

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 27TH DAY OF MAY 2022 / 6TH JYAISHTA, 1944

RFA NO. 843 OF 2009

AGAINST THE JUDGMENT IN OS No.45/1999 OF THE VI ADDITIONAL
DISTRICT COURT, ERNAKULAM

APPELLANTS/DEFENDANTS 1 & 2:

- 1 S.N.D.P.YOGUM A PUBLIC LIMITED COMPANY,
REP.BY ITS PRINCIPAL OFFICER, NAMELY THE GENERAL
SECRETARY, V.K.NATESAN, S/O.KESAVAN, AND HAVING
HIS OFFICE AT SNDP YOGAM OFFICE, KOLLAM.

- 2 V.K.NATESAN,
S/O.KESAVAN, VELLAPPALLIL HOUSE,
KANICHUKULANGARA, CHERTHALA.

BY ADVS.

SRI.A.N.RAJAN BABU
SRI.A.R.EASWAR LAL
SRI.P.GOPALAKRISHNAN
SRI.A.K.GOPI

RESPONDENTS/PLAINTIFFS & DEFENDANTS 3 TO 18:

- 1 G.KRISHNAMOORTHY (DIED)
S/O.GOPALAN, RETIRED SUPERINTENDENT OF POLICE,
RESIDING AT KRISHNA NIKETAN, NEYYATTINKARA
VILLAGE.

- 2 REGHUNATHA PANICKER,
S/O.NARAYANA PANICKER, RETIRED ASSISTANT EXCISE
COMMISSIONER, PADMAVILASAM, THALAYAL DESOM,
ATHIYANALLOOR VILLAGE.

- 3 P.E.VELAYUDHAN,
S/O.ITTAMAN, PARALEKKUDIYIL, THOPPUMPADY,
RAMESWARAM VILLAGE, KOCHI TALUK.
- 4 K.P.GOPI,
S/O.NARAYANAN, KOCHUPARAMBIL, THULASIPPARA,
IRATTAYAR P.O., UDAMBANCHOLLA, IDUKKI.
- 5 V.N.MOHANKUMAR,
S/O.P.A.NARAYANAN, VADAKKINADATHU, VENNALA P.O.,
EDAPPALLY, THEKKUMBHAGOM VILLAGE.
- 6 K.K.SUNILKUMAR,
S/O.KRISHNAN, SECRETARY, SREE NARAYANA FORUM FOR
SOCIAL JUSTICE, RESIDING AT SATHYALAYAM,
CHANGANKULANGARA.
- 7 C.K.VIDHYA SAGAR,
VICE PRESIDENT, SNDP YOGAM, CHENGOKAL,
THODUPUZHA.
- *8 A.S.PRATAP SINGH PRESIDENT (DIED),
SNDP YOGUM, S.N.VIHAR, KANIMANGALAM P.O.,
TRICHUR-27. (DELETED)
- 9 KAVYAD MADHAVANKUTTY,
DEVASWOM SECRETARY, KAVYAD HOUSE, PEERAPPANCODE,
VENJARAMOODE, TRIVANDRUM.
- 10 M.B.SREEKUMAR,
MOHANAVILASAM, THUNGUKAVU P.O., PATHANAMTHITTA.
- 11 MOHAN SANKAR,
LAKSHMI NIVAS, PATTATHANAM EAST, KOLLAM P.O.

