(2006) 04 DEL CK 0113

In the Delhi High Court

Case No : CS (OS) No. 1043 of 2004

Francois Xavier Bagnoud India Society APPELLANT

Vs

Mr. Jagdish Harsh and Others RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Citation : (2006) 04 DEL CK 0113

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Tasneem Ahmadi, for the Appellant; Nemo, for the Respondent

Judgement

Anil Kumar, J.—This judgment will dispose of plaintiff''s suit for permanent and mandatory injunction against the defendants seeking a permanent injunction that defendants should not interfere with and deal with any assets, infrastructure in the running and administration of the plaintiff society and they should not transfer or withdraw the funds from the bank accounts of the plaintiff.

2. plaintiff contended that it is a society registered at Delhi and it was formed for the purpose of carrying out the mission of defendant No. 6 Association, Francois Xavier Bagnoud, Switzerland, also referred to as AFXB. plaintiff was one of the organization sponsored by AFXB to bring to India worldwide philanthropic activities of defendant No. 6 which is parent body of the plaintiff. Regarding defendant No. 6 it was stated that it is a private philanthropic institution dedicated to spread international awareness, de- stigmatization and care in the field of HIV/Aids. The mission of AFXB is to fight Aids and support the world orphans and vulnerable children left in the wake of Aids pandemic and under the guidance of its board of trustees grant funds for HIV/AIDS related activities.

3. Francois Xavier Bagnoud Rajasthan Society in India is a registered society which was created with a view to carry out the aims and mission of AFXB (defendant No. 6) in the State of Rajasthan. FXB Rajasthan Society was reporting directly to defendant No. 6 and all the funds received by the said society was

based on the funding received from the defendant No. 6. plaintiff is also one of the society which is another Francois Xavier Bagnoud (FXB) Organization.

4. It was asserted by the plaintiff that defendant No. 1 was appointed as a country director of plaintiff by defendant No. 2 after the registration of the plaintiff who is a US National and was employed in USA in one of the FXB organization. The defendant No. 2 was in-charge of setting up FXB Rajasthan Society from its inception and was ensuring that all the programs approved by AFXB were carried out by FXB Rajasthan Society.

5. The plaintiff was formed after the formation of FXB Rajasthan Society. Defendant Nos. 1 to 5 were trying to ensure that the plaintiff gets a status or adopts a status under FXB Rajasthan Society so that the defendants could have a control and superiority over the funds of the plaintiff. Defendant No. 3 is stated to be in-charge of all the accounts of plaintiff society as well as FXB Rajasthan Society whereas defendant No. 4 has been administering the affairs of FXB Rajasthan Society. It was pleaded that the defendant No. 4 has a conflict of interest with the plaintiff as he has a brother in Rajasthan who along with defendant No. 4 runs a NGO in Kitchan and were utilizing the infrastructure of FXB Rajasthan with the connivance and encouragement of defendant Nos. 2 and 3. Defendant No. 5 was employed as the Administrator Assistant at the Head Quarter of plaintiff at Delhi and she was working directly under defendant No. 1 and had colluded with defendant No. 1.

6. By an interim order dated 22nd September, 2004, defendant Nos. 1 to 5 were restrained from interfering in any manner dealing with the administration or assets of the plaintiff. Local Commissioners were also appointed to make the inventory of the account books of the plaintiff and to take the same into custody and the Local Commissioner was also authorized to seize all the statutory accounts of the plaintiff for all the financial year since the inception of plaintiff and all related documents, vouchers, bills, etc. relating to plaintiff lying at the premises A-69, Shanti Path, Tilak Nagar, Jaipur, Rajasthan and from the premises bearing No. D-3, Basement, Kalkaji, New Delhi and also B-7/EXt. 99, Safadarjung Enclave, new Delhi. The Local Commissioners, Mr.B.LWali and Mr. R.K.Khera were also given liberty to take assistance from the concerned Station House Officers.

