

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL(AT) NO.338 OF 2018**

(ARISING OUT OF JUDGEMENT AND ORDER DATED 28.08.2018 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, CHENNAI)

IN THE MATTER OF:

	Before NCLT	Before NCLAT
1. Sh V.J. Paul Joseph S/o Sh Joseph, Valiyaparambil House, N.K. Sreedharan Road, Pachalam P.O. Cochin 682012	2 nd Respondent	1 st Appellant
2. Sh P.J. Gregory, S/o Sh Joseph Pandyathumparambil House, Vaduthala P.O., Cochin 682023	3 rd Respondent	2 nd Appellant
3. Sh P.J. Joseph, S/o Sh John, Padinjattumuri House, Vaduthala P.O. Cochin 682023	4 th Respondent	3 rd Appellant
4. Sh V.J. Peter, S/o Sh Joseph, Valiyaparambil House, Vaduthala P.O. Cochin 682023	5 th Respondent	4 th Appellant
5. Sh Gilroy Mendez, S/o Sh antony Mendez, Valiyaparambil House, Vaduthala P.O. Cochin 682023	6 th Respondent	5 th Appellant

Vs

1. Alexander Correya S/o Sh Lawrence Correya, Correya Cottage, Correya Road, Pachalam, Cochin 682012	1 st Petitioner	1 st Respondent
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| 2. Sh Henry Peter,
S/o Peter,
Kolothumveetil,
Toll Gate Road,
Vaduthala P.O.
Cochin 682023 | 2 nd Petitioner | 2 nd Respondent |
| 3. Sh V.R. Jude Jose
S/o Raphel,
Vazhuveli House,
Vaduthala P.O.
Cochin 682023 | 3 rd Petitioner | 3 rd Respondent |
| 4. Kathrikutty Augusthy,
W/o Shankar Lal,
Flat No.B-10,
Jewel Blue Bell Tower,
Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.
Ernakulam 682018 | 7 th Respondent | 4 th Respondent |
| 5. Ullas Shankar Purohit,
S/o Sh Shankar Lal,
Flat No.B-10,
Jewel Blue Bell Tower,
Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.,
Ernakulam 682018 | 8 th Respondent | 5 th Respondent |
| 6. Deepa Simon,
W/o Ullas Shankar Purohit,
Flat No.B-10,
Jewel Blue Bell Tower,
Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.,
Ernakulam 682018 | 9 th Respondent | 6 th Respondent |
| 7. M/s Bhagyodayam Company.
Chethiath,
Pachalam,
Cochin 682012 | 1 st Respondent | 7 th Respondent |
| 8. Ms Yoland Correya,
W/o Late Andrew Cyril Correya,
House No.73/207, Hendriks Cottage,
Anglo Indian school Cross road, | | |

Vaduthuthala,
Cheranellor Village,
Ernakulam
Kerala

10th Respondent 8th Respondent

For Appellant:- Mr. Renjith B.M., Mr. Rajesh Vijayan, Advocates for the appellant.

For Respondents: - Mr. Lzafeer Ahmad, Mr Vipin Jai, Advocates for R7.

Mr. Anandh K., Mr Raunak Verma, for R4 to R6.

Mr.Ravi Raghunath, Advocate for R8.

Mr Sharath Chandran and Mr. Achyuth Ajithkumar, Advocate for R1-R3.

AND

COMPANY APPEAL(AT) NO.349 OF 2018

IN THE MATTER OF:

Before NCLT

Before NCLAT

- | | | |
|---|----------------------------------|---------------------------------|
| <p>1. Kathirkutty Augusthy
W/o Shankar Lal,
Flat No.B-10, Jewel Blue Bell,
Tower Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.
Ernakulam 682018
Kerala</p> | <p>7th Respondent</p> | <p>1st Appellant</p> |
| <p>2. Ullas Shankar Purohit,
S/o Sh Shankar Lal,
Flat No.B-10,
Jewel Blue Bell Tower,
Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.,
Ernakulam 682018</p> | <p>8th Respondent</p> | <p>2nd Apprllant</p> |
| <p>3. Deepa Simon,
W/o Ullas Shankar Purohit,
Flat No.B-10,
Jewel Blue Bell Tower,
Kannachanthodu Road,
Ayyapankavu,
Ernakulam North P.O.,
Ernakulam 682018</p> | <p>9th Respondent</p> | <p>3rd Appellant</p> |

