

SUPREME COURT OF INDIA

T.Varghese George

Vs.

Kora K.George & Ors.

C.A.No.6786 of 2003

(R.V.Raveendran and H.L.Gokhale,JJ.,)

13.10.2011

JUDGMENT

H.L.Gokhale,J.,

1. Civil Appeal No. 6786 of 2003 raises the question as to whether T. Thomas Educational Trust, Perambur, Chennai, is in any way a Minority Educational Trust? And if so, whether the Division Bench of the Madras High Court was justified in framing a scheme for the administration of this trust under Section 92 of Code of Civil Procedure, 1908 ('CPC' for short) by treating it as a Public Charitable Trust?

Facts leading to Civil Appeal No. 6786 of 2003 are this wise –

2. One Shri T. Thomas son of Shri Thomas Pappy, of Perambur, Chennai, started a school in Chennai by name 'St. Mary's School' sometime in the year 1970. On 4.4.1975, he executed a deed of declaration of a trust by name 'T. Thomas Educational Trust' for the purpose of running of the school on the terms and conditions mentioned therein. In para 2 of this deed he declared the objects of the trust as follows:-

"2. The said Trust shall have the following objects namely –

a. to run the said St. Mary's School,

b. to run other Educational Institutions and Institutions allied to Educational Institutions like Research Institutions.

c. to accept donations in any manner from any person or Institutions whether Governmental or quasi Governmental or otherwise, for carrying out the purpose of the Trust.

d. to borrow moneys from banks and/or other credit Institutions and/or individuals and/or public bodies and/or other Governmental or quasi-Governmental bodies, on the security of its properties or otherwise, for the purpose of the Trust.

e. to lease out or sell or mortgage or otherwise deal with any of the properties of the Trust whether moveable or immovable for the purpose of the Trust."

3. In para 3 he declared that the entire control and management of the Trust including appointment of the Correspondent of the School shall rest in a 'Board of Trustee' who shall consist of the following persons namely:-

- (a) The Principal of the School (ex-officio)
- (b) Headmaster or Headmistress
- (c) Warden of the St. Mary's School Hostel (ex-officio)
- (d) A member elected from the Parents Association of the School.
- (e) A member elected from the Staff Council of the School.

(f) Three members nominated by the above five members, having high standing in the Educational field. He nominated the First Board of Trustees in para 4. The members thereof were as follows: -

- (a) Rev. Fr. G.M. Thomas, B.Sc., L.T., acting Principal of the School.
- (b) Mr. Joseph Ebenezer, B.Sc., L.T. Headmaster
- (c) Mrs. Elizabeth Saraswathi, Warden of the St. Mary's English School Hostel
- (d) Mrs. Molly Thayil, 37, Vyasa Nagar, Madras-39
- (e) Mr. J. Devaraj, B.A. (Staff Member)
- (f) Mrs. Mary Joshna Thomas, M.A.B.D., Prof. of History, St. Stephen's College, Pathanapuram, Kerela
- (g) Mr. D.V. DeMonte, M.L.C., President, Anglo Indian Association, Madras
- (h) Pandit M.C. Chandy, Teaching Assistant (Retd.) Madras Christian College School, Madras

4. What Shri T. Thomas declared in para 10 with respect to the income of the School and utilisation of its funds is very crucial for our purpose. This para reads as follows:-

"10. The income from the School or any income or funds pertaining to the Trust shall be exclusively used for the purpose of the Trust including financial assistance to poor and deserving pupils or students irrespective of case, creed or religion."

(emphasis supplied)

5. Shri Thomas died on 16.1.1984, and the trust and the school fell under the management of his wife Smt. Elizabeth Thomas. There were allegations with respect to mis-management of the funds of the institution by her. This led three persons taking interest in the activities of the trust to institute a suit in the Madras High Court under Section 92 of the CPC for framing of a scheme for this trust. They were:-

“(i) Shri D.V. DeMonte, a member of the First Board of Trustee,

(ii) Dr. K.P. Natrajan, a parent of a student of the institution, and

(iii) Shri Kora K. George, respondent No. 1 herein, who is husband of the sister of Late T. Thomas.”

6. This suit was numbered as Civil Suit No. 601/1987, wherein

(i) T. Thomas Educational Trust, (ii) Smt. Elizabeth Thomas, (iii) Smt. Molly Thayil and

(iv) Rev. Thomas Mar Osthathos, were joined as the defendants. The learned Single Judge framed the necessary issues and then after recording evidence decided the suit. Issue Nos. 6 and 7 from amongst them were as follows:-

"6. Whether the suit falls outside the purview of section 92 of the Code of Civil Procedure as contended by the second defendant?

