlier meeting and it is stated that a telegram has been sent for that meeting. As far as the meeting held on 15.1.2002 is concerned, it is seen from

the Agenda Book for the meeting that only five trustees have signed their acknowledgment for the holding of the meeting held on 15.1.2002. In

other words, in the Agenda Book, there are references only to the meeting held on 15.1.2002 and one earlier meeting, and the Agenda Book is silent for the subsequent meetings.

96. As far as the Minutes of the meeting dated 15.1.2002 is concerned, only five trustees have signed the Minutes and other four trustees have not signed. The report of the learned Supervisor also shows that one of the trustees met him and complained that he was threatened to sign the Minutes and the learned Supervisor has also stated that he did not know whether any other notice was sent to other four trustees by post or otherwise. Under the scheme, the Secretary is required to maintain proper records containing copies of the notices issued for the conduct of meetings and he is also required to maintain a regular Tapal Book besides a regular Accounts Book showing the details of the expenditure by maintaining vouchers, counterfoils, etc. It is clear that the Secretary has failed to perform his duty in not producing the copies of the notice sent to other trustees and he has not maintained proper accounts of the trust.

97. We hold that the question whether there is any interpolation or not in the Minutes Book has to be ascertained after full examination of the parties and we are not placing any reliance on the report of the Forensic Science Department. The objections of Ahmed Ibrahim and Mohammed Salihu are that there was no interpolation and five trustees have not raised any objection. We find substance in the objection that the report of the Forensic Science Department is not a conclusive evidence and we are not placing any reliance on the report of the Forensic Science Department and we are also not expressing any opinion on the question whether there was any interpolation in the minutes of the meeting held on 15.1.2002.

We are of the opinion that it is for the Scheme Court to decide the question whether there was any interpolation or not in the minutes of the meeting held on 15.1.2002. We also find substance in their objection that the interpolation can be proved by a separate proceedings giving reasonable opportunity to the parties to let in evidence including the evidence of the Experts. However, the point in issue is whether the five trustees of the Board of Trustees have acted in proper manner in withdrawing the suit, O.S. No. 114 of 1998 when the appeals are pending before this Court. We find that the suit, O.S. No. 114 of 1998 was instituted with prior

permission of the Scheme Court, but when the suit was withdrawn, the prior permission of the Scheme Court was not obtained and the learned Supervisor appointed by this Court was not apprised of the withdrawal of the suit. The trustees have not taken into confidence this Court also and apprised the Court of their proposal to withdraw the suit as the withdrawal of the suit will have an impact on some of the appeals pending before this Court.

98. We are of the view that the present trustees by withdrawing the suit for removal of encroachment of wakf property have acted against the interest of the trust and they helped the unsuccessful candidates to set up a plea of non-pendency of suit against them. We are of the view that the interest of the trust and preservation of the trust and its property and promotion of the trust and its objects are all of paramount importance and the present trustees, by their failure to protect the trust property have acted against the interest of the trust. Though it is an isolated act, this act has to be seen in the context of other factor, namely, there is a constant dispute or quarrel between the trustees, split into two groups resulting in foisting of cases by one group against the other group. It is an unnecessary venture to find out and decide for the purpose of this case the groups in which the trustees have split themselves, as the reports of the learned Supervisor and the learned Receiver clearly point out the groups in which they fall and the persons who are controlling the groups. Viewed the matter in that light, we are of the view, the five trustees who have voted in favour of the resolution to withdraw the suit are not eligible to continue as trustees. Though in the scheme decree there is a specific clause in clause No. 4(d) (iii) of the Scheme for the removal of trustees, in our view, it is not necessary that the present trustees should be allowed to continue with the liberty granted to the Scheme Court to initiate proceedings for violation against them. We are of the view, when the act done by the trustees is against the interests of the trust, that too, at the stage when the appeals are pending before this Court, it is not appropriate to grant judicial blessing to those persons who have acted against the objects of the trust that they should be allowed to continue as trustees till such time the scheme Court decides the matter.