7. Mr. Wali, the Local Commissioner, who visited the premises at G-13, LGF, Jungpura Extension, New Delhi had taken into possession certain magazines and literature books, however, there were no books of accounts and the material which was taken into custody and were given on superdari to the brothers of defendant No. 1. Subsequently, these books were ordered to be taken by the Local Commissioner and were directed to be kept in the custody of Deputy Registrar. Another Local Commissioner, Shri Khera, who visited the premises at A-69, Shanti Path, Tilak Nagar, Jaipur, Rajasthan, had seized the record which was returned to the plaintiff society as it belonged to the plaintiff society in order to enable the society to file return and other allied purposes.

8. After the institution of the suit, the defendants were served and a written statement replying to the averments made in the plaint on behalf of defendant Nos. 1 to 5 was also filed. After filing the written statement, the defendants absented themselves. Appearance was put on behalf of defendant No. 6 who also absented himself and did not file any reply. The applications for impleadment were also filed by Francois Xavier Bagnoud Rajasthan Society being is No. 499 of 2004 and Francois Xavier Bagnoud India Society through alleged authorized representative Shri Jaideep Singh, one of the members of the applicant, being is No. 7087 of 2004, which were however, dismissed.

9. The defendants were proceeded ex parte on 19th September, 2005 and thereafter, plaintiff has filed his evidence on affidavit and also proved the documents. The deposition of Shri Vijay Krishan Shrivastava, member of the Governing Body of the plaintiff who was also appointed as an attorney of the plaintiff society with authority and power to depose on behalf of the plaintiff, was also filed. The said witness proved the power of attorney in his favor executed by the society as Exhibit P1, original power of attorney.

10. The attorney of the plaintiff deposed that the plaintiff is a registered Society registered at Delhi on 1.12.2000 and plaintiff was formed for the purpose of carrying out the missions of defendant No. 6 Association Francois Xavier Bagnoud, Switzerland (AFXB). He deposed about the rules and regulations of plaintiff which were proved and exhibited as exhibit P-2. It was deposed that plaintiff was one of the organizations sponsored by AFXB to bring to India worldwide Philanthropic activities of defendant No. 6 which is the parent body of plaintiff. The activities undertaken by the plaintiff for HIV/AIDS related programs are in terms of the guidelines, activities and mission of defendant No. 6 which were to be carried out by the plaintiff in its capacity of one of organization of Association of Francois Xavier Bagnoud, Switzerland (AFXB) reporting directly to the parent association, defendant No. 6.

11. The deponent proved the copy of resolution passed on 18.7.2004 as exhibit P-3 and deposed that plaintiff has offices in all the states of India and the Headquarter of the plaintiff is situated at Delhi. It was stated that the suit has been filed by the Secretary of the plaintiff who was duly authorized to do so vide resolution dated 18.7.2004

12. It was deposed on behalf of the plaintiff that defendant No. 6 is a non profit organization registered as per Articles 60ss of the Swiss Civil Code and defendant No. 6 is also registered in the United States and France under the law of 1901 as modified. Defendant No. 6 was stated to be having a special status with United States Economic and Social Council. A copy of the brochure of defendant No. 6 was proved and exhibited as P-4.

13. It was deposed on behalf of the plaintiff that Francois Xavier Bagnoud Rajasthan Society was formed for the purpose of carrying out the mission of defendant No. 6 related programs in the state of Rajasthan. It was deposed that

FXB Rajasthan Society is one of Societies like plaintiff which was sponsored and funded by defendant No. 6 to bring worldwide philanthropic activities. Defendant No. 1 was stated to be appointed as a country director of plaintiff by defendant No. 2 who is a US national and was employed by Association Francois Xavier Bagnoud, USA (AFXB). Defendant No. 2 was in charge of setting up FXB Rajasthan Society from its inception and for ensuring that all programs approved by AFXB were carried out by FXB Rajasthan Society.