7. Whether this court has no jurisdiction to interfere with the management and with administration of the first administration of the first defendant Trust under section 92 C.P.C."

7. It was canvassed by Smt. Elizabeth Thomas before the learned single Judge that the concerned trust was a private trust and a Minority Institution. She pointed out that three schools of the institution had obtained declaration of being minority educational institutions. Therefore, it was submitted that the single Judge did not have jurisdiction to entertain the suit under Section 92 of CPC. That submission was not accepted by the learned single Judge. The learned Judge looked into the original trust deed and noted that in para 3 of the founders declaration, one of the objects was to accept donation in any manner from any person or

institutions whether governmental or otherwise for carrying out the purpose of the Trust, which was the educational purpose. He also referred to the above referred clause 10 which stated that the income and funds of the institution were to be exclusively used for the purposes of the trust, including financial assistance to the poor and deserving students irrespective of caste, creed or religion. He referred to the prospectus of St. Mary's group of schools. He also noted that no benefit whatsoever was to be retained by any member of the family, and the beneficiaries were only public. At the end of para 29 he held that the above factors would show that it is a Public Charitable Trust. This para reads as follows:-

"29. Issue 6 and 7:- Ex. P-1 is the Trust deed. I shall refer to the clauses in it, which are relevant for considering whether it is a public charitable trust. In the first page he has stated that this declaration of trust is made by T. Thomas, herein after called the declarant which expression shall whenever it is not repugnant to the context mean and include the heirs, successors, executors, administrators and legal representatives of the Declarant. In para 3, it is stated that the said trust shall have the following objects, viz.,

(a) to run the said St. Mary's School;

(b) to run other educational institutions, and institution like research institution;

(c) to accept donation in any manner from any person or institutions whether governmental or otherwise for carrying out the purpose of the Trust etc. In page 5, as per clause 8, a sum of Rs.2,000/- has been deposited with Indian Overseas Bank, Perambur in the name of the trust, which sum along with further donation etc., shall be utilized for the purposes for which the trust is created. As per clause 10, which is found at page 6, the income form the school or any income or funds pertaining to the trust shall be exclusively used for the purpose of the trust, including financial assistance to poor and deserving pupils or students irrespective of caste, creed or religion. IN Ex. P-2, which is prospectus of St. Mary's group of Schools under T. Thomas educational trust, in para 1, it is stated as follows:-

"T. Thomas educational trust was founded by chevalier t. Thomas M.A., Dip in Econ. (London), to promote quality education in North Madras." The above would show that the trust was created wholly for the purpose of imparting education. It is also seen that there is provision for donations from the public. It is further seen that no benefit whatsoever was retained by any member of the family and the beneficiaries are only public. The above would show that it is a public Charitable Trust."

8. The learned Judge however was of the view that the three conditions as laid down by this Court in *Bishwanath Vs. Shri Thakur Radha Ballabhji*¹ reported in had to be satisfied for invoking Section 92 of CPC viz. that (i) the trust is created for public purpose of a charitable or religious nature. (ii) there was breach of trust as directions of court is necessary in the administration of such a trust; and (iii) the relief claimed is one of the reliefs enumerated therein. The single Judge took the view that a case of breach of trust had not been made out,

and the prayer for direction was vague, and therefore although he found the trust to be a charitable trust, he gave a finding in the affirmative on issue Nos. 6 and 7. Issue No.8 was as to whether the plaintiffs could be considered as interested persons to maintain the suit and ask for settlement of a scheme. The learned single Judge held that they could not be said to be interested persons. He therefore, dismissed the suit. At the end of para 30 he held as follows:-

"30.....But, if after evidence is taken, it is found breach of trust alleged has not been made out and that the prayer for direction of the Court is vague and is not based on any solid foundation in facts of reasons but is made only with a view to brig the suit under section then a suit purporting to be brought under section 92 must be dismissed. In this case, after evidence is taken it is found that the breach of trust alleged has not been made out and the allegations in the plaint and the grievances made are not based on any fact or basis. The ratio of this ruling squarely applies to the facts of this case. Though I have found that this trust is a Public Charitable Trust, in view of my findings under Issues 1 to 3, 5 and 8 it follows that Issues 6 and 7 are to be decided in the affirmative."