99. We are of the view, the question whether a person is fit to continue as a

trustee is not a question relating to the declaration of right to a property, but one which is relating to the capacity of the person to hold the office of the trustee and if anyone of the trustees has rendered himself incapable of acting as a trustee by his own act or misdeed as a trustee or by happening of any one of the contingencies mentioned in clause 4(d)(iii) of the scheme decree, then he is not eligible to continue as a trustee and it will be open to this Court, when the revisions are pending, to intervene and remove trustees from the trusteeship. It is not necessary to direct the parties to approach the District Court enabling the District Court to consider whether such a person should continue as a trustee or not. We find from the records that the particular act of the trustees is against the interest of the trust and its property and the act has been done with a view to help a person who lost his case before the scheme Court in the matter of selection due to the pendency of the civil suit and we hold that the trustees who have voted for in the resolution are not eligible to continue as trustees. Though we are not exercising the power of appeal, since we are of the view that a group of trustees have acted against the interests of the trust, this Court has the necessary power to hold that the trustees should cease to act as trustees. The Court is the ultimate guardian for the trust and its properties and if the Court finds that the trustees have acted against the interests of the trust, we are of the view, the Court has the necessary power to remove a trustee or a group of trustees. It is, no doubt, important that the intention of the founder of the wakf should be given importance and no doubt, it was his intention that two persons from each of his family should function as trustees. We are of the view that the carrying out of the objects of the trust properly and the maintenance of the trust property properly are more important than the desire of the founders that some of the family members should be trustees as it is of secondary importance after the constitution of the trust for public welfare. The trust administration like any other organisation, has to be carried out by some human agency and if there is any inherent defect in the human agency in the performance of the trust objects, we hold that the objects of the trust for which it was established cannot be accomplished or achieved by allowing them to continue as trustees.

100. As far as other four trustees who did not attend the meeting on 15.1.2002

are concerned, they are also not eligible to continue as trustees.

We are of the view that with the remaining four trustees, it is not possible to carry out the objects of the trust. Further, it is stated that they are also

disqualified by their failure to attend two consecutive meetings. In addition to that, we have already found that there is a bitter quarrel between two

groups of trustees and in this state of affairs, we are of the view that it will not be advisable for the other four trustees to continue as trustees.

Hence, we are of the view that the entire selection made by the Scheme Judge of trustees, both hereditary and non-hereditary, is liable to be set

aside and accordingly, it is set aside.

101. The next question that arises is whether there should be a direction to the scheme Court to select new trustees immediately. We find that there

is a lot of disputes between the trustees and it is stated in the affidavit filed by the Secretary that the former Secretary had handed over only a sum

of Rs. 375.74 (Rs. 96.70 + Rs. 230.93 + Rs. 48.11) being cash balance relating to the trust. There are bitter disputes between two groups of

trustees and both the learned Supervisor and the learned Receiver have commented about the disputes between the groups. Learned Receiver in

his 12th report has also submitted that the endeavours made by him to bring about a settlement among the trust family members almost failed

despite many good persons in the family and respected persons in the town earnestly wish for an amicable settlement so that the institutions of the

trust may be run efficiently. Further, O.S. No. 114 of 1998 has been instituted for removal of encroachment. Similarly, certain criminal proceedings

have also been instituted against the 9th respondent A.M. Shamshudeen for misappropriation of a sum of Rs. 15,00,000/-. The Chartered

Accountant in his annual report has given certain details of the amount of expenditure for which there are no vouchers with reference to each year

from 31.3.1993 to 31.3.2001 and these matters requires a detailed investigation. It is stated in the affidavit of Mohammed Salihu that the amount

not accounted for is more than Rs. 3 crores as per the Audit Report. Though it is stated that the vouchers are available, they have to be produced

and verified. Further, there is a serious dispute that there was no notice to the four trustees for the meeting held on 15.1.2002 and it is stated that in

the Minutes dated 15.1.2002, the subject of withdrawal of the suit, O.S. No. 114

of 1998 was subsequently written and the resolution was also written subsequently and for the meeting held on 15.1.2002 the subject of withdrawal of the suit was not originally in the agenda and it was subsequently inserted. We have already held that we called for a report from the Forensic Science Department and the Director of the Forensic Science Department has also given his report stating that there is change in the ink used.