14. The witness of the plaintiff deposed that ever since the formation of the plaintiff society which was formed after formation of FXB Rajasthan Society an effort was made by the defendants that plaintiff adopts the status of an organization below and under FXB Rajasthan Society and the plaintiff may also operate under the said Rajasthan Society so that the defendants could have financial superiority and control over the plaintiff society.

15. Under the memorandum of regulations of FXB Rajasthan Society it had to confine its activities to the State of Rajasthan whereas under the memorandum rules and regulations of the plaintiff its activities can be carried throughout the country. The defendant No. 3 had been placed in-charge of the acts of the plaintiff as well as FXB Rajasthan Society by defendant No. 2.

16. It was deposed that defendant No. 4 has been administering the affairs of FXB Rajasthan Society in absence of defendant No. 2 who has a conflict of interest with the plaintiff. Defendant No. 4 has a brother in Rajasthan who along with said defendant No. 4 runs a NGO in Kitchan while being employed with FXB Rajasthan Society and is utilizing the infrastructure of FXB Rajasthan Society in connivance and with the encouragement of defendant Nos. 2 and 3.

17. The attorney of the plaintiff also deposed that defendant No. 5 was employed as the administrative assistant at the Headquarter of the plaintiff at Delhi and she was working directly under defendant No. 1 who has also colluded with defendant No. 1 in his dishonest and illegal acts.

18. It was stated that in order to ensure the defendants control over the plaintiff, defendant No. 2 ensured that defendant No. 3 was placed in-charge of the accounts of the plaintiff. Defendant Nos. 1, 3 and 4 were also signatories to the bank accounts of the plaintiff. Defendant No. 3 was also stated to be in- charge and in control of the books of accounts of the plaintiff.

19. The witness of the plaintiff made categorical deposition that the funds sent by defendant No. 6 to FXB Rajasthan Society were not spent by defendant Nos. 2, 3 and 4 for the purpose they were purported to be spent by (AFXB). A team from France (Credes) was sent by defendant No. 6 for carrying out a social audit which conducted the survey of the activities of FXB Rajasthan Society and which team also conducted a series of interviews with other parties as well as employees of the Society at Rajasthan and it was reported that a number of activities were sham and not being carried out. The team specifically reported about the acts and omissions of defendant No. 4?s brother at Kitchan and the

fact that he is running a NGO while being employed. The witness proved the extracts of the report given by Creeds which was exhibited as Exhibit P-5.

20. On account of the sham activities and the activities not carried out by FXB Rajasthan Society in true spirit, the founder of defendant No. 6 suggested some changes in the administrative set up/authorities of FXB Rajasthan Society which were accepted by Rajasthan Society and consequent thereto the defendant No. 4 was stripped of the authority of director of Administration and Dr. Avdesh Gupta was given charge of FXB Rajasthan Society on or around 20.7.2004 The defendant No. 1 was also made the country coordinator for the plaintiff instead of country director for which he agreed. Consequently the deponent, Mr. Vijay Krishna Srivastava was appointed as a consultant with effect from 1.8.2004 to look into the financial and administrative affairs of FXB Rajasthan Society. A letter of appointment of the consultant was proved by the deponent which was exhibited as exhibit P-6.

21. Consequent to all these, defendant No. 1 sent a letter of resignation on 26.7.2004 to the founder of defendant No. 6 resigning from 30.8.2004 Defendant No. 1 went on leave for a couple of days on or around 2.8.2004 and thereafter absconded and did not attend office. The witness proved emails dated 26.7.2004 and 8.8.2004 exhibited as exhibit P-7 and P-8 informing the founder of defendant No. 6 that he would be on leave for a few days. However, after 2.8.2004 defendant No. 1 did not attend office regularly. Even defendant No. 5 left the office and also resigned without any prior intimation and resignation of defendant No. 1 and defendant No. 5 and proceeding on leave were almost simultaneous.

22. Later on it transpired that defendant No. 1 had absconded with various movable properties from the office of the plaintiff at Delhi including laptops, seals and stamps of plaintiff society, petty cash and programs/research relating to HIV AIDS. It was contended on behalf of plaintiff that the knowledge pertaining to HIV and AIDS is extremely valuable to the plaintiff as it has a large bearing on the future activities of the plaintiff.