9. The respondent No. 1 herein carried the matter in appeal by filing O.S.A. No. 49 of 1995. Smt. Elizabeth did not file any cross appeal or objection on the finding rendered by the single Judge that the institution was a public trust. The Division Bench noted with approval that on Issues No.6 and 7, the single Judge had held that the institution was a public trust. With respect to the finding of the single Judge on above Issue No.8, the Division Bench noted that Shri Kora K. George was instrumental in buying vast lands which are in possession and ownership of T. Thomas Educational Trust. He was also incharge of constructing buildings for Marian School at and St. Mary's Girls School, Sembium at Madras. The Division Bench held that he was a person who was very much interested in the trust and the view taken by the learned single Judge to the contrary was not correct. In the facts and circumstances of the case the Division Bench formed the opinion that having held the institution to be a public trust, it was necessary to frame an appropriate scheme. It noted that initially there was only one school run by the trust, but now it was running a college also, and a representation to the Principal of the college on the board of trustees was necessary. The Court was of the view that it was absolutely necessary to fill up the lacunae in the deed of trust which could be done only by framing a scheme therefor. The Court, therefore, passed an order on 20.11.1995 calling upon both the parties to file draft schemes for the consideration of the Court. Smt. Elizabeth Thomas did not file any draft scheme in spite of this specific order. The Court, thereafter, considered the draft scheme filed by Shri Kora K. George, and modified it appropriately and accordingly allowed the appeal by its judgment and order dated 4.12.1995.

10. Smt. Elizabeth Thomas and T. Thomas Educational Trust filed a Civil Appeal before this Court against that judgment and order, which was numbered as Civil Appeal 16578 of 1996. A bench of three Judges of this Court disposed of the said appeal on 27.10.1999 by passing the following order:-

"We are of the opinion that the judgment of the High Court on the legal issues which were raised does not call for any interference but considering the fact that the appellants had been the managing trustees ever since the inception, one further opportunity should be granted to them to file a draft scheme which should be considered along with the draft scheme which was filed by the respondent herein. It will be more appropriate, in our opinion, that the exercise of consideration the draft schemes should be undertaken by the High Court rather than by this Court. We, therefore, while affirming the judgment of the High Court in all other aspects remand the case to the High Court for considering afresh the draft schemes. The appellants herein will file the draft scheme within eight weeks from today. The High Court will decide the question thereafter after giving reasonable opportunity to both the sides....."

(emphasis added)

As can be seen from this order, this Court specifically affirmed the judgment of the High Court on all aspects. It remanded the matter only with a view to give an opportunity to Smt. Elizabeth Thomas who had filed the appeal. It is also material to note that pending the decision on the scheme, this Court continued the status-quo with regard to the operation of the approved scheme.

11. After the matter was remanded, a Division Bench of the Madras High Court went into the issue of framing of the scheme. It looked into the history of the proceeding as stated above. The High Court noted that although initially the trust was running only one school, by the time the appeal was being decided in December 2002, it was running eight schools and colleges. The Court noticed that there were allegations of financial mis-management against Smt. Thomas, and therefore appointed Mr. Justice Kanakaraj, a retired Judge of Madras High Court as an interim Chairman of the trust. He gave two reports on 3.6.2002 and 7.10.2002, wherein he reported that Smt. Elizabeth Thomas was trying to sell the land of the institution situated at Madhavaram which was purchased for its engineering college.

12. The Court examined the draft scheme presented by Smt. Elizabeth Thomas, Shri Kora K. George and also by the interim Chairman. Smt. Thomas once again tried to raise the issue that it was a minority institution, but the Division Bench declined to accept that submission in view of the finding of the single Judge on that issue being left undisturbed by this Court. Smt. Thomas wanted to be appointed as a trustee for life. Division Bench noted that there were serious allegations with respect to mis-appropriation of funds against her. While looking into these allegations, the High Court noted that she had created one trust of her own by name Elizabeth Thomas Trust in October 1997. She had obtained a loan of Rs.2.50 crores on the security of T. Thomas Education Trust, and diverted that amount to her own trust. The Division Bench had therefore, by an earlier order dated 27.3.2002 held that the assets of the Elizabeth Thomas Trust shall be treated as belonging to the T. Thomas Trust. Smt. Thomas sought the appointment of a religious leader of the Christian community as a trustee for life and as Chairman of the trust. The Division Bench observed in para 16 of its judgment, that such a request cannot be acceded to, and a public trust cannot be by a backdoor method

converted into a religious trust. It therefore framed the scheme in its judgment and order dated 5.12.2002. In paragraph 25 it appointed a Board of Trustees consisting of eight persons. This para 25 reads as follows:-

"25. The first Board of Trustees shall comprise of Justice J. Kanakaraj, former Judge of the Madras High Court, as Chairman, Shri S. Palamalai, I.A.S. (Retd.), as Executive Trustee and Mrs. Elizabeth Thomas, as trustee, Dr. V.A. Vasantha, the Principal/Headmaster of St. Mary's Matriculation Boys High Secondary School, Perambur, Chennai 11, the Principal/Headmistress of St. Mary's Matriculation Girls Higher Secondary School, Sembium, Chennai-11, the Principal/Headmaster of Chevalier T. Thomas Elizabeth Matriculation Higher Secondary School, Perambur, Chennai 11, the Principal of Chevalier T. Thomas Elizabeth College for Women, Perambur, Chennai 11, as trustees. They shall within two months from the date of their first meeting nominate a trustee to represent the non teaching staff employed in the institution."