102. Since there are factual disputes, we direct the Scheme Judge to go into the question whether there was any agenda for the meeting held on

15.1.2002 for the withdrawal of the suit in O.s. No. 114 of 1998 and whether the resolution regarding withdrawal of the suit was inserted

subsequently and whether it was inserted with different ink as opined by the Forensic Science Department and whether there was any interpolation

in the minutes of the meeting held on 15.1.2002. We are of the view that O.S. No. 114 of 1998 which was withdrawn should be restored on the

file of the Sub Court, Pattukottai so that the question whether there was any encroachment and the civil court has the jurisdiction to decide the

question can be decided by the civil court itself. The defendants in the written statement have categorically undertaken that they would surrender

possession of the suit property, if the property is found to be wakf property and the defendants have encroached the property. Hence, in exercise

of powers under Article 227 of the Constitution of India, we direct restoration of the suit in O.S. No. 114 of 1998 on the file of Sub Court,

Pattukottai setting aside the order of the learned Subordinate Judge passed in I.A. No. 16 of 2002 in O.S. No. 114 of 1998 dated 9.4.2002. We

also direct the Subordinate Judge, Pattukottai to dispose of the suit on merits as early as possible. In the state of affairs, we are of the view that it

would not be advisable to entrust the management of the trust to anyone of the groups and we are of the view that the present Receiver should

continue for some mere time and in the mean time, the suit O.S. No. 114 of 1998 as well as the proceedings initiated against A.M. Shamsudeen

should be disposed of one way or the other and the question regarding accounting of unaccounted expenditure can also be gone into by the District

Court.

103. Though learned Supervisor directed for the withdrawal of investigation

initiated against A.M. Shamshudeen, we are of the view that since the complaint has already been preferred before the police, the same should be investigated properly and the audit of accounts is one of the aspects of the matter. Since the proceedings have been initiated for misappropriation, the police authorities are directed to investigate the matter regarding misappropriation of the funds of the trust. Hence, we direct the Superintendent of Police concerned to look into the matter and cause the investigation completed by a higher officer in the police department within a period of six months from the date of receipt of a copy of the judgment. We are of the view that the suit in O.S. No. 114 of 1998 on the file of Subordinate Judge, Pattukottai should be pursued if the court finds that it has the jurisdiction to decide the suit and the proceedings initiated against A.M. Shamshudeen should be investigated and the District Court, Thanjavur should also go into the question whether there is any unaccounted expenditure.

104. In other words, since there are factual disputes, the Scheme Judge is directed to go into the following questions:

i) Whether there was any Agenda for the meeting held on 15.1.2002 for the withdrawal of the suit in O.s. No. 114 of 1998 on the file of

Subordinate Judge, Pattukottai and whether notice has been served on all nine trustees?

ii) Whether the resolution regarding withdrawal of the suit was inserted subsequently and whether there was any interpolation in the minutes of the meeting held on 15.1.2002?

iii) Whether it is true that one Raja has paid a sum of Rs. 3 lakhs to Ahmed Ibrahim for securing an appointment?

iv) Learned Scheme Judge is also directed to supervise the investigation into the alleged misappropriation of Rs. 15 lakhs by the former Secretary,

A.M. Shamshudeen?

v) Whether there is an unaccounted expenditure of more than Rs. 3 crores as per the Audit Report and whether there are vouchers in support of

such unaccounted expenditure and who are responsible for the unaccounted expenditure?