- 12 M.P.SHAJI BONSALE,
MUGHAPPIL, KOZHAKKEKARA VADAKKU, VALIYAPARAMBU,,
KARTHIKAPPALLY.
- 13 V.K.ASHOKAN,
VELLAMPATHU VEEDU, BENETH ROAD,
CHEMBOOKAVU, THRISSUR.
- 14 T.S.SANJEEV,
THARAMMEL VEEDU MURINJAKAL P.O., KOODAL,
PATHANAMTHITTA.
- 15 E.M.MURALEEDHARAN,
EETTUMMAL VEEDU, ANUPAMA, SNDY ROAD,
PALLURUTHY, KOCHI-5.
- *16 A.K.SOMAN,
AAYANKOYIKKAL, PUTHUPPALLY P.O.,
KOTTAYAM. (NAME DELETED)
- 17 B.YAMUNA PRASAD,
VENUVILASAM, AMARAVILA P.O., NEYYATTINKARA.
- 18 K.N.DIVAKARAN,
KALARIKKAL, ADIMALI.
- *19 P.R.SADANANDHAN,
PULLARKKAD HOUSE, NEAR KSRTC, PERUMBAVOOR P.O.,
KUNNATHUNAD. (NAME DELETED)
- *20 V.PONNAN,
JEM MANSION, MARUTHORVATTOM P.O.,
CHERTHALA. (NAME DELETED)

- *21 K.K.SUNILKUMAR,
SECRETARY, SREE NARAYANA FORUM FOR SOCIAL
JUSTICE, RESIDING AT SATHYALAYAM,
CHANGANKULANGARA, COCHIN. (NAME DELETED)
- *22 M.R.SASIDHARAN,
S/O.RAGHAVAN, SOCIAL WORK, MANAKADAVU VILLAGE,
ARIKUZHA,, THODUPUZHA TALUK. (NAME DELETED)
- *23 P.J.SADANANDAN,
S/O.NEELAKANDAN, RESIDING AT MODIYIL HOUSE,
PAZHANGADI VILLAGE,RANNI VILLAGE,
PATHANAMTHITTA. (NAME DELETED)

NAMES OF RESPONDENTS 19, 21 AND 22 DELETED FROM
PARTY ARRAY VIDE ORDER DATED 2/07/2018 IN IA
2766/10.

NAME OF RESPONDENTS 8, 16, 20 AND 23 ARE DELETED
FROM THE PARTY ARRAY AT THE RISK OF THE
PETITIONERS/APPELLANTS AS PER ORDER DATED
18.02.2021 IN IA 4 OF 2020.

IT IS RECORDED THAT R9 DIED AND LEGAL HEIRS OF
DECEASED R9 NEED NOT BE IMPEDED AS PER ORDER
DATED 18.02.2021 IN IA NO.4 OF 2020. R9 BEING NOT
A SHARER IN THE NON TRADING COMPANY BUT ONLY A
MEMBER AND HIS MEMBERSHIP BEING NOT TRANSFERABLE.

BY ADVS .

SRI.V.R.KESAVA KAIMAL FOR R9

SRI.ENOCH DAVID SIMON JOEL FOR R7

SRI.M.G.KARTHIKEYAN FOR R10, R14 AND R17

SRI.T.I.ABDUL SALAM FOR R7

SRI.P.B.KRISHNAN FOR R7

SRI.P.B.SUBRAMANYAN FOR R7

SRI.SABU GEORGE FOR R7

SMT.B.ANUSREE FOR R7

SRI.MANU VYASAN PETER FOR R7

SRI.K.JAGADEESCHANDRAN NAIR FOR R5

SMT.MEERA P. FOR R7

SRI.J.KRISHNAKUMAR FOR R5

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 27.05.2022, ALONG WITH CO.57/2010, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 27TH DAY OF MAY 2022 / 6TH JYAISHTA, 1944

CO NO. 57 OF 2010

IN

RFA 843 OF 2009

AGAINST THE DECREE AND JUDGMENT DATED 8.4.2009 IN OS No.

45/1999 IN THE DISTRICT COURT, ERNAKULAM

CROSS APPELLANTS/RESPONDENTS 5 & 6 /PLAINTIFFS 5 & 6:

- 1 V.N.MOHANKUMAR,
S/O.P.A.NARAYANAN, VADAKKINADATHU, VENNALA P.O.,
EDAPPALLY, THEKKUMBHAGOM VILLAGE.
- 2 K.K.SUNILKUMAR,
S/O.KRISHNAN, SECRETARY, SREE NARAYANA FORUM FOR
SOCIAL JUSTICE, RESIDING AT SATHIYALAYAM,
CHANGANKULANGARA.