23. The witness of the plaintiff stated that a legal notice was issued to defendant No. 1 calling upon him to return the assets removed and misappropriated by him. However, defendant No. 1 replied to the notice refuting having possession of any assets belonging to plaintiff and also disassociated himself from any link with the founder association and founder of defendant No. 6 Countess Albina Du Boisrouvray. The witness proved the notice as exhibit P-9 and the reply by defendant No. 1 dated 8.8.2004 as exhibit P-10.

24. Sh. Vijay Krishna Srivastava witness of the plaintiff also deposed that he had sent administrative instruction to defendant No. 3 who was responsible for financial controls/accounts of FXB Rajasthan Society and he was asked to come to Delhi for meeting and discussion with details asked for. However, he came on 10.8.2004 without most of the information which was asked from him. The

deponent had pointed out that the budgetary and financial control were grossly lacking and that there were unaccounted bills of FXB Rajasthan Society of Rs. 50,000/- which were found at the desk of Mr. Hitendra Singh and that the cash in hand of FXB Rajasthan Society and plaintiff had not been reconciled; and there had been reports about forging of certain vouchers to make up the cash discrepancies in both Rajasthan Society and the plaintiff. Therefore reconciliation of inventories of both FXB Rajasthan Society and plaintiff was impressed upon him. Instructions were also given to defendant No. 3 on 10.8.2004 to follow a strict financial discipline. The email dated 3.8.2005 was proved as exhibit P-11 whereas email dated 8.8.2005 and letter dated 9.8.2004 were exhibited as P-12 and P-13. Another email dated 12.8.2004 was proved as exhibit P-14. 25. The witness deposed that defendant No. 3 refused to come on the telephone and later informed the witness that he had been instructed by defendants No. 1, 2 and 4 not to give any information or follow any instructions.

A notice dated 11th August, 2004 at the behest of defendants No. 1, 2 and 4 was also received by the deponent intimating him that he was not recognized as consultant by FXB Rajasthan Society and he should not give any instructions either to FXB Rajasthan Society or any of its employees or office bearers. Defendant No. 2, who was a US resident and acting to the detriment of the interest of the plaintiff, he was removed as a member of General Body of plaintiff and he ceased to be a members of the Governing Body. Letters dated 17th August, 2004 and 23rd August, 2004 were sent to the Registrar of Societies regarding change in General Body and Governing Body of the plaintiff and letters were proved and exhibited as Ex.P15 and P16. Another AGM was held on 6th July, 2005 and a new Governing Body was elected which filed the returns with the Registrar of Societies and also intimated the results of election by letter dated 8th July, 2005 which was proved and exhibited as Ex.P-17. Defendant No. 2 had also resigned as the President of the plaintiff and his letter of resignation was proved as Ex.P-18. The true copy of the minutes held on 18th April, 2004 was proved and exhibited as Ex.P-19. The minutes which were in the illegal custody of defendant No. 4 were sent by letter dated 20th July, 2004 which was proved and exhibited as P-20.

26. Despite removal of defendant No. 2 as a member of the plaintiff and other defendants No. 1, 3 and 4 not being the members of the Governing Body, however, their efforts to take over the administration of the plaintiff continued.

27. The witness of the plaintiff deposed that defendants are trying to interfere in the administration of plaintiff and hijacked the activities and assets of the plaintiff and a number of emails were issued which were exhibited one of which was exhibited as Ex.P-22, which was email dated 30th August, 2004 Similar things are reflected in a letter dated 19th August, 2004 which was proved and exhibited as P-23 issued by defendant No. 4 and other emails/letters dated 1st August, 2004 and 3rd September, 2004 issued by defendant No. 3 which were proved and exhibited as Ex.P-24 and P-25. The staff of plaintiff did not agree to