13. Smt. Elizabeth Thomas filed SLP No.24352 of 2002, to challenge the said judgment and order, but later on she withdrew the same on 20.01.2003. (She has subsequently passed away on 5.9.2006.) In the present Civil Appeal No. 6786/2003, this judgment and order is challenged by the appellant herein who is a medical practitioner from Chennai, and who admittedly was not a party before the High Court as stated by himself in para 1.1 of the SLP. He claims to have arranged some good funds for the trust. He has once again sought to raise the issue in this Court that T. Thomas Educational Trust cannot be considered as a public trust. According to him it is a minority institution and therefore, the High Court erred in exercising the jurisdiction under Section 92 of CPC.

14. The appellant thereafter filed Civil Miscellaneous Petition (CMP) No. 20476 of 2003 to implead himself in disposed of O.S.A No. 49 of 1995. He filed another CMP No. 5673 of 2003 on 10.12.2003 for removal of the Chairman and the managing trustee before the Madras High Court in O.S.A No. 49 of 1995. The appellant made a grievance that the executive trustee and the Chairman were alienating the properties and assets to the prejudice of the trust. He however, did not move that CMP, and filed I.A. No.4 in Civil Appeal No. 6786 of 2003, to restrain the trustees from alienating any of those estates or properties and sought appointment of a receiver. This Court rejected the said I.A. by passing the following order on 16.4.2004"-

"We are not inclined to appoint a receiver as prayed for in this application at this stage. However, we restrain the trustees from alienating any of the estates or the property without the permission of this Court. IA is rejected."

15. The appellant thereafter moved a Contempt Petition bearing No. 435 of 2004 and pointed out that in breach of this order dated 16.4.2004, the above executive trustee and Chairman were disposing of few vehicles and furnitures of the institution. Thereupon, this Court passed the following order on 6.9.2004:-

"List the Contempt Petition along with the main appeal. The application filed by the applicant for the appointment of Receiver shall be moved before the High Court. We grant permission to the applicant to make such application before the High Court."

16. (i) CMP No. 20476/2003 was allowed by the High Court on 9.3.2005 and the appellant was joined as a respondent in O.S.A No. 49 of 1995. Thereafter, the appellant moved CMP No. 5660/2005 in O.S.A No. 49 of 1995 for appointment of a receiver. He also filed CMP No. 9402 of 2006 seeking modification of the scheme decree passed in O.S.A No. 49 of 1995. The appellant made various grievances including that some five acres of land of the trust at Madhavaram had been sold at a much lesser price to the prejudice of the trust. The executive trustee and the Chairman denied these allegations, and pointed out that all the decisions were taken by the entire board of trustees and not only by these two persons. On the other hand they alleged that the appellant was acting at the instance of Smt. Elizabeth Thomas. The Division Bench of the High Court examined all these issues, and accepted the submissions of the executive trustee and the Chairman, and dismissed these three CMPs on merits by a detailed order dated 21.9.2007. The Court held that the appellant had not substantiated his allegations against the Chairman and the Executive Trustee that they had acted against the interest of the trust or has mis-managed its affairs. Therefore, there was no justification for appointing a receiver for the trust. The High Court held that even assuming that there was any irregularity in the sale of 5 acres of land and that the price fetched was less, it was open to the appellant to seek appropriate remedy before the appropriate forum.

(ii) CMP No.10340 and 10341 of 2005 were filed by one Shri V.G. Panneerselvam and Shri C.V.W Davidson to join in the proceeding as additional applicants. However, since CMP Nos. 5673 of 2003, 5560 of 2005 and 9402 of 2006 were being dismissed on merits, the Court did not entertain these two CMPs also. These two CMPs for impleadment were therefore disposed of alongwith the said common order. This common order dated 21.9.2007 has led to SLP Nos.22590 and 22591 of 2007. They are being heard and decided along with Civil Appeal No. 6786 of 2003. Submissions by the rival parties –

17. Shri K. Subramanian, Senior Advocate, appeared for the appellant. Respondent No. 9 and 10 i.e. T. Thomas Educational Trust as represented by its Executive Trustee, Shri. S. Palamalai and its Chairman Justice J. Kanakaraj, have been joined in this matter vide this Court's order dated 22.8.2003. Shri M.S. Ganesh, Senior Advocate has represented them.