BY ADV SRI.K.JAGADEESCHANDRAN NAIR

CROSS APPEAL RESPONDENTS/APPELLANTS/DEFENDANTS &

PLAINTIFFS NO.1 TO 4:

- 1 S.N.D.P.YOGUM A PUBLIC LIMITED COMPANY,
REP.BY ITS PRINCIPAL OFFICER, NAMELY THE GENERAL
SECRETARY, V.K.NATESAN, S/O.KESAVAN, AND HAVING
HIS OFFICE AT SNDP YOGAM OFFICE, KOLLAM.
- 2 V.K.NATESAN,
S/O.KESAVAN, VELLAPPALLIL HOUSE,
KANICHUKULANGARA, CHERTHALA.
- 3 C.K.VIDHYA SAGAR,
VICE PRESIDENT, SNDP YOGAM, CHENGOKAL,
THODUPUZHA.
- 4 A.S.PRATAP SINGH PRESIDENT (DIED),
SNDP YOGUM, S.N.VIHAR, KANIMANGALAM P.O.,
TRICHUR-27.
- 5 KAVYAD MADHAVANKUTTY,
DEVASWOM SECRETARY, KAVYAD HOUSE, PEERAPPANCODE,
VENJARAMOODE, TRIVANDRUM.
- 6 M.B.SREEKUMAR,
MOHANAVILASAM, THUNGUKAVU P.O., PATHANAMTHITTA.
- 7 MOHAN SANKAR,
LAKSHMI NIVAS, PATTATHANAM EAST, KOLLAM P.O.
- 8 M.P.SHAJI BONSALE,
MUGHAPPIL, KOZHAKKEKARA VADAKKU, VALIYAPARAMBU,
KARTHIKAPPALLY.

- 9 V.K.ASHOKAN,
THARAMMEL VEEDU, MURINJAKAL P.O., KODAL,
PATHANAMTHITTA.
- 10 T.S.SANJEEV,
THARAMMEL VEEDU MURINJAKAL P.O.,
KODAL, PATHANAMTHITTA.
- 11 E.M.MURALEEDHARAN,
ETTUMMAL VEEDU, ANUPAMA, SNDY ROAD,
PALLURUTHY, KOCHI-5.
- 12 A.K.SOMAN,
AYYANKOYIKKAL, PUTHUPPALLY P.O.,
KOTTAYAM.
- 13 B.YAMUNA PRASAD,
VENUVILASAM, AMARAVILA P.O., NEYYATTINKARA.
- 14 K.N.DIVAKARAN,
KALARIKKAL, ADIMALI.
- 15 P.R.SADANANDHAN,
PULLARKKAD HOUSE, NEAR KSRTC, PERUMBAVOOR P.O.,
KUNNATHUNAD.
- 16 V.PONNAN,
JEM MANSION, MARUTHORVATTOM P.O.,
CHERTHALA.
- 17 M.R.SASIDHARAN,
S/O.RAGHAVAN, SOCIAL WORK, MANAKADAVU VILLAGE,
ARIKUZHA, THODUPUZHA TALUK, (ADDL.18 TH
DEFENDANT)

18 P. J. SADANANDAN,
S/O. NEELAKANDAN, RESIDING AT MODIYIL HOUSE,
PAZHANGADI VILLAGE, RANNI VILLAGE, PATHAMTHITTA.
(ADDL. 19TH DEFENDANT)

BY ADV. SRI. A. N. RAJAN BABU FOR R1 AND R8

THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY
HEARD ON 27.05.2022, ALONG WITH RFA.843/2009, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

R.F.A. No.843 of 2009

and

Cross Objection No.57 of 2010

Dated this the 27th day of May, 2022.

JUDGMENT

P.B.Suresh Kumar, J.