Vs

1. Alexander Correya
S/o Sh Lawrence Correya,

Correya Cottage, Correya Road, Pachalam, Cochin 682012	1 st Petitioner	1 st Respondent
2. Sh Henry Peter, S/o Peter, Kolothumveetil, Toll Gate Road, Vaduthala P.O. Cochin 682023	2 nd Petitioner	2 nd Respondent
3. Sh V.R. Jude Jose S/o Raphel, Vazhuvelli House, Vaduthala P.O. Cochin 682023	3 rd Petitioner	3 rd Respondent
4. M/s Bhagyodayam Company. Chethiath, Pachalam, Cochin 682012	1 st Respondent	4 th Respondent
5. Sh V.J. Paul Joseph S/o Sh Joseph, Valiyaparambil House, N.K. Sreedharan Road, Pachalam P.O. Cochin 682012	2 nd Respondent	5 th Respondent
6. Sh P.J. Gregory, S/o Sh Joseph Pandyathumparambil House, Vaduthala P.O., Cochin 682023	3 rd Respondent	6 th Respondent
7. Sh P.J. Joseph, S/o Sh John, Padinjattumuri House, Vaduthala P.O. Cochin 682023	4 th Respondent	7 th Respondent
8. Sh V.J. Peter, S/o Sh Joseph, Valiyaparambil House, Vaduthala P.O. Cochin 682023	5 th Respondent	8 th Respondent
9. Sh Gilroy Mendez,		

S/o Sh antony Mendez,
Valiyaparambil House,
Vaduthala P.O.
Cochin 682023

6th Respondent 9th Respondent

For Appellant:- Mr. Wills Mathews and Mr. Anandh K, Advocates.

For Respondents: - Mr. Lzafer Ahmad, Advocate for R7.

Mr. Sharath Chandran and Mr Achyuth Ajithkumar, Advocates for R1 to R3.

Mr Vipin Jai, Advocate for Respondent No.4.

JUDGEMENT

(23rd July, 2020)

Mr. Balvinder Singh, Member (Technical)

The present appeals have been preferred by the appellants under Section 421 of the Companies Act, 2013 against the order dated 28.08.2013 passed by the National Company Law Tribunal, Chennai Bench, Chennai whereby the NCLT has allowed the Company Petition. The appellants have prayed that the impugned order dated 28.8.2018 passed by the NCLT Chennai may be set aside.

COMPANY APPEAL (AT) NO.338 OF 2018

2. The facts of the case are that Company Petition No.29/2017 was filed by the 1st to 3rd Respondents (original petitioners) against the respondent under Section 241 and 242 of the Companies Act, 2013 alleging various sets of oppression and mismanagement in the affairs of 7th Respondent. It is stated that 7th respondent was incorporated as a Charitable Company initially under the Companies Act, 1913 and was governed by the provisions of Section 25 of the Companies Act, 1956 and is presently governed by Section 8 of the Companies Act, 2013. The object of 7th respondent specifically state that it is

to collect funds through subscription, conducting chits and through other sources as the 7th Respondent deems fit, and for deployment of the funds of the company for the purpose of promoting education, industry and charitable activities. It is stated that the Hon'ble High Court of Travancore, Cochin vide its order dated 10th November, 1952 (Page 107 of appeal) went on to reaffirm the charitable nature of the 7th respondent and interalia noted that the funds of the 7th respondent cannot be distributed for the benefit of the members of the Company.

3. The brief averments made in the Company Petition by the original petitioners were that-

-Respondent/1st appellant herein took over the affairs of 7th respondent as Managing Director in the year 2013 and usurped the goodwill and the assets of the Company for oblique purposes and for personal gain and those who opposed the appellant, they were removed by the appellant.

-The Respondent/appellant herein amended the Articles of Association without the prior approval of the Central Government and thereby violated clause 40 of the AOA and also diverted funds to certain members to gain loyalty. The membership of the company was for life but the appellant expelled the member stating that the Board has expelled them whereas the Board has no such power since the said power is vested with the general body with prior notice.

-Clause 26 of the AOA requires that the directors will be elected every year and the elected body would comprise of 15 members including the Managing

Director and 4 Trustees; and 4 members should be from the Board of Directors of the previous year. A notice dated 2.12.2014 was sent for conducting the AGM for the year 2013-14 and the said notice was silent about the total number of directors to be elected and the persons who were contesting the elections. Another notice issued by the Respondent/appellant herein dated 4.12.2014 stated that elections were to be conducted only for 9 post of directors instead of 15 directors and when pointed out the appellant ignored the same and decided to proceed on his own. One of directors protested for the same and resigned and filed a case in OS No.6 of 2015 before the Munsiff Court, Ernakulam for restraining the elections to be held pursuant to the notice dated 4.12.2014, the said Court stayed the election.

-Funds of 7th respondent company were being spent contrary to the mandate of Clause 40 of the AOA and the amount was also spent without sanction.