18. The principle submission on behalf of the appellant has been that the T. Thomas Educational Trust is a minority institution and the High Court has erred in appointing Shri S. Palamalai, a non-christian as the Executive Trustee and Correspondent of the Trust. In support of his submission that it is a minority institution, Shri Subramanian, learned senior counsel appearing for the appellant submitted that the trust was found by Late Shri T. Thomas who was a Christian. The school started by him was named as St. Mary's School. Subsequently, three schools belonging to this trust obtained a certificate of being minority schools under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act) from a Civil Court which had been left undisturbed in appeal also. All these

factors were ignored by the High Court in passing the impugned order. In his submission the High Court should not have accepted the scheme proposed by Justice J. Kankaraj.

19. Shri Subramanian submitted that Article 30 (1) of the Constitution of India gives a fundamental right to the minorities to establish and administer educational institutions of their choice, and this right should not be allowed to be diluted. He relied upon a judgment of a Constitution Bench of this Court in *State of Kerala Vs. Very Rev. Mother Provincial reported in*² and particularly paragraph 8 thereof. This paragraph reads as follows:-

"8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection."

20. Thereafter, he referred to the judgment in the case of *Secretary, Malankara Syrian Catholic College Vs. T. Jose and others reported in*³ wherein one of us (R.V. Raveendran, J.) was a member of the Bench. The Counsel submitted that in paragraph 19, this Court had summarised the general principles relating to establishment and administration of educational institutions by minorities. The principle (i) (a) laid down therein reads as follows:-

"(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

(a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;"

He submitted that the correspondent appointed under the impugned order could not be said to be person in whom the founders would have had confidence. In any case, Smt. Elizabeth wife of the founder did not have confidence in him. He drew our attention to the observations of this Court in paragraph 63 (6) of the judgment in *All Saints' High School, Hyderabad and others Vs. Government of Andhra Pradesh reported in*⁴ to submit that introduction of an outside authority however high in the governing body would be destructive of the fundamental right guaranteed by Article 30 (1) of the Constitution. In his submission, the proper course must be to consider the past history of the institution and the way in which the management has been carried out herein before as was laid down by the Privy Council in *MD. Ismail Ariff and others Vs. Ahmed Moolla Dawood and another reported in*⁵ This being the position, in his submission the order of appointment of the Executive Trustee was

vitiated. The High Court had not discharged its function under Section 92 of CPC correctly, and therefore, this Court ought to interfere and set-aside the impugned judgment and order, and if necessary, remand the matter to the High Court for re-consideration. He also drew our attention to some of the allegations of mis-management against the Chairman and correspondent.

21. Shri M.S. Ganesh, learned senior counsel appearing for the Chairman and the correspondent of the trust on the other hand submitted that the appellant was working at cross purposes with the trust, and this fact should not be lost sight of. The appellant claims to have arranged contributions of lakhs of rupees to the trust when Smt. Elizabeth Thomas was in the management, and has subsequently started claiming those amounts from the present management. On 24.2.2003, he sent a fax message demanding lakhs of rupees from the trust, and when Shri S. Palamalai visited Kottayam, the appellant threatened him to return the amounts which led the correspondent to lodge a complaint with the police on 26.2.2003. Smt. Elizabeth Thomas and the appellant were hand in gloves, and, therefore although she withdrew her appeal to this Court, she recommended the appellant for being taken in the formal meetings of the board by her letter dated 22.1.2003, and in spite of the above referred incident on 26.2.2003 she once again wrote to the Chairman of trust that his moneys be returned.

22. Apart from this aspect, Shri Ganesh pointed out the fact that this trust is a secular public trust for the purposes of education, is writ large in the document of the trust as well as its activities. He pointed out that the trust deed permits receiving of funds from anybody, it does not anywhere state that it is set up in the interest of any minority community having a separate culture of its own. On the other hand para 10 of the trust document specifically states that its funds will be utilized for encouraging the deserving and poor students, irrespective of caste, creed or religion. All throughout the findings on this aspect have been very clear. The single Judge has held that it was a public charitable trust and not a minority institution. That view was accepted by a Division Bench, and reaffirmed by a bench of three judges of this Court. That being so there was no occasion to reopen the issue any more.

