

(1997) 06 DEL CK 0005

In the Delhi High Court

Case No : Interim Application No's. 8855 and 8856 of 1995 and Suit No. 2127 of 1995

St. Sophia's Christian Education Society

APPELLANT

Vs

K. Samuel

RESPONDENT

Date of Decision : 09-06-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1997) 4 AD 285 : (1997) 67 DLT 791 : (1997) 42 DRJ 389

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mukul Rohatagi, Ravi Gupta, Girdhar Govind and Aprajita Pattnaik, for the Appellant;

Judgement

J.B. Goel, J.

(1) By this order I am disposing of two applications (1) is No.8855/95 under Order 39 Rules 1 & 2 and Section 151 CPC . for ad-interim injunction and (2) is No-8856/95 under Order 40 Rule I CPC . for appointment of a receiver. These two applications have been filed by the plaintiff in a suit for declaration, injunction recovery of possession and rendition of accounts etc.

(2) plaintiff No. 1 is a Society registered under the Societies Registration Act, 1860 registered on 13.7.1972 with its registered office at D-23, Kirti Nagar, New Delhi and plaintiff No. 2 claims to be its President. Objects included imparting of education. It started a primary school at D-23, Kirti Nagar, Delhi. This School was recognized up to primary level by the Municipal Corporation of Delhi in the year 1977 and later was upgraded and accorded recognition up to middle school level in 1980 to Secondary Level in the year 1982-83 and to Senior Secondary Level in 1987-88 by the Director of Education, Delhi thereafter it was also affiliated to the Central Board of Secondary Education, Delhi. While according recognition to Secondary Level vide letter No.F.22(83)-Z-96/79-BOL/II/100084 dated 12.8.1983 certain conditions were imposed which inter alias included the following:

"THAT the management of the School shall procure land from Delhi Development Authority for the School and construct thereon a suitable building for the school by December 1984 and this School is shifted to new building".

THE Society had approached the Delhi Development Authority (for short DDA) for allotment of land for construction of building for the school. Its case had been recommended- by the Director of Education, Delhi. The D.D.A. vide letter dated 19.4.1983 offered a 4 acres plot of land at A-2 Block, Paschim Vihar, New Delhi inter alias on the following conditions:

"(3)The land measuring 2 Acres shall be kept open for play ground and no structure of even temporary nature shall be raised and the land shall be used by the Society for the construction of H.S. School and for no other purpose whatsoever.

(8)The society shall abide by the Rules and Regulations of Delhi Administration for claiming a school.

(11)The building plan should be got approved from the Local Body/DDA before undertaking any construction over the land.

(12)The Society shall complete construction of the School building on the land within a period of 2 years from the date of handing, over possession of land."

(3) Demand of Rs. 12,00,000.00 on account cost of land and Rs. 30,000.00 as ground rent for one year and Re.1.00 as license fee for play Field was also made to be paid within 60 days from the date of issue of the letter. Later on this land price and the ground rent thereon was reduced to 50% of it. Sometime thereafter once Mr. M.M. Samuel since deceased, was taken as a member of the Society and was appointed as the Chairman of the Managing Committee of the school and in the meeting of the General Body of the Society held on 29th December, 1983 he was also appointed as General Secretary of the Governing Body of the Society, on 29.12.1983 the Governing Body constituted comprised of the following persons:-

- 1.Major V.M.R. James, President
- 2.Mr. M.M. Samuel, General Secretary
- 3.Mr. Joseph Thomas, Vice President(ex officio)
- 4.Mr. Gian Singh, Treasurer
- 5.Mr. H. Samuel, Counselor
- 6.Mrs. Prem Lata Joseph, (Counselor Co opted .
- 7.Mr. Siddharth Sen, Counselor(Co opted .