-Respondent/Appellant herein amended the Clause 31 and 41 of the AOA in the EGM held on 4.7.2015 which were void and no effect. Some of the directors represented to the ROC who in turn declared that amendments made in Clauses 31 and 41 of the AOA was illegal and no prior consent of the Central Government was taken.

-Respondent/Appellant herein approached the High Court of Kerala by filing Writ Petition challenging the constitutional validity of the provisions of Section 8 of the Act, 2013.

-Respondent/Appellant herein spent huge amount in purchasing computers for which a criminal case was filed by one of the directors before High Court of Kerala.

-The Respondent/appellant herein and other Board members sold prime land to 4th Respondent herein. Another land was also alienated to 5th and 6th Respondents herein who are son and daughter in law of 4th Respondent herein. The said sales were made without any resolution in the AGM of the Company.

-The appellant informed 1st and 2nd respondent that they have been expelled in Board Meeting on 18.5.2017. No show cause was issued before expelling the directors. The powers to expel the directors is vested with the General Body and not with the Board. Seven other directors were expelled and all have challenged their expulsion before Civil Court.

4. Respondents/appellant herein filed their reply to the company petition and averred as under:-

-The affairs of the company were being conducted in a transparent manner and the AGMS for the years have been conducted and there are no merits in the submissions of the petitioners/respondent herein.

-2nd Respondent/1st appellant herein had filed a criminal complaint dated 6.6.2014 before the Additional Chief Magistrate (ACM) under Section 406 and 420 of the IPC against the petitioners/respondent herein and the said case was coming up for trial. The said complaint has been filed for their action of

disposing the immovable property of the Company for a throw away price when they were at the held of affairs of Company.

-The Company has decided to sell some of the properties for avoiding encroachments and the Managing Director was authorized by the Board of Directors to see the property vide resolution dated 13.1.2017 and 18.6.2017.

-The judgement made by the erstwhile High Court of Travancore-Cochin does not have any relevance as far as the complaints of the petitioners/1st to 3rd respondents herein are concerned. The judgement only prohibits the distribution of the funds of the company among its members or giving grants to the members. The petitioners/1st to 3rd respondents herein do not have any specific complaints that the Company has ever given any grants to any of its members or distributed its surplus funds amount among the members.

-A notice dated 4.12.2014 was issued to convene the AGM on 28.12.2014 and the agenda for the meeting inter alia election of directors was duly mentioned in the notice.

-The company deleted the clause 31 and 41 of AOA in the EGM held on 4.7.2015 and the said matter is sub judice.

-As the properties owned by Company were not clearly demarcated and bound by proper fencing or boundary walls and all the properties came to be vested with the Company during 1930 and 1940 through court proceedings. In many such properties illegal encroachments by anti social elements were recurring. Since the company felt that those properties are unnecessary lying without any benefit to the Company, the Board therefore resorted to dispose

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of the said properties which are not at all required for the present or at any time in the future.

5. 7th to 9th Respondent/4th to 6th Respondent herein also filed counter reply in company petition and stated

-7th to 9th Respondent/4th to 6th Respondent herein have purchased the properties of the company for a consideration value which is much above fair value fixed by the local government for transfer of immovable property in the concerned are and they are the bona fide purchasers.

-The sale transactions do not constitute an act of oppression or prejudicial to the petitioners/1st to 3rd respondent herein.

-The petitioners/1st to 3rd respondent herein do not have a case that the sale of property is a fraudulent transfer as defined in Section 53 of the Transfer of Property act and the petitioners/1st to 3rd respondent herein nowhere have stated specific clauses that have been violated in effecting the sale made.

-The petitioners/1st to 3rd respondent ought to have invoked the jurisdiction of this Tribunal under Section 245 of the Act, 2013 but invoked section 241 and 242 of the Act, 2013 being afraid of the consequent penal provisions of section 245(8) of the Act, 2013.

6. 10th Respondent/8th Respondent herein filed reply and stated that none of grounds raised in the Company Petition is legally tenable or worth consideration to annul the transaction between 10th respondent/8th respondent herein and the company. The company has acted well within the powers conferred by the Companies Act to carry out the transaction. The Company Appeal (AT) No.338 and 349 of 2018.

Tribunal lacks jurisdiction and the powers under Section 241 and 242 of the Act to examine the validity of the transaction in the present proceedings. The jurisdiction of this Tribunal is ultra vires its power as its jurisdiction is expressly made to depend upon the existence of certain conditions and particular facts by the Companies Act, 2013. This Tribunal cannot give itself jurisdiction by erroneously deciding the existence of the condition or existence of facts upon which the jurisdiction depends. This Tribunal has no jurisdiction to interfere in the sale transactions entered into between 4th to 6th, 8th Respondent and the Company.

7. The petitioners/1st to 3rd respondents herein filed rejoinder and reiterated the contents as stated in the company petition.