The above appeal and cross objection are directed against the judgment and decree dated 08.04.2009 in O.S.No.45 of 1999 on the files of the Court of the District Judge, Ernakulam. Defendants 1 and 2 are the appellants in the appeal and plaintiffs 5 and 6 are the objectors in the cross objection.

2. The suit was one instituted in a representative capacity with the leave of the court under Section 92 of the Code of Civil Procedure (the Code) for removal of defendants 2

to 16 from the administration of Aruvippuram Sree Narayana Dharma Paripalana Yogam (the Yogam) and for framing of a scheme for its administration.

3. The plaintiffs are members of the Yogam. The first defendant is the Yogam itself and defendants 2 to 16 are the members of the Council of the Yogam on whom the administration of the Yogam vests in terms of the Articles of Association of the Yogam. The Yogam was registered as a public limited company under the Indian Companies Act, 1882, as applied to the erstwhile Travancore, without the addition of the word "Limited" to its name. Going by the objects of the Yogam as disclosed in its Memorandum of Association, it is a body constituted for carrying out the daily poojas, annual festivals and all other requirements of Aruvippuram Siva Temple and other temples which are brought under it and for improving the spiritual and temporal education and for developing the industrial habits of those belonging to Ezhava community by establishing and conducting/running temples, hermitages,

schools and other institutions.

4. The Articles of Association of the Yogam, among others, provide that anyone who belongs to Ezhava Community and who subscribes to the rules of the Yogam and pays the value of one share of the Yogam will become a member of the Yogam. The Articles of Association also provide that the management of the Yogam will vest in a Board of Directors elected at its annual general meeting consisting of a President, a Vice-President, a General Secretary, a Devaswom Secretary and other members. The Articles of Association also provide that there shall be a council for the administration of the Yogam consisting of not more than 15 members of the Board of Directors including four office bearers. The Articles of Association also provide that the General Secretary would be the executive officer of the Yogam.

5. The plaint is a repetitive assemblage of facts, evidence and arguments, relevant and irrelevant, and it is unnecessary to refer to the whole of the averments in the plaint

for the purpose of this case. As noted, the suit is one instituted for relief under section 92 of the Code on the premise that the Yogam is a public religious and charitable trust. In the context of the nature of the relief sought in the suit, bereft of unnecessary and irrelevant details, the case set out by the plaintiffs in the plaint is that in the absence of any provision in the Memorandum of Association of the Yogam enabling formation of Branches and Unions, the formation of Branches and Unions for the Yogam is unauthorised; that even if it is assumed that it is permissible for the Yogam to have Branches and Unions, in the absence of any provision in its Memorandum of Association or Articles of Association as to the status of the Branches and Unions, there exists a serious doubt right from the very beginning of the establishment of the Yogam as to whether the Branches and Unions of the Yogam are independent units capable of acquiring assets and incurring liabilities; that on account of this doubt, the assets and liabilities as also the income and expenditure of the Branches and Unions are not

shown in the Annual Statement of Accounts of the Yogam; that on account of this doubt, while the Yogam is exercising disciplinary control over the affairs of the Branches and Unions and asserting rights over the assets of the Branches and Unions, it is disowning the liabilities of the Branches and Unions; that the doubt aforesaid led to various litigations between the Yogam and its Branches and Unions concerning the disciplinary action taken by the Yogam as also the rights over the assets of the Branches and Unions, including the institutions run by them and that the said state of affairs as regards the inter relationship between the Yogam and its Branches and Unions are not conducive for a proper administration of the Yogam. It is also the case of the plaintiffs that although the Articles of Association of the Yogam originally framed conferred a right to all members of the Yogam to participate in its annual general meeting and to elect the members of the Board of Directors and office bearers of the Yogam, having regard to the difficulty experienced in course of time in the matter of convening an annual general

meeting with the participation of all its members, the number of which would run into several lakhs, the aforesaid provision in the Articles of Association was amended on 19.03.1966 and a provision was introduced in its place for a representative annual general meeting of one percentage of the members of the Yogam; that later even the said percentage was reduced to half by way of another amendment; that the said amendments which take away the right of the members of the Yogam to participate in its annual general meeting and to elect the office bearers of the Yogam are illegal and not conducive for a proper administration of the Yogam. It is also the case of the plaintiffs that later several other amendments were also made to the Articles of Association of the Yogam, otherwise than in accordance with the provisions of the applicable law governing the company, and in terms of one of such amendments, several persons who are not elected representatives of the members of the Yogam were also permitted to participate and elect the office bearers of the Yogam in its annual general meeting.