FOR the years 1983-84 and 1984-85. By resolutions No.7-A and 8 passed in the same meeting Mr. M.M.Samuel was authorised to inter aha deal with the Dda in

connection with the land, to make payment to the Dda towards cost of the land and to take possession of the same. A sum of Rs. 1 Lac was paid by Shri M.M. Samuel to the DDa on behalf of the Society on 30.12.1983 and for the balance he had given an undertaking on behalf of the Society to the Dda that the balance amount would be paid in four equal installments with interest within a period of 2 years. Possession of the land on this undertaking was given to Shri Samuel on behalf of the Society on 30.12.1983 by the DDA. It appears that some constructions were also raised over the said land shortly after taking possession of the land. Then some disputes arose between the Society and Mr. M.M. Samuel about the alleged payments received by him from the Society but were not deposited with the Dda or otherwise not accounted for and also about the functioning of Mr. Samuel. It appears that for his alleged illegal acts, Shri Samuel was removed from the Governing Body as well as from the Managing Committee of the School in June, 1984 and a new Managing Committee of the School was reconstituted. In the meantime, Maj. V.M.R. James had submitted resignation as President of the Society on 12.3.1984 which was later accepted on 10.10.1984. Shri Joseph Thomas who was the Vice President of the Society at the relevant time continued to act as its Acting President. And it appears that new elections were held, and he was elected its President. It is alleged that Shri M.M. Samuel, illegally and without the authority and permission of the Society started a new school of his own in the same name in which plaintiffs school was being run at D-23, Kirti Nagar, i.e., under the name of St. Sophia Secondary School at the new site at Block A-2, Paschim Vihar, New Delhi for personal gain. This school was started without the authority of the Director of Education also as required under Rule 50 of the Delhi School Education Rules, 1973 for which objection was also raised by the Director of Education. Thus two schools started functioning in the same name one from the old premises at D-23, Kirti Nagar, New Delhi and the other from A-2 Block, Paschim Vihar, New Delhi. A number of suits and writ petitions were filed on behalf of the Society "being Suits No.1010/84, No.552/84, No-1346/87, No.1610/89 and No-2243/92 and writ petitions No.1744/86, No-798/87 and No-1329/87, claiming one or the other ad-interim order against the other party. One suit being Suit No-1048/84 was also filed by Shri M.M. Samuel. On account of enhancement of its jurisdictional value, the suits which were instituted in this Court were subsequently transferred to the Court of District Judge. In the last Suit No-2243/92 request for grant of injunction and appointment of receiver was declined by the Court concerned. Though by way of interim ex-parte order the management of the School was taken from the defendant party and entrusted to a third person but later on, this order was set aside and this Court in appeal upheld this order but the following two conditions were imposed on the defendants in its order dated 7.7.1994:

(A) Respondent/defendants herein shall not make any additions or structural changes in the building already in existence without prior permission of the Trial Court;

(B) The respondent/defendant herein shall keep and maintain the regular books

of account and shall get the accounts audited and checked by a Chartered Accountant every year and a copy of the report shall be submitted to the Trial Court with due promptitude.

THEREAFTER the present suit has been filed on behalf of the Society which is impleaded as plaintiff No. 1 and Shri Joseph Thomas as its President as plaintiff No. 2. It is inter alia claimed that the plaintiffs alone are entitled to run the school under the name of St. Sophia Secondary School and the school being run by the defendants at A-2 Block, Paschim Vihar is illegal and unauthorized and accordingly the plaintiffs have claimed reliefs of possession of the school premises, rendition of accounts and other ancillary reliefs pertaining to the affairs and the functioning of that school run by the defendants at A-2 Block Paschim Vihar.

(4) Defendants have filed written statement and are contesting the suit. They have denied the material averments made in the plaint. They have claimed that a new governing body was constituted in June, 1984 which was headed by late Shri M.M. Samuel and after his death, now defendant No. 1 Mrs. K. Samuel and defendant No. 5 Shri Mathew Samuel are the President and Secretary respectively of the Governing Body of the Society and they are running the School in accordance with law, and the alleged governing Body of plaintiff No. 2 is not legally constituted governing body and they are not entitled to deal with the affairs of Society or of the School. The School is being run by a validly constituted Governing Body and Managing Committee of the School. Various counter allegations have also been leveled against plaintiff No.2.