23. With respect to the orders of being minority institutions obtained by three schools of the trust under the Tamil Nadu Act, Shri Ganesh submitted that at the highest those orders will have to be read as obtained for the purposes of that statute, though in his submission the orders were obtained from an authority viz. the Civil Court which did not have the jurisdiction to issue such orders. In any case, the orders could not be used for the purposes of restricting the objective of the trust, and for making a submission that the trust is a minority institution. The intention of the founder of the trust must be correctly understood and given utmost importance, which is what the Court had done in this matter all throughout. He relied upon the judgment of a Constitution Bench in *S. Azeez Basha Vs. Union of India reported in*⁶ where in the context of Article 30(1) this Court observed in paragraph 19 as follows:-

"19. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The article cannot be read, to mean that even if the

educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. We are of opinion that nothing in that case justifies the contention raised of behalf of the petitioners that the minorities would have the right to administer an educational institution even though the institution may not have been established by them. The two words in Article 30(1) must be read together and so read the Article gives this right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1)."

(emphasis supplied)

Shri Ganesh submitted that as the proposition states, if an educational institution is established by somebody else, a religious minority does not acquire the right to administer it only on the ground that for some reason or the other, it might be administering it. In the instant case, though the trust is constituted by person belonging to a religious minority, he created a secular trust. He has specifically stated that its income is not to be utilized for the benefit of students belonging to any particular community. The objects of the trust in no way state that the trust is set up in the interest of any minority having a distinct culture within the meaning of Article 29(1) of the Constitution.

23. He referred to a recent judgment of this Court in *T.M.A. Pai Foundation and others Vs. State of Karnataka and others reported in*⁷ and particularly paragraph 117 thereof where this Court referred to the judgment in *Ahmedabad St. Xavier's College Society Vs. State of Gujarat reported in*⁸ which reiterated the observations of Das, CJ in *Kerala Education Bill*⁹ to the effect that right to administer is to be tempered with regulatory measures to facilitate smooth administration. The right to manage a minority institution does not mean a right to mismanage the same. He also made a wider submission based on the observations of a Constitution Bench of this Court in *Commissioner Hindu Religious Endowments, Madras Vs. Shri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in*¹⁰ where in the context of Article 26 (b) of the Constitution, it is observed at page 1023 that "it is clear therefore that questions merely relating to administration of properties belonging to a religious group or institutions are not matter of religion to which clause (b) of the Article applies." In his submission administration of an educational trust is a secular activity and the appointment of a person belonging to another religion cannot amount to any infringement of the right of a minority under Article 30 (1) of the Constitution.

Consideration of the rival submissions –

24. We have noted the submissions of both the counsel. To begin with, we would like to refer to the provision of Section 92 of CPC whereunder the proceedings leading to these appeals were initiated. This Section reads as follows:-

"92. Public charities - (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following, circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

- (i) have been, as far as may be, fulfilled; or
- (ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or
- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
- (e) where the original purposes, in whole or in part, have, since they were laid down,-
 - (i) been adequately provided for by other means, or
 - (ii) ceased, as being useless or harmful to the community, or
 - (iii) ceased to be, in law, charitable, or
 - (iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust]."

25. As can be seen from this Section two or more persons having interest in the trust may institute a suit in the principle civil court of original jurisdiction to obtain a decree concerning a public charity for various purposes mentioned therein. Such suit will lie where these persons make out a case of alleged breach of any trust created for public purposes or for directions of the Court for administration of the trust. One of the purposes set out in sub-section (1) (g) is settling a scheme, sub-section (b) speaks about a new trustee being appointed, and sub-section (a) speaks about removing a trustee. Out of the three persons who filed the Civil Suit No.601 of 1987, Shri D.V.D. Monte was a member of the Board of Trustees nominated by the founder Shri T. Thomas himself. Shri Kora K. George is a brother-in-law of Shri T. Thomas. He has raised funds for buying lands for the institution, and for constructing the buildings of the school. Therefore, although the single Judge held that he could not be said to be a person having interest in the trust, that finding was reversed by the Division Bench in OSA No.49 of 1995. Dr. Natrajan is a parent of a student of the

institution. None of these persons can be criticized as persons lacking good intention for the trust.

26. Sub-section (2) of Section 92 lays down that a suit claiming any of the reliefs specified in sub-section (1) has to be instituted in conformity with that sub-section. Such suit having been filed, the Trial Court gave a finding that it was a public trust and not a minority institution. That finding has been left undisturbed by the High Court, and confirmed by a bench of three judges of this Court. Although, the Trial Court declined to accept the principle prayer of Shri Kora K. George and others, the Division Bench in appeal realised that an appropriate scheme for the administration of the trust was necessary. The Court, therefore, framed the scheme considering the objects of the trust by its order dated 4.12.1995.