cooperate with defendant No. 2 and sent an email in response to the emails of defendant No. 4 and email dated 23rd August, 2004 was exhibited as Ex.P-26 and Ex.P-27. Email dated 1st September, 2004 and email dated 7th September, 2004 were exhibited as Ex.P-28. On behalf of plaintiff, the lease deeds in favor of plaintiff Society were proved and exhibited as Ex.P-29 to Ex.P-33 showing that defendants have nothing to do as far as the lease hold rights were concerned. A suit was also instituted against defendants No. 2, 3 and 4 and Ms.Ritu Singh and FXB Rajasthan Society at Jaipur wherein by an interim order, all the assets, accounts of FXB Rajasthan Society were frozen. A certified copy along with the English translation of the order passed by Civil Judge, Jaipur on 26th August, 2004 was proved and exhibited as Ex.P-34. According to the deponent, it appeared on or around 23rd August, 2004 that an amount of Rs. 29,370.32 had been transferred clandestinely from the bank account of the plaintiff at Delhi to that of FXB Rajasthan Society. The statement of summary of plaintiff''s account with IDBI, Delhi was proved and exhibited as Ex.P-35. Some of the record of the plaintiff Society was also burnt which fact was incorporated in a note for record dated 17th September, 2004 and that note dated 17th September, 2004 was proved and exhibited as Ex.P-36. For these illegal acts, a legal notice was sent to defendant No. 3 who admitted that he is in possession of all the statutory account, etc. of plaintiff and who further stated that he is willing to hand over only to the office bearer of the Society but he subsequently did not respond to the written request of the Secretary of the plaintiff. The copy of the notice was proved and exhibited as P-37 and the reply by defendant No. 3 was proved and exhibited as Ex.P-38. The letter sent by the Secretary demanding defendant No. 3 to return the accounts dated 24th August, 2004 and 31st August, 2004 were proved and exhibited as Ex.P-39 and Ex.P-40. As there was an apprehension that the defendants may further transfer the amount from the account of the plaintiff Society, a notice was also sent to the IDBI Bank which was proved and exhibited as Ex.P-41. Statement of cash account for the year 2003-2004 was proved and exhibited as Ex.P-42 whereas the list of unauthorized payments made in connivance with defendant No. 3 from the account of plaintiff were proved and exhibited as Ex.P-43.

29. The witness of the plaintiff deposed that from the accounts, it became apparent that fake vouchers were being prepared to show fictitious payment, the amounts of which were usurped by the then Country Director, defendant No. 1, which fake vouchers were made on his instructions with connivance of defendant No.3. A note signed by two Program Coordinators of the plaintiff specially stipulated that defendant No. 1 asked them to make fake vouchers which were then couriered to defendant No. 3. The note was proved and exhibited as Ex.P-44.

30. The deponent of the affidavit on behalf of plaintiff categorically deposed that the entire record that were kept in duplicate were either removed or destroyed by defendants No. 1 and 5 and they timed their simultaneous departure from the office of the plaintiff at Delhi and they are in possession of these records while

the originals are with defendant No. 3 who is not handing over the same to the plaintiff. It was also categorically deposed that various passwords to different programs of the plaintiff are with defendant No. 5.

31. The averments made in the written statement were not substantiated by the defendants as no evidence was led by the defendants and the deposition made on behalf of plaintiff have also remained un-rebutted. No witness has been examined on behalf of defendants to counter the facts proved against the defendants. The plaintiff has placed on record the evidence/letters/emails sent by defendants under the garb of Francois Xavier Bagnoud Rajasthan Society to the plaintiff''s employees at its different offices asking them to take instructions from them and not from the Governing Body of the plaintiff. The letters have been proved and exhibited and have not been rebutted by the defendants. The plaintiff has also proved the responses from the employees of the plaintiff which also show that the defendants could not exercise control over the plaintiff Society. Even Memorandum and Article of Association of Francois Xavier Bagnoud Rajasthan Society limits the activities of the said society to the state of Rajasthan whereas Memorandum and Article of Association of Francois Zanier Bagnoud India Society permits the plaintiff to carry out the activities of the said Society throughout India.