(5) I have heard the learned counsel for the parties. Learned counsel for the plaintiffs relying on the documents filed by the plaintiffs has contended that plaintiff No. 1 is being run and managed by a legally constituted Governing body of which plaintiff No.2 is the President and they have been running its duly recognised school at premises No.D-23, Kirti Nagar, Delhi, that School has not been shifted from there to the new premises at A-2 Block, Paschim Vihar, Delhi nor the Governing Body has set up or authorised to set up the other School at Paschim Vihar; School being run by the defendants is thus illegal, and is unauthorised and is without the authority of the legally constituted governing Body of the Society, and of the Director of Education, Delhi. It is also alleged that besides various financial irregularities committed, Shri M.M. Samuel had forged documents to usurp the property of the Society for which separate suits have been filed earlier and in the circumstances the plaintiffs are entitled to ad interim injunction as prayed as well as for appointment of Receiver to take the management and to safeguard the interest of the public, students, of the School and of the Society. Whereas learned counsel for the defendants has contended that the plaintiffs have been filing false, vexatious and frivolous suits one after the other against the defendants and in those suits requests for interim injunction and for appointment of Receiver were either not granted or pressed or were rejected. Request for appointment of Receiver was last rejected on

7.7.1994 in Suit No.2243/92 which was confirmed in appeal by this Court. In these circumstances neither the present suit nor application for grant of ad-interim injunction or for appointment of Receiver is maintainable, and even otherwise the circumstances do not warrant grant of such reliefs as these powers could be exercised sparingly and in exceptional circumstances "which do not exist in the present case nor there is change in the circumstances after 7.7.1994 when such request was rejected. Successive suits and applications for similar reliefs are misuse of the process of the Court.

(6) From the pleadings of the parties and the documents placed on record it is seen that a plot of land measuring 4 Acres was allotted by Dda to this Society on 30.12.1983 for running its School there which had been recognised by and upgraded to Senior Secondary level. At that time plaintiff society had a constituted Governing Body as well as a School Managing Committee. One Mr. M.M. Samuel had been appointed as the secretary of the Society as well as Chairman of the School Managing Committee in December, 1983. He was entrusted to deal with the Dda for allotment of land, to make payment and to take its possession. He paid Rs. I Lac and took possession of land on 30.12.1983. Some construction was raised over that-plot of land. However, it appears that the Governing Body had not yet decided to shift its school to the new site but a School was started there perhaps by late Shri M.M. Samuel. It appears that two parallel governing Bodies and Managing Committees came into existence each claiming to be legally and validly constituted one, and claiming to run the school and affairs of the Society. Some disputes had arisen between members of the Governing Body/Managing Committee and each group removing the members of the existing Governing Body and Managing Committee in June, 1984. Thereafter, as already notice several cases were filed by the plaintiffs and one suit was filed by the defendant party. Thus two parallel Governing Bodies as well as Managing Committees are claiming to be entitled to manage the Society and the School. This controversy has not been resolved during the last 13 years. Various applications have been filed by the parties for temporary injunctions and other reliefs in those cases. Either no relief has been granted or relief has been declined. In the last instituted Suit No.2243/92a temporary injunction was granted and an independent Administrator was appointed exparte for running the affairs of the School at A-2 Block but subsequently the said order was set aside by the Court of Shri S.N. Dhingra, Additional District Judge and application for temporary. injunction was rejected by that Court, Appeal against that order (FAO No. 203/93) was dismissed by this Court on 7.7.1994. The appellate Court had noticed the following facts:

"SUFFICE to say that both the sides claim to be the legally constituted bodies authorised to possess the premises and run and manage the School at Paschim Vihar. It would be too slippery in the present state of fluidity to jump to any conclusion. The issue raised is contentious and needs much deeper probe for which tools are yet to be provided by the parties in the shape of evidence. However, one thing is certain and it, as already noticed, is that right from the

appointment of Mr. Samuel as the Chairman of the managing Committee, the appellants have not been having any say in the, management or running of the school nor were they in possession of the premises at the time of the institution of the suit or much before that. This being the position, coupled with the claim that the respondents are the legally constituted persons to run the show. I do not think the order of the learned Additional District Judge can be faulted."