8. After the hearing the parties, NCLT held that order made in AS No.47 of 1125 in OS No.158 of 1122 made by the Hon'ble High Court of Travancore-Cochin is relevant to the present case and it is binding on the affairs of the company and also held that the disbursement of amount to the members are made against the said order of the Hon'ble High Court of Travancore-Cochin; The agreement of sale entered into between the Company and the 7th to 10 Respondent/4th to 6th and 8th Respondent herein are declared illegal and null and void; regarding the deletion of Clause 31 of AOA and amendment in Clause 40 in the EGM, the NCLT held that since the matter of amendment of AOA is a subject matter of a writ petition before the Hon'ble High Court of Kerala and any discussions in the matter is sub judice; NCLT also held that the removal of petitioners/1st to 3rd respondent herein is made in contravention of the Clause 40(b) of the AOA, in contravention of the order Company Appeal (AT) No.338 and 349 of 2018.

dated 18.11.2015 by the Munsif Court and also without adhering to the principles of natural justice; NCLT held that the 2nd to 6th respondents/appellants herein have failed to demonstrate how the order dated 18.06.2015 is not sustained and the law under which they have convened the AGM on 17.08.2015 much after the pronouncement of the order by Munsif Court on 18.06.2015.

9. NCLT, after giving the above observations disposed of the petition vide order dated 28.08.2018.

10. Being aggrieved the appellants have filed the present appeal. The appellant stated that the Company was incorporated as a Charitable Company initially under the Companies Act, 1913. It was governed by the provisions of Section 25 of the Companies Act, 2013. The objects of the company specifically state that it is to collect funds through subscriptions, conducting chits and through other sources as the company deems fit and the deployment of funds of the company for the purpose of promoting education, industry and charitable activities.

11. It is stated that the Hon'ble High Court of Travancore, Cochin vide its order dated 10th November, 1952 (Page 107 of appeal) went on to reaffirm the charitable nature of the 7th respondent and inter alia noted that the funds of the 7th respondent cannot be distributed for the benefit of the members of the Company.

12. The appellants stated that the affairs of the company were being conducted in a transparent manner and the AGMs for the years have been conducted.

13. The appellant had filed a criminal complaint dated 6.6.2014 before the ACM under Section 406 and 420 of the IPC against the respondent and the said case was coming up for trial. The said complaint has been filed for their action of disposing the immovable property of the Company for a throw away price when they were at the helm of affairs of Company.

14. The Company has decided to sell some of the properties for avoiding encroachments and the Managing Director was authorized by the Board of Directors to see the property vide resolution dated 13.1.2017 and 18.6.2017.

15. The judgement made by the erstwhile High Court of Travancore-Cochin does not have any relevance as far as the complaints of the 1st to 3rd respondents are concerned. The judgement only prohibits the distribution of the funds of the company among its members or giving grants to the members. The 1st to 3rd respondents do not have any specific complaints that the Company has ever given any grants to any of its members or distributed its surplus funds amount among the members.

16. A notice dated 4.12.2014 was issued to convene the AGM on 28.12.2014 and the agenda for the meeting inter alia election of directors was duly mentioned in the notice.

17. The company deleted the clause 31 and 41 of AOA in the EGM held on 4.7.2015 and the said matter is sub judice.

18. As the properties owned by Company were not clearly demarcated and bound by proper fencing or boundary walls and all the properties came to be vested with the Company during 1930s and 1940s through court proceedings. In many such properties illegal encroachments by anti social elements were recurring. Since the company felt that those properties are unnecessary lying without any benefit to the Company, the Board therefore resorted to dispose of the said properties which are not at all required for the present or at any time in the future.

19. Reply on behalf of 1st to 3rd Respondent has been filed. The Respondents stated that the NCLT vide its order dated 28.8.2018 has found that the appellants had gravely misused their position as Managing Director/Directors and committed grave acts of oppression and mismanagement by acting in brazen violation of the Articles of Association of the 7th respondent company and/or court orders. Respondents stated that the NCLT has also prima facie, found that the contention of the respondents that the appellants had misappropriated huge sums of money by resorting to illegal alienation of company property was well founded. Respondents stated that the NCLT has rightly disposed off the company petition directing the appointment of an interim Administrator to set right the affairs of the company and to investigate into the fraud and misappropriation committed by the appellants.

20. Respondents stated that the appeal is wholly misconceived and the contentions raised are false, self serving and devoid of cogent evidence or

reasoning. The contentions raised in the appeal are denied unless specifically admitted herein.