32. On perusal of the evidence of the plaintiff and the averments made on behalf of plaintiff and on considering the documents, it has also been established that defendants have destroyed some of the records and manipulated the cash balances of the plaintiff. The plaintiff has also been able to show the manner in which the defendants transferred the funds from the bank account of plaintiff at Delhi as defendants No. 3 and 4 were still signatories to the said bank account though afterward the plaintiff had opened a new bank account. Defendants No. 1 to 5 do not have rights in the leasehold properties of the plaintiff become also apparent from the lease deeds which have been proved by the plaintiff showing that the leasehold rights are with the plaintiff and not with any other society.

33. The other facts which the plaintiff has been able to prove are that defendant No. 1 was appointed as a Country Director of the plaintiff who resigned vide letter dated 26th July, 2004 effective from 31st August, 2004 The said defendant went on leave on or around 2nd August, 2004 and thereafter absconded and did not attend the office. As various assets of the plaintiff were missing, the defendant No. 1 did not respond to any emails or phone calls and rather sent a legal notice dated 8th August, 2004, in which he alleged that defendant was not an employee of plaintiff Society but was an employee of Francois Zanier Bagnoud Rajasthan Society. If that be so, defendant No. 1 is not entitled to claim any right or interest of any nature in the plaintiff Society or in its administration.

34. The plaintiff has also established that defendant No. 2 was In-charge of setting up the plaintiff Society which he did in a manner to keep the plaintiff subordinate to FXB Rajasthan Society which was done to take control of the plaintiff Society through his appointees in Rajasthan Society. What is also

apparent is that the defendant No. 2 was the President of the plaintiff Society in his capacity as one of the first members of the Governing body of the plaintiff Society as set out in Memorandum of the Society before the Society was registered. It has also been established that since no election was taking place to elect a Governing Body of the plaintiff Society and the members of the Society were not happy with the manner in which defendant No. 2 was controlling the plaintiff Society, he was asked to resign as the President in a meeting held on 18th April, 2004 which resignation was confirmed by him by a hand-written letter dated 18th April, 2004 which has also been proved. The defendants have not challenged the minutes of the meeting date 18th April, 2004 or the resignation of defendant No. 2 or intimation thereof to the plaintiff Society. What emerges from the deposition of the witness of the plaintiff is that at the meeting of the General Body of the plaintiff held on 18th April, 2004, defendant No. 2 was also removed as a member of the General body and intimation thereof was sent to the Registrar of Societies which has not been challenged by defendant No. 2. Consequently, defendant No. 2 cannot claim to have any right or interest of any nature in the plaintiff Society where defendant No. 2 has nothing to do with the affairs of the plaintiff Society.

35. From the evidence of the plaintiff, it is also apparent that defendant No.3 was placed as In-charge of accounts of plaintiff by defendant No. 2. Since he refused to explain the discrepancies in the accounts and also refused to hand over the accounts, a legal notice dated 16th August, 2004 was issued. In reply to the said legal notice, defendant No. 3 categorically admitted that he was given charge of the account of the plaintiff by defendant No. 2 on an honorary basis. Defendant No. 3 also agreed to hand over the accounts, however, he did not hand over the same. Similarly, what has also been established is that defendant No. 4 had been administering the affairs of FXB Rajasthan Society in absence of defendant No. 2 and was also a signatory to the bank account of the plaintiff Society due to his closeness to defendant No. 2. By sending emails, the defendant No. 4 tried to interfere with the administration of the plaintiff describing himself as the Director of Administration of FXB Rajasthan Society and not of plaintiff Society and, consequently, even he does not have any right to interfere in any manner with the affairs of the plaintiff Society. Even the defendant No. 4 had admitted that he has not right or interest of any nature in the plaintiff Society or its administration.