(7) It is not disputed and is rather conceded in the plaint that formerly late Shri M.M. Samuel and after his death defendants are in control and management of the affairs of the School to the exclusion of the plaintiff No. 2 and his group.

(8) No new circumstances are shown to have arisen after this order was passed to warrant the grant of an ad-interim injunction order or for the appointment of a Receiver. It is doubtful if at all the new suit for possession and other reliefs claimed therein is at all maintainable or is necessary in view of the other suits pending between the parties. One or the other of those suits would be sufficient to determine the real controversy between the parties. The controversy obviously is as to who are validly constituted Governing Body of the Society and the Managing Committee of the School entitled to run the Society and the School. Present suit apparently has been filed to make another attempt to somehow obtain the reliefs which have either not been pressed granted or was rejected in the earlier suits. Thus, the suit and two applications under consideration seem to me to be glaring instance of mis use of the process of the Court. Without prejudice to this I am considering these two applications independently also.

(9) In is No.8855/95 under Order 39 Rules I and 2 and Section 151 of the CPC the prayers made are:

(1)To restrain the defendants from causing any loss, injury or damage to the property of the Society at A-2 Block, Paschim Vihar;

(2)Not to create any encumbrances thereon;

(3)To restrain not to interfere in the running of the School by the defendants at A-2, Paschim Vihar, or at D-23, Kirti Nagar; and

(4)To restrain them from running the school, under the name and style of St. Sophia's Senior Secondary School.

(10) There is no averment made in this suit or in the application as to what and how far loss, injury or damage, if any, has been caused or is being caused or likely to be caused or how and what encumbrances is/are threatened or likely to be created on the property of the Society or the School. As such in the absence of proper plea and material on record to this effect no notice of any such plea made in the prayer clause of application can be taken and so no relief could be granted to that extent.

(11) As regards prayer for restraining the defendants from entering or running of the School at A-2- Block, Paschim Vihar is concerned it is not their case that the

alleged Governing Body headed by plaintiff No. 2 is in possession of the School premises or is in control of the school affairs after 1984. As such the question of grant of ad-interim injunction to this effect does not arise. However, it is not the case of the plaintiff pleaded either in the plaint or in the application how, when and in what manner defendants are threatening to interfere in the affairs of the School if at all any school is being run at D-23, Kirti Nagar, New Delhi. As such no relief to this extent also can be granted.

(12) As regards the last prayer for temporary injunction, the principles for grant of ad interim injunction are well established. A party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favor of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is to maintain the status quo. The Court grants such relief according to the legal principles *ex debito justitiae*. Before any such order is passed the Court has to be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of the maintainability of the suit and the balance of convenience is in his favor and refusal of injunction would cause irreparable injury to him.

(13) Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period the dispute between the parties is resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such direction has, however, to be weighed against the corresponding need to the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the balance of convenience lies. *M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others*, following *Wander Ltd. and Another Vs. Antox India P. Ltd.*, .

(14) The ad-interim injunction sought is in the form of mandatory injunction. Learned Counsel for the plaintiff relying on the decisions in *Mis. Vijay Srivastava Vs. Mirahul Enterprises* 1988 Rlr 7 and *Textile House Vs. Bangaram & Sons* 1995 Rlr 12 has contended that the Court has discretion to grant interim mandatory injunction to restore the status quo and it is a fit case to exercise such a power. This is disputed by the learned counsel for the defendants.