27. It is material to note that the Division Bench had framed the scheme by its order dated 4.12.1995, after calling upon Smt. Elizabeth Thomas to give her proposals which she had declined to do so. Still, with a view only to give one more opportunity to her, this Court remanded the matter once again to the High Court. The Division Bench of the High Court which heard the matter after remand appointed Justice J. Kankaraj, a retired Judge of Madras High Court as the interim Chairman, and a retired IAS Officer Shri Palamalai as the Executive Trustee and Correspondent in April 2002. Hon'ble Justice J. Kankaraj made the necessary reports to the Division Bench and pointed out that Smt. Elizabeth was mis-managing the trust. The Division Bench considered all the aspects and proposals including that of Smt. Elizabeth Thomas for framing the scheme and framed an appropriate scheme by its order dated 5.12.2002. Apart from the appellant, and Smt. Elizabeth hardly anybody has raised any grievance with respect to the functioning of the Chairman or the Correspondent. The appellant did not choose to initiate any proceedings with respect to the functioning of the trust as required under Section 92. After the scheme was finalized, although Smt. Elizabeth filed an appeal, she withdrew the same. It was at this stage that the appellant filed the present appeal raising the issues that he has raised. The correct course of action for him ought to have been to file his suit under Section 92, if he deemed it fit.

28. As can be seen from the narration above, as far as the character of the trust as a secular public trust is concerned, that view was taken initially by a learned Single Judge. Subsequently, it was confirmed by a Division Bench as well as by a bench of three judges of this Court. The fact that the trust was set up by Late Shri T. Thomas who belongs to a religious minority was very much there before the Courts all throughout. The fact that three schools of this trust had obtained a certificate of minority character was canvassed before the single Judge, and in spite of that submission the single judge gave a finding that the trust was not a minority trust. He recognised the secular character of the institution, particularly by referring to Clause 10 of the declaration made by the founder. The specific finding on concerned issues No. 6 and 7 was left undisturbed by a Division Bench of the High Court in appeal and reaffirmed by a bench of three judges of this Court. Smt. Elizabeth did not file any appeal on this finding of the single Judge to the Division Bench of the High Court. This Court has already confirmed that finding. Explanation IV to Section 11 of Code of CPC clearly lays down that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and

substantially in issue in such latter suit, and a Civil Court cannot try the same issue once again between the same parties or between the parties under whom they were litigating. The same proposition applies to issue estoppel. Such a view has been taken by this Court in *Shiromani Gurdwara Parbandhak Committee Vs. Mahant Harnam Singh reported in*¹¹. In that matter this Court was concerned with the issue as to whether a particular sect could be regarded as a sect belonging to the Sikh religion. That issue had already been decided in *Mahant Harnam Vs. Gurdial Singh reported in*¹² At the end of para 17, of its Judgment this Court, therefore, held as follows:-

"The factual findings relating to the nature and character of the institutions, specifically, found on an elaborate review of the governing legal principles as well, and which have reached finality cannot be reagitated and the same is precluded on the principle of "issue estoppel" also. As has been rightly contended by the learned counsel for the respondents, decisions rendered on the peculiar fact situation specifically found to exist therein cannot have any irreversible application."

This being the position, the issue with respect to the character of the trust as a Secular Education Trust cannot be permitted to be reopened.

29. Then comes the question as to whether the orders obtained under the above referred Tamil Nadu Act by three schools belonging to the trust can make any difference. It is necessary to note in this connection that these orders were obtained from a Civil Court and were confirmed in appeal. However, we must note that a recognition of a school as a minority school is to be obtained from a competent authority under Section 11 of that Act, and not from any Civil Court, and any party aggrieved by non-grant thereof has a right of appeal under Section 41 of that Act to the prescribed Authority. Section 53 of the Act clearly lays down that no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by an authority or officer mentioned in this Act. Thus, prima facie, it would appear that the orders were obtained from a forum non-juris. The reliance on the judgments of the Civil Court though pressed into service before the single Judge were not taken as a relevant factor for deciding the minority character of the trust. Now, that this submission is being reiterated, Shri Ganesh has submitted with some force that these orders are from a Court without any jurisdiction. We must note in this connection, that the statement of objects and reasons of the Act states that the act was passed to regulate the service conditions of the teaching and non-teaching staff in private schools and in that context some separate provisions were made for the minority schools. In the present case, though the declaration was claimed under the Tamil Nadu Act, it was not obtained from an authority specifically created for that purpose under the act to give such a status declaration. Therefore, in our understanding these orders cannot be used for determining the character of the trust. It is also relevant to note that these orders were obtained after the demise of the founder and not during his life time.