21. Respondent stated that the interpretation of the Clause 40 of the AOA came up for consideration before the High Court of Travancore-Cochin and vide its judgement and decree dated 10.11.1952 passed in AS 47 of 1125, held that financial grants given by the then Board of the 7th respondent company to children of the members of the company amounted to a breach of trust and were ultra vires the powers of the company. Respondent further stated that the then Management had conceded that the payment of sitting fees to Directors were also ultra vires the powers of the company.

22. Respondents stated when 1st appellant, who has not passed even Matriculate examination, took over the affairs of the company as Managing Director in September, 2013 has usurped the goodwill and assets of the company for oblique purposes and for personal gains. The member who opposed his action was allegedly removed from the company even without a hearing. The so called meetings are manned by the 1st appellant and his cronies whose deliberate and criminal actions would show that adherence to the constitutional documents of the company have been observed in their breach.

23. Respondents stated that 1st appellant frittered away valuable assets of the company; effecting amendments to the AOA without the prior consent of the ROC; violating Article 40 of the AOA by diverting funds to certain members to buy their loyalty; diverting funds of the company to fund a scheme to purchase computers with internet connection for the members on the alleged Company Appeal (AT) No.338 and 349 of 2018.

ground that the same was to be returned to the company upon termination of the membership of the company. Respondent stated that the Members who questioned this were illegally excluded by stating that the Board has expelled them whereas the Board has no power to expel them and such power is vested with General Body and that too only after prior notice.

24. Respondent stated that Clause 26 of the AOA requires that the directors will be elected every year and the elected body would comprise of 15 members including the Managing Director and 4 Trustees; and 4 members should be from the Board of Directors of the previous year. A notice dated 2.12.2014 was sent for conducting the AGM for the year 2013-14 and the said notice was silent about the total number of directors to be elected and the persons who were contesting the elections. Another notice issued by the 1st appellant dated 4.12.2014 stated that elections were to be conducted only for 9 post of directors instead of 15 directors and when pointed out, 1st appellant ignored the same and decided to proceed on his own. One of directors protested for the same and resigned and filed a case in OS No.6 of 2015 before the Munsiff Court, Ernakulam for restraining the elections to be held pursuant to the notice dated 4.12.2014, the said Court stayed the election. Respondent stated that the IIIrd Additional Munsif, Ernakulam vide order dated 18.6.2015 directed that the monies of the company shall be spent strictly in accordance with Article 31 and no amount shall be spent in violation of Article 40 and that the remuneration of the Directors, Auditors shall be strictly in accordance with Article 41 of the company. .

25. Respondent stated that 1st appellant called for an EGM on 4.7.2015 and shockingly on the same date passed a resolution deleting the existing Articles 31 and 41 of the company and substituting them with self serving provisions. Respondent stated that this brazenly illegal act was a direct affront to the order of the Munsiff Court restraining the 1st appellant and the Board from taking any policy decision till the conduct of a regular election. However, ROC Kerala declared that the amendments made to Articles 31 and 41 of the AOA without obtaining prior consent of the Central Government was illegal.

26. Respondent stated that the 1st appellant challenged the constitutional validity of Section 8 of the Companies Act by filing Writ Petition and the same is still pending.

27. Respondents stated that in complete violation of Article 40 of the AOA, 1st appellant and his coterie illegally decided to spend a sum of Rs.13,50,000/- to buy computers with internet connections for some of the members of the company ignoring the Judgement in AS No.47/1125 by the High Court of Travancore-Cochin holding that funds of the company cannot be spent for the members of the company or their relatives.

28. Respondent stated that no such resolution was passed to utilize the funds of the company to purchase the computers.

29. Respondent stated that 1st appellant arranged a trip to Goa on the company's expense and spent a huge amount. The huge expenses were incurred when the company suffered a loss of Rs.2370483/- as per the report of the Board dated 10.09.2016. Respondents stated that they denied that

they have gone for these pleasure trips. The sole motive of the 1st appellant to destroy the assets of the company in his personal aggrandizement.

30. Respondents stated that 1st appellant and other members sold 2 acres and 36 cents land for a low sum of Rs.35 lacs on 3.5.2017 to 4th Respondent. Respondent stated that on the same day another 2.60 acres of land was alienated for a sum of Rs.39 lakhs to 5th and 6th Respondent.

31. Respondent stated that none of the funds from the sale of land have been accounted for. They have been usurped into the private kitty of 1st appellant and his coterie in the Board. The sale has been effected to defraud the company and the same is contrary to the MOA and AOA and is, therefore, ultra vires.

32. Respondent stated that 1st appellant has illegally removed 1st and 2nd respondent saying that the Board has expelled them whereas the Board has no powers and the powers are in the hand of General Body.