(15) In the First case of *Mrs. Vijay Srivastava (supra)*, after referring to the relevant case law it was laid down that though there is no bar to the Court granting interlocutory relief in the mandatory form though in doing so, the Court should act with greatest circumspection and such powers can be exercised only in rare and exceptional cases which it will depend on the facts and circumstances

of the case.

(16) In the second case of Textile House, the immediate cause was that the defendants had caused obstructions to the defendants in the use of common hall by placing a big wooden shelf and counter in the hall in common use of the parties. The plaintiff had approached the Court without any delay. In the facts and circumstances, it was held that a strong case for grant of mandatory injunction was made out. Obviously mandatory injunction was granted to restore the status quo existing immediately before the suit was filed.

(17) In *Rajeshwar Nath Gupta Vs. Administrator General and Others*, also it was reiterated that no doubt the Court does have the power to grant interim mandatory injunction but it has to be granted in rare and exceptional cases. In this case it was further laid down as under:

"If more than a prima-facie case is made out by the plaintiff to the likelihood of the suit being decreed and if there is no tangible defense raised by the defendants and if manifest injustice would be done if interim injunction is not granted, then the Court would, in exceptional circumstances be justified in granting interim relief."

(18) In this case it was found that defendants were in occupation of the premises since long, they had raised an arguable defense on merit and at that stage it was not possible to arrive at a categorical finding that there is absolutely no merits in the case of the defendant, that the defense set up was wholly untenable in law; prima facie the defense was bonafide which deserved serious consideration.

(19) To my mind to be entitled to the equitable relief like injunction and especially in the mandatory form the conduct of the plaintiff should be free from blame and he should not be guilty of laches, delay and acquiescence.

(20) As already noticed the defendant's party is in exclusive possession of the premises at A-2, Paschim Vihar, and they are running the school there since about 1984 alleging to have constituted a Governing Body and Managing Committee to the exclusion of the plaintiff's party. The plaintiff's party is thus excluded from the premises as well as from the Management of the School since then. Plaintiffs have either not taken appropriate steps or have not pursued their remedy in law diligently, properly and in accordance with law to get their claim right established. The request of the plaintiff for interim relief as already noticed has already been rejected on 7.7.1994 in the earlier suit. No new circumstances have arisen nor are so alleged thereafter. In the circumstances, it can not be said that the claim of the plaintiffs is better than that of the defendants or the defense raised is not bonafide and does not need consideration or balance of convenience is in favor of the plaintiff. The plaintiff is excluded from possession, control and management of the School for the last 13 years by now. The question of restoration of status quo existing soon before the institution of this suit thus does not arise. In these circumstances, no case for grant of ad-interim injunction prohibitory or mandatory is made out. This application is No.8855/95

has no merits and is wholly misconceived. The same is accordingly dismissed with costs.

(21) The other application (IA No-8856/95) is to appoint a Receiver to forthwith taken charge of the control, management and affairs of the school being run by defendants. This application is being opposed on behalf of the defendants who have contended that no case for appointment of Receiver is made out and that this application is a misuse of the process of the Court.

(22) The principles governing appointment of Receiver are well settled which may be summarised as under:

1.Appointment of a Receiver pending a suit is a matter resting in the discretion of the Court. Discretion is sound and judicial discretion to be exercised on taking into account all the circumstances of the case;

2.The power is exercised for the purpose of promoting the ends of justice and protecting the rights of all parties interested in the controversy and the subject matter and is based upon the fact that there is no adequate remedy or means of accomplishing the desired objects of the judicial proceedings.

3.The Court should not appoint a Receiver except upon proof by the plaintiff that prima-facie he has a very excellent chance of succeeding in the suit.

4.Not only must the plaintiff show a case of adverse and conflicting claims to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

5.The Court will not appoint a Receiver merely on the ground that it will do no harm.