30. With respect to an outsider coming in the management, it is to be seen that the founder had not designated any of the persons on the board by their religion. Thus, he nominated all the persons in their ex-officio capacity as follows:- (a) Principal of the school (ex-officio),

(b) Headmaster/Headmistress, (c) Warden of the Hostel (ex- officio), (d) Member elected by the parent association, (e) Member elected from the staff council, and (f) Three persons having high standard in the education field nominated by the first five. When one sees the formation of this board, one just cannot say that persons other than Christians cannot be in the management of the institution. Incidentally, we may note that the nominated Chairman Justice J. Kanakraj, son of Late P. Jacob is a Christian. The objection of the appellant appears to be only on the basis of the religion of S. Palamalai, the Executive Trustee and Correspondent of the trust.

31. Paragraph 8 of Very Rev. Mother Provincial quoted above lays down two tests. The negative test is that a contribution from other communities to a minority institution and conferring of benefits of the institution to the majority community are not the factors which matter in deciding the minority character of the institution. The positive test is that the intention in founding the institution must be to found an institution for the benefit of a minority community. As far as, these negative testes are concerned, they can be said to be satisfied in the present case. But the positive test which is more significant namely that the intention must be to found an institution for the benefit of a minority community, is not satisfied. We do not find anywhere in the initial declaration made by the founder that the institution was to be a minority institution. All the trustees nominated were on ex-officio basis or on the basis of their qualifications and not on the basis of religion. The funds and income was to be utilized for encouraging poor and deserving students irrespective of caste, creed or religion. It is nowhere stated in that declaration that the trust was being created for the benefit of the Christian community. Thus the proposition in Very Rev. Mother Provincial in fact goes against the appellant.

32. In the facts of the present case, we may not be required to go to the extreme as canvassed by Shri Ganesh based on the quotation from judgment in the case of Shirur Mutt (supra). But, we cannot ignore the proposition laid down in S. Azeez Basha (supra) namely that if an institution is established by somebody else, meaning thereby a person belonging to another religion or a secular person, still a religious minority can claim the right to administer it on the basis of Article 30(1) merely because he belongs to a minority or for some reason or the other people of a minority might have been administering it. In the instant case the approach of the founder is clearly seen to be a secular approach and he did not create the trust with any restricted benefits for a religious community. Merely because he belongs to a particular faith, the persons belonging to that faith cannot claim exclusive right to administer the trust. The establishment and administration must be both by and for a minority which is not so in the present case. Similarly, it is material to note as observed in sub para (ii) and (iii) of para 19 in Malankara Syrian Catholic College (supra), the right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. The right to establish and administer educational institution does not include the right to maladminister. This being the position in the present case, there is no occasion for us to apply the propositions in para 63 (6) of All Saints' High School judgment (supra) or the one in the case of MD. Ismael (supra).

33. Having seen the scenario and the legal position, in the facts and circumstances of the present case, in our view there was no error in the impugned judgment of the Division Bench of Madras High Court dated 5.12.2002 on O.S.A 49 of 1995 in holding that T. Thomas Educational Trust is a secular public charitable trust and not a minority institution. The High Court was accordingly justified in framing the scheme under Section 92 of CPC to see to it that the trust is administered in a better way. We find the scheme to be in the interest of the trust. We have perused the common order of the Division Bench dated 21.9.2007 in CMP Nos. 5673 of 2003, 5560 of 2005, 9402 of 2006 and CMP No. 10340 and 10341 of 2005. The High Court has held on merits that the appellant had failed to make out any case of mismanagement against the Chairman or the correspondent, and we do not find any error in the High Court order in that behalf. We do not find any merit in the Contempt Petition No. 435 of 2004 either. In the circumstances, Civil Appeal No. 6786 of 2003, Special Leave Petition (C) Nos. 22590-22591 OF 2007 and Contempt Petition (C) No. 435 of 2004 are all dismissed. There will however be no order as to costs.

Judgment Referred.

¹*AIR 1967 SC 1044*

²*(1970) 2 SCC 0417*

³*(2007) 1 SCC 0386*

⁴*(1980) 2 SCC 0478*

⁵*AIR 1916 P.C. 0132*

⁶*AIR 1968 SC 0662*

⁷*(2002) 8 SCC 0481*

⁸*(1974) 1) SCC 0717*

⁹*AIR 1958 SC 0956*

¹⁰*(1954) 5 SCR 1005*

¹¹*(2003) 11 SCC 0377*

¹²*AIR 1967 SC 1415*