According to the plaintiffs, even assuming that the amendment made to the Articles of Association of the Yogam in terms of which a representative annual general meeting was introduced is valid, the amendment made to the Articles of Association in terms of which persons other than the representatives of the members of the Yogam were permitted to participate and elect the office bearers of the Yogam in its annual general meeting is unauthorised and not conducive for a proper administration of the Yogam. It is also the case of the plaintiffs that unbridled and arbitrary disciplinary power is retained by the offices and officers of the Yogam over the Branches and Unions of the Yogam as also over its members; that such powers are not conducive for a proper administration of a social organisation like the Yogam.

6. Defendants 1 to 3, 6, 9 and 11 to 16 contested the suit by filing a joint written statement. It was contended by the said defendants, among others, that the Yogam is not a public trust; that it is only a company governed by the law

relating to companies as applicable from time to time and that the suit under Section 92 of the Code is therefore not maintainable. It was also contended by them that the Yogam has obtained exemption from the provisions of Sections 172 to 279 and Article 14 of Table C of Schedule I of the Companies Act, 1956 from the Central Government in terms of Section 25(6) of the said statute and in the light of the exemption aforesaid, the amendments made to the Articles of Association of the Yogam cannot be said to be illegal. It was also contended by them that clause 12 of the Articles of the Yogam provides for establishment of Branches and Unions for the Yogam and Branches and Unions have been established in accordance with the sub-rules framed under clause 12 of the Articles. It was also contended by them that the Branches and Unions of the Yogam are under the control of the Yogam; that the assets of the Branches and Unions of the Yogam belong to the Yogam and that it is not necessary to show the assets and liabilities as also the income and expenditure of the Branches and Unions in the

Annual Accounts of the Yogam. It was also contended by them that powers reserved in favour of the offices and officers of the Yogam are necessary for the proper administration of the Yogam.

7. Both sides adduced evidence, oral and documentary. Thereupon, on an appraisal of the materials on record, the court below came to the conclusion that the Yogam is the successor body of Aruvipuram Kshetra Yogam which was a trust created for public purposes of charitable and religious nature; that it was subsequently registered as a company and that the subsequent registration of the Yogam as a company will not oust the jurisdiction of the court in respect of the same under Section 92 of the Code. On the aforesaid findings, the Court found that the suit is maintainable. On facts, it was found by the court below that the plaintiffs are entitled to a decree for settling a scheme for the administration of the Yogam. The Court however held that the plaintiffs have not made out a case for removal of defendants 2 to 16 from the administration of the

Yogam. In fact, it was specifically pleaded by the plaintiffs in the plaint that the order of the Central Government granting exemption to the Yogam from the provisions of the Companies Act, 1956 so as to enable the Yogam to convene a representative annual general meeting is invalid, and the said case of the plaintiffs was also repelled by the court below. In the light of the said findings, the court below passed a preliminary decree directing framing of a scheme for the administration of the Yogam in accordance with the law applicable to the Companies. Defendants 1 and 2 are aggrieved by the said decision of the court below and hence the appeal. The cross objection is by plaintiffs 5 and 6 challenging, among others, the finding rendered by the court below as regards the correctness of the order passed by the Central Government granting exemption to the Yogam from the provisions of the Companies Act, 1956 as also the finding that the plaintiffs have not made out a case for removal of the defendants from the administration of the Yogam.

8. It is seen that some among the