6.The order appointing a Receiver will not be made where it has the effect . of depriving a defendant of a "de facto" possession since that might cause irreparable wrong.

7.If the dispute is as to title the Court very reluctantly disturbs the possession by Receiver except if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force, and it is necessary for the security of the property.

8.The Receiver would not be appointed in supersession of a bonafide possessor of property in controversy and the bonafides have to be presumed until the contrary is established or can be indubitably inferred.

9.The Court must take into consideration the conduct of the party who makes application and will usually refuse to .interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay acquiescence.

10.Where there is no reason at this stage to doubt the bonafides of the defense

set up, it is not advisable for the Court to appoint Receiver to take possession of the immovable property from the defendants until and unless the Court is of the opinion that there is some well founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives its protection.

11. The Court in exercise of its discretion to appoint or refuse the appointment of a Receiver must take into account all the circumstances and facts of the case, presence of conditions and grounds justifying the relief, ends of justice, the rights of all the parties interested in the subject matter and the adequacy of other remedies.

Ravi Kumar Vs. Misha Vadhera and Others, ; Hari Mohan Sharma and Others Vs. CSR Poultry Research and Breeding Farm, ; Rajeshwar Nath Gupta Vs. Administrator General and Others, and T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others,

(23) As already noticed the plaintiffs are out of possession of the suit property and also they have been excluded from participating in the management and control of the affairs of the School being run at A-2 Block, Paschim Vihar for the last over 13 years; and on the other hand affairs of that School are being run by the defendants who claim having been legally constituted Governing Body of the Society as well as School Managing Committee. No allegations of waste or damage to the school or the functioning of the school on the part of the defendants have been shown or alleged by the plaintiff. This application for appointment of Receiver is highly belated being made after about 13 years, the plaintiffs are thus guilty of laches, delay and acquiescence and this conduct does not entitle them to the equitable relief. The application of the plaintiffs for interim injunction has been rejected by separate order. Similar application was also rejected about 3 years -ago and no new circumstances have been brought on record. Both the parties are claiming to be legally constituted Governing Body and Managing Committee of the School. This claim can be determined after trial and on the material _ placed on record in this suit it is not possible to arrive at any decision on the merits of the respective contentions of the parties. In the circumstances, in my view no case for appointment of a Receiver has also been made out. This application also has no merits and the same is dismissed with costs.

(24) Costs of both these applications are assessed at Rs. 2,000.00 to be paid personally by plaintiff No. 2.

(25) It may be mentioned that the plaintiffs have claimed that a Governing Body of the Society and a Managing Committee of the School had been constituted and Shri M.M. Samuel who was Secretary of the Society as well as Chairman of the School had been removed, Shri M.M. Samuel in his Suit No-1048/1984 had on the other hand claimed that he had removed Mr. Joseph Thomas who was the Vice President/President of the Society in June, 1984 and a new Governing Body

and Managing Committee were constituted by him. The dispute between the parties in various suits is as to who are the legally appointed Governing Body of the Society and Managing Committee of the School. So far the plaintiff has not taken a definite plea in any of their suits as to what has been the Governing Body constituted by them how and when and that the alleged Governing Body and Managing Committee constituted by the defendants as claimed in the Suit No. 1048/84 are not legally constituted Governing Body and Managing Committee. This is the main issue that arises in the controversy involved between the parties and so long this controversy remains undecided.

(26) DUE-TO this controversy between the parties other important issues involved have been relegated in the background. Land for the School was allotted by the Dda to the Society in 1983 for running a School and a building was to be constructed within 2 years according to approved plan. So far no such plan appears to have been got approved from Competent Authority and some building appears to have been raised without any such sanction. This is in violation of the conditions of the allotment of land and it is possible that the Dda may cancel the allotment of the land for violation of this condition. It is necessary to take steps to get the building regularised to accord with the building bye laws.