36. From the averments made in the plaint and the deposition on behalf of the plaintiff, it has also been established that defendant No. 5 was employed as the Administrative Assistant of defendant No. 1 who resigned without prior notice on 26th July, 2004 without handing over the charge of her functions or the records in her custody. What also emerges is that defendant No. 5 was present at the office of the plaintiff at Delhi on 1st August, 2004 and she had helped defendant No. 1 in removing all assets and destroying the records of plaintiff Society.

37. What emerges in the facts and circumstances is that Francois Xavier Bagnoud Rajasthan Society had to limit its activities in the State of Rajasthan in

accordance with its Memorandum and Articles of association whereas the Memorandum and Articles of association of plaintiff''s Society permits it to carry out its activities throughout India. The plaintiff has also established that the defendants were trying to ask the employees of the plaintiff to take instructions from the defendant Nos. 1 to 5 and not from the governing body of the plaintiff. The plaintiff has also been able to establish that defendants have destroyed the records of plaintiff Society and have also misappropriated the cash of the plaintiff Society. Since defendant Nos. 1, 3 and 4 remained signatories to the bank account of the plaintiff, till plaintiff opened a new account, they transferred funds from the bank account of plaintiff at Delhi.

38. The plaintiff has also produced the lease deeds in respect of various premises taken at different places to run its offices throughout the country. The lessee of the different premises throughout the country is plaintiff and not the defendant Nos. 1 to 5 either in their individual capacity or Francois Xavier Bagnoud Rajasthan Society.

39. In the circumstances the plaintiff has been able to establish that defendant Nos. 1 to 5 are not associated with the plaintiff''s Society any longer and consequently they are not entitled to interfere in any of the activities carried on by the plaintiff Society. Defendant Nos. 1 and 2 have resigned as is indicated from their letters of resignation which have been proved by the plaintiff. One of the local commissioner appointed by this Court was able to take into custody certain records and had put the same into two almirahs which were sealed by him. As one of the local Commissioner was not allowed to take out the record of plaintiff Society, he had sealed the room in which the record of the plaintiff Society were lying. Subsequently with the police aid the documents and records were retrieved and on an application by the plaintiff seeking return of the account books, bills, voucher, and documents seized by the local Commissioner, these were ordered to be returned to the plaintiff Society by order dated 11th October 2004

40. In the circumstances the plaintiff has been able to prove that defendant Nos. 1 to 5 are not entitled to interfere in any manner with the activities of the plaintiff Society nor they are entitled to deal with any of the assets of plaintiff Society in any manner. The plaintiffs have also been able to prove that the defendants are not entitled to withdraw or transfers any funds from the bank accounts of the plaintiff. Some of the record of the society has already been returned to the plaintiff, however, the plaintiff is not entitled for a mandatory injunction against the defendants to return the amounts illegally removed from the plaintiff''s account. To recover the amount illegally misappropriated by the defendants, the plaintiff ought to have filed a suit for recovery of the said amount.

41. In the circumstances the plaintiff has been able to make out a prima facie case and has also been able to establish that the plaintiff shall suffer greater inconvenience in case the injunction as prayed by the plaintiff is not granted to

him. In the circumstances the balance of convenience is in favor of plaintiff and against the defendants. The plaintiff has also established that he will suffer irreparable loss in case injunction as prayed by him is not granted in his favor.

42. Therefore, the suit of the plaintiff for permanent injunction is decreed in his favor and against the defendant Nos. 1 to 5 restraining them from interfering in any manner with the activities or the functioning of the plaintiff and/or dealing with any assets, infrastructure, funds and assets of the plaintiff Society. The defendant Nos. 1 to 5 are also restrained from entering any of the offices of the plaintiff and from operating any of the accounts of the plaintiff Society in the banks. A decree of mandatory injunction is also passed in favor of plaintiff and against the defendant Nos. 1 to 5 directing them to return all the laptops, sales, stamps and research and programs of the plaintiff. The plaintiff shall be entitled for whatever had been recovered by the Local Commissioners from the defendants. Cost of the suit is also awarded to the plaintiff and against the defendants.