33. Respondents prayed that the appeal may be dismissed and impose exemplary costs on the appellants.

34. Reply has been filed on behalf of 4th to 6th Respondent. 4th to 6th Respondent stated that they entered with a Sale Deed dated 3.5.2017 with the Managing Director and Trustees of the Company in respect of two properties. 4th to 6th Respondent stated that the said Sale Deeds were entered into by the Respondents only after verification of the documents with respect to the proper under the possession of appellants/company. The said sale transaction was approved by Board of Directors vide Resolution dated 13th

January, 2017 wherein the company resolved to sell the property. 4th to 6th Respondent stated that the representatives of the company assured them that the property is completely free from all encumbrances, mortgage, charges, lease, lien, attachment by court and other authorities and other dues claim and/or any other encumbrance and impediments.

35. 4th to 6th Respondent stated that as per the doctrine of 'Indoor Management' also known as Turquand's Rule it is established that "*a person entering into a transactions with the company only needed to satisfy that his proposed transaction is not inconsistent with the articles and memorandum of the company. He is not bound to see the internal irregularities of the company and if there are any internal irregularities then company will be liable as the person has acted in the good faith and he did not know about the internal arrangement of the company.*"

36. 4th to 6th Respondent stated that the authorized representatives of the company were having authority to sell the property as per Article 29 of the AOA. 4th to 6th Respondent stated that before buying the said property had taken all reasonable steps to verify and confirm whether the property is having a good title and also made sure that all the compliances are done as per Kerala Land Act. 4th to 6th Respondent further stated that they are the bona fide purchasers of the property and the peaceful possession of the land was transferred to the Respondents. Respondents stated that they donot know the appellants and the Trustees in personal capacity and are not related in whatsoever manner with the authorized representative of the company. Respondents stated that after taking the possession of the property the

respondents put their hard earned money to start the construction on the property for residential purpose and respondents applied the appropriate sanctioning from the Govt offices.

37. Respondents stated that they were surprised to serve with the Company Petition No.29/2017 and were made a party in an alleged/purported illegal sale of land. Respondents immediately communicated the same to appellants and its representative and sought an explanation regarding the said act of the original petitioners (1st to 3rd respondent herein) in the Company Petition. Respondents were shocked to received copy of the order dated 28.8.2018 passed by the NCLT.

38. Respondents stated that it is a fit case for applying the doctrine of indoor management as Respondents no way whatsoever in the decision making of the board of 7th Respondent.

39. Affidavit of Administrator on behalf of 7th Respondent has been filed stating that he is performing the duties of Administrator of 7th respondent and will continue to perform.

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40. The appellants have preferred this appeal against the impugned order dated 28.8.2018 passed by the NCLT, Chennai in Company Petition No. 29/2017. The appellants are 4th to 6th Respondents in Company Appeal (AT) No.338/2018. The appellants' stand has already been stated in para 34 to 38 above. The appellants have stated new facts and filed new documents which were not part of the NCLT below.

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41. The appellants have filed copy of the approval for carrying on constructions on the said property and documents evidencing the expenses incurred on construction on the property for residential purpose. The appellants explained the reasons for not filing the same NCLT by filing an affidavit vide Diary No.16972 dated 4.1.2019 which is taken on record. The appellants have filed copy of the building permit, bank loan document, copies of pictures describing the scale of construction on the purchased property, copy of proof evidencing sale of Sirohi, Rajasthan property and affidavit to that effect. The appellants have prayed that the appeal may be admitted and set aside the impugned order and pass an order declaring the sale deed as valid and binding on the company.

42. Reply on behalf of 1st to 3rd Respondent has been filed. 1st to 3rd Respondents stated that the NCLT has found that the 5th to 9th Respondents have gravely misused their position as Managing Director and committed grave acts of oppression and mismanagement by acting in brazen violation of the Articles of Association and/or court orders.

43. 1st to 3rd Respondents stated that 5th to 9th respondents members sold 2 acres and 36 cents land for a low sum of Rs.35 lacs on 3.5.2017 to 1st appellant. 1st to 3rd Respondent stated that on the same day another 2.60 acres of land was alienated for a sum of Rs.39 lakhs to 2nd and 3rd appellant, who are near relatives of 1st appellant.

44. 1st to 3rd respondents stated that the appellants intentionally did not file the counter affidavit filed before NCLT. 1st to 3rd respondents stated that in the said counter affidavit the appellants have pleaded that the company Company Appeal (AT) No.338 and 349 of 2018.

petition ought to have been filed under Section 245 of the Act, 2013 instead of Section 241 of the Act. 1st to 3rd Respondents stated that the NCLT took note of the collusive conduct of the appellants and commented on the stand taken by appellants alleging lack of jurisdiction and locus standi of these respondents. The appellants are not the bona fide purchaser. 1st to 3rd Respondent stated that the NCLT has rightly held that such a sale is illegal. An illegal act cannot be ratified by the shareholders.

45. Reply has been filed on behalf of the 5th to 9th Respondent. The reply has been filed by 5th respondent for himself and for 6th to 9th Respondent. 5th respondent stated that he has traversed the entire contents of the appeal. 5th respondent stated that being conversant with the facts leading to the appeal, he is competent to swear the counter affidavit. 5th respondent stated that he is advised that since the 5th respondent has already filed Company Appeal (AT) No.338 of 2018 assailing the very same order impugned through this appeal, the said respondent need not file its counter affidavit in the present appeal. 5th respondent stated that 5th to 9th Respondent do hereby adopt all the contentions raised by the appellants in the present appeal.

46. Rejoinder has been filed by 1st to 3rd appellant and reiterated the contents raised in the appeal.

47. We have heard the parties in both the appeals and perused the record.

48. Learned counsel for the appellant argued that the proceedings under Section 241/242 of the Companies Act, 2013 is not maintainable as the Company is a Section 8 company.

49. Learned counsel for 1st to 3rd respondent argued that the Hon'ble Supreme Court in the case of ***M.S.D.C Radharamanan v. M.S.D Chandrasekara Raja (2008) 6 SCC 750*** has held that once NCLT finds glaring illegalities and gross mismanagement, it will not shut out a matter of sheer technicalities. Learned counsel for 1st to 3rd Respondent argued that the Hon'ble Apex Court held that NCLT had the widest power to grant any relief that would put an end to the oppression complained of and to pass such orders as maybe necessary to protect the interest of the Company. Learned counsel for 1st to 3rd Respondent argued that the appellants have done glaring illegalities and irregularities and therefore considering the same, NCLT has rightly admitted the petition.

50. We have heard the parties and have also gone through the impugned order and note that various irregularities have been committed by the appellant in a charitable company. The appellant is expected to maintain a higher standard of fair play and probity while managing the affairs of a charitable company and any irregularity committed by him shall be taken to be far seriously than if it is committed in a non-charitable company. It would be highly inappropriate for the appellant to raise the issue that it is a charitable company and the petition cannot be filed under Section 241/242 of the Act. Seeing the various irregularities committed by the appellants, this Tribunal cannot shut their eyes to let appellant go scot free undermining the spirit of charity. We find no force in the arguments of the appellants and the same are rejected.

51. Learned counsel for the appellant argued that the removal of membership from the register cannot be a subject matter of a petition under Section 241. The same can be agitated only under Section 59 of the Companies Act. Section 241 of the Act stipulates only class action and not personal wrongs. Therefore, the relief in that regard ought not to have been granted. Learned counsel for the appellant argued that the removal of membership has been strictly in accordance with the Article 48(b) in the Article of Association regarding the disqualification of membership.

52. Learned counsel for the 1st to 3rd Respondent argued that no show cause notice was issued and principle of natural justice was not complied with and further argued that the expulsion order was stayed by the NCLT vide order dated 4.7.2017. Learned counsel for 1st to 3rd Respondent further argued that the appellants have themselves stated in their reply before NCLT, Chennai in Para 13 (Page 125 of the reply) that **'no member was expelled by the respondent company'**. Learned counsel for the 1st to 3rd Respondent further argued that the alleged resolution dated 18.5.2017 and Extract of Minutes of the Board of Directors Meeting held on 5.9.2017 (Page 175 and 176 of the appeal respectively) were not filed before the NCLT at any time. Learned counsel for 1st to 3rd Respondent further argued that the appellant have fabricated these documents for the purpose of the appeal.

53. We have heard the parties on this issue. We have gone through the para 13 of the reply filed by the appellants before the NCLT where it is clearly stated by the appellants that no member was expelled by the appellant company. We further note that copy of resolution dated 18.5.2017 and

Extracts of Board Meeting dated 5.9.2017 (Annexure A-20 and Annexure A-21) were not filed before the NCLT, Chennai. Therefore, these documents cannot be relied. However, the NCLT had also stayed the expulsion of the members.

54. Learned counsel for the appellant argued that the sale of properties can never be said to be illegal and unauthorized. Learned counsel for the appellants argued that Article 29 of the AOA vests powers in the Managing Director and the Board to deal with the immovable properties. Learned counsel further argued that the Board has all the powers to alienate the properties through proper resolution. Section 179 of the Companies Act also grants necessary power to the Board to exercise all the powers as authorized in the Articles of Association. Learned counsel for the appellants argued that the Board has passed the resolution and authorized to sell the properties. Learned counsel for the appellants argued the approval of the General Body is not required to sell the assets of the company. Learned counsel for the appellants argued that Section 180 of the Companies Act also stipulates a situation only where an undertaking is being alienated as a whole and the same needs the approval of the General Body. Learned counsel for the appellants argued that the sale has been for an amount much above the fair value fixed for the property and the sale consideration has been duly accounted in the company accounts.

55. Learned counsel for the 1st to 3rd respondent argued that there were only two Trustees in the Company at the time of passing the board resolution and even if it is admitted that the Board has been vested with the power of

disposal of the properties, as the same were vested with them as per Clause 29 of the AOA, the decision of the disposal of the properties was not taken by the Managing Director and Four Trustees as required, therefore the said resolution is not valid. Learned counsel further argued that it is mandatory for the company to pass a special resolution which has not been passed at all by the Company.

56. We have heard the parties on this issued. We note that that when the Munsif Court has ordered that any policy decision shall be taken only with the approval of General Body, therefore, entering into such agreement for sale with the appellants in Company Appeal (AT) No.349/2018, which is very much a policy decision, on the basis of a resolution in the Board Meeting and submitting that the said order is not sustainable is nothing but deemed to be a contempt of court order.

57. Learned counsel for the Appellants in Company Appeal (AT) No.349 of 2018 and also appearing for 4th to 6th Respondent in Company Appeal (AT) No.338/2018 argued that they are the bona fide purchasers of the properties. Learned counsel further argued that the original petitioners has no locus standi to file the petition. Learned counsel further argued that they are not related parties to the appellants in the present appeal. Learned counsel further argued that they have started construction on the said plot and submitted photographs of the same. Learned counsel further argued that the NCLT has no jurisdiction to deal with the transaction of properties.

58. We have heard the parties and perused the record. We observe that the agreement of sale entered with the appellants of Company Appeal (AT) No.349 Company Appeal (AT) No.338 and 349 of 2018.

of 2018 is ultra vires powers of the company in view of the order made by the Hon'ble High Court of Travancore-Cochin and also order of the Munsif Court. Therefore, the agreements of sale entered into between the company and appellants of Company Appeal (AT) No.349/2018 is illegal, null and void.

59. Administrator on behalf of 7th respondent submitted his report vide Diary No.21484 dated 10.5.2019. Learned Administrator submitted that this Tribunal vide order dated 9.4.2019 directed the appellants to hand over all documents of the company to Administrator but in wilful and rank disobedience to the orders of this Tribunal the appellants did not either produce the documents before the Administrator or communicated the reasons, if any for not producing the same. Administrator submitted that he has filed a contempt application against the appellants with a prayer to direct the City Police Commission to apprehend the appellants and seize the records of the company from him. Administrator also submitted that the appellant is not handing over the documents as requires and the only presumption can be drawn is that he is purposefully withholding the documents, since if produced it would be unfavourable to him.

60. We may observe here that the Administrator had submitted before this Court on 9.4.2019 that he is facing hardship in execution of his duties due to non-cooperation of the appellant. This position was again brought to the notice of the Court on 24.5.2019.

61. We also observe that despite specific direction the relevant documents were not provided by the appellants to Administrator, therefore, this Tribunal directed appellant No.1 to remain present in person on 8th August, 2019. The Company Appeal (AT) No.338 and 349 of 2018.

appellant did not appear on 8th August, 2019 and the hearing was deferred to 6th September, 2019 for personal appearance of appellant No.1. The appellant did not appear on 6.9.2019 also and the Tribunal has to stated that the appellant is playing hide and seek and not cooperating.

62. In view of the above we are of the view that the conduct of the appellant is not upto the mark.

63. We also note that this is a charity institution which has been created for a noble cause. In case a person who is in the management and managing the affairs of the institution not for the purpose of noble cause and his behaviour is not for the noble cause and his only agenda is to execute his private agenda and to benefit one or the other person, this will seriously compromise the goodwill and reputation and will spoil the image of the company for good work done. We also note that the Administrator has made serious complaints against the appellant before the NCLT and as well as before this Tribunal. We have also seen his conduct for delaying the process of law. We also note that the company petition was filed in 2017 and the Company Appeal was filed on 23.10.2018. After filing of the appeal the appellant always tried to delay the proceedings. Seeing the overall conduct of the appellant, we thought it fit that the appellant should be suitably punished for showing disrespect to the court of law.

64. In view of the above discussions and observations we find no merit to interfere in the impugned orders. The appeals are dismissed. Shri V.J. Paul, Appellant in Company Appeal (AT) No.338/2018 is imposed a cost of Rs.10 lakh. Shri V.J. Paul is directed to deposit the same with Registrar, NCLT, Company Appeal (AT) No.338 and 349 of 2018.

Chennai within 30 days from the date of this order failing which Registrar, NCLT, Chennai is directed take action as per law.

65. A copy of this judgement may be sent to Registrar, NCLT, Chennai.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member Technical

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

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