(27) The Society formerly was running its School at D-23, Kirti Nagar, New Delhi. Recognitions to this School up to the Senior Secondary level were granted subject to the condition that it would construct a proper building to house the School and shall shift the School to such new school building. Two parallel schools are being run one at D-23, Kirti Nagar and the other at A-2 Block Paschim Vihar, obviously in violation of recognition granted by the Director of Education. Two Schools could not be run without express authorisation from the Director of Education.

(28) Also at the time of taking possession of the land from Dda on 30.12.1983 only a sum of Rs. 1 Lac was paid and an undertaking had been given that the balance amount would be paid within 2 years in four equal installments with Interest-Balance of the amount that may be due does not appear to have been paid so far. Dda had sought cancellation of the allotment of land and that action had been stayed in a writ petition filed by the plaintiff. It would be unjust and inequitable that the legal dues of the Dda remain unpaid in spite of the solemn undertaking given by the Society and at the same time the defendant should enjoy the benefit arising out of use of that land. The dispute arising between the two parties has made the work of the Director of Education difficult to take proper action under the relevant Delhi Education Rules. It has not been possible for him to resolve the controversy between the parties due to various suits pending in Court. Two Schools being run in the name of the Society may not be legally permissible to be run at two places without proper sanction to that effect. The existing School was to be shifted from D-23, Kirti Nagar to new building constructed on the land allotted by the Dda for the purpose. The parties have not shown bonafides and sincerity in getting the disputes about the legally appointed

Governing Body of the Society that may be entitled to manage the Society during the last about 13 years.

(29) The premises at A-2 Block Paschim Vihar and affairs of the School being run from there are in possession and control of the defendants. It was the defendants who should have taken appropriate steps to get the land use regularised after getting the building plan sanctioned, to have cleared the dues of the Dda and got the recognition of the School from the Director of Education and also of the Central Board of Secondary Education if they claim to have constituted a governing body in supersession of the other which they have not done. The controversy involved brooks no further delay. It is not in the interest of the Society, public and the students who like to study in the School that this controversy should be dragged on further indefinitely. It will be just, convenient, and expedient that the affairs of the Society are entrusted to a non controversial and duly appointed Governing Body and the Managing Committee of the School. Constitution of the Governing Body seems to be an yearly event. I feel that an Administrator be appointed to hold the election of the Governing Body of the Society at the earliest. I accordingly, appoint Shri Harish Malhotra, Advocate, H-35/1, Con. Circus, N. Delhi-1 as Administrator for the purpose of holding the elections of the Governing Body of the St. Sophia Christian Education Society, i.e., the plaintiff. Both the parties are hereby directed to make available to the Administrator within two weeks of this order all the relevant documents pertaining to the members of the Society available with them with the names and particulars of the members as may have been enrolled by them and the Administrator shall prepare a list of its members after satisfying himself if such members have been legally and validly enrolled in accordance with the bye laws and objects of the Society after hearing the objections, if any, raised about entitlement of any such person as a member ignoring as to by which of the two competing Governing Bodies of the Society they might have been enrolled. The Administrator shall hold such election within 3 months of the receipt of the copy of this Order. The Fee of the Administrator is Fixed at Rs. 5,000.00 to be paid out of the funds available with the School being run at A-2 Block, Paschim Vihar. Cost of such election shall also be paid from the same fund.

(30) Both the parties-are hereby directed to furnish to the Administrator the names of the members of the Society as may have been enrolled by them with date, proof of enrollment and entitlement of such members. The eligibility of such members shall be considered in accordance with the undisputed Constitution of the Society. In case of non-compliance of this order by either of the party, the claim of such party about the membership of the Society shall be ignored. On being so constituted/elected such Governing Body will be the Governing Body of the Society and all the assets, properties, papers, records of the Society as well as of the two Schools/establishments being run at D-23, Kirti Nagar, as well as at A-2 Block, Paschim Vihar, shall vest in and stand transferred to such Body forthwith.