We are of the view that these are all matters which requires a detailed investigation and during the course of investigation, we are of the view, if the

management of the trust is handed over to anyone of the members of the trust or some fresh candidates, it would impede the progress of the investigation and there may not be a fair and impartial investigation in these matters. Equally, we are of the view that the judicial take-over of the administration of the trust should not be for a long duration and it should as far as possible be of minimum duration. The term of the present Board of trustees is expiring on 28.9.2004. Hence, for a proper and impartial investigation into the matter listed above, we are not inclined to order an immediate election of new Board of trustees.

105. Accordingly, the learned Receiver, Mr. Justice Abdul Hadi, a retired Judge of this Court is permitted to continue as Receiver till March,

2005. Learned Receiver is given full powers to administer the trust. It is open to him to appoint anyone of his choice to assist him in the

administration of the affairs of the trust. He has sought for certain clarifications in his 13th report and it is open to him to appoint a Selection

Committee for the purpose of selection of students for the college and the schools. It is made clear that if any clarification is needed, it is open to

the learned Receiver to approach this Court. The terms of the appointment of learned Receiver would be finalised later. The Scheme Judge is

directed to call for applications for selection of trustees for next term in the first week of January, 2005 and finalise the list by 31.3.2005 so that the

new trustees can take office in the first week of April, 2005. It is made clear that the persons selected or non-selected earlier would be eligible to

apply for the post of hereditary trustees to represent their own branch.

To sum up:-

1. Appeals are not maintainable and C.R.Ps. are alone maintainable. Petitions filed to convert the appeals except in A.S. No. 1139 of 2001 are

ordered and the appeals are converted as C.R.Ps.

2. All the applicants in a particular branch of trustees should be made parties in the C.R.P. filed challenging the selection of trustees in that

particular branch. It is not correct to state that only selected candidates and objected candidates are enough to decide the C.R.P.

3. This Court has only the revisional jurisdiction in the matter of selection of trustees when the selection is challenged.

4. So far as the qualification for the selection of trustees, hereditary and non-

hereditary, is concerned, it should be on the basis of the scheme

decree. As regards hereditary trustees are concerned, the only disqualification is the indebtedness to the trust.

5. In so far as selection of trustees are concerned, this Court does not appraise the merits and demerits of the applicants and substitute its own

findings for those arrived at by the scheme court unless any such finding is not in any way borne out by the evidence on the record or is manifestly

contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.

6. A.S. No. 1139 of 2001 is dismissed both on the ground that it is not maintainable and on merits. All other C.R.Ps. are dismissed on merits.

However, the selection of the trustees is set aside.

7. The Secretary Ahmed Ibrahim is directed to tender apology to Mr. Justice B. Akbar Basha Kadhiri for his disobedience.

8. O.S. No. 114 of 1998 is ordered to be restored on the file of Subordinate Judge, Pattukottai and the learned Subordinate Judge is directed to

dispose of the suit, as early as possible, if the court finds that it has the jurisdiction to try the suit.

9. Investigation against A.M. Shamsudeen on the complaint preferred against him should be done by a higher police officer and the

Superintendent of Police concerned should look into the matter and cause the investigation completed within a period of six months from the date

of receipt of a copy of the judgment. Learned Scheme Judge is directed to monitor the investigation.

10. Learned Scheme Judge is also directed to investigate and look into the other matters listed earlier which require a detailed investigation.

11. There will be no election to the Board of trust immediately. Mr. Justice Abdul Hadi, a retired Judge of this Court will be in charge of the trust

up to March, 2005. It is open to him to appoint anyone of his choice to assist him. Learned scheme Judge is directed to call for applications for the

next term in the first week of January, 2005 and finalise the list by 31.3.2005 so that the new trustees can take office in the first week of April,

2005.

12. The persons selected or non-selected earlier would be eligible to apply for the post of hereditary trustees to represent their own branch.

With the above observations, all the C.R.Ps. (including the appeals which have been converted into C.R.Ps.) are dismissed. No costs. Connected C.M.Ps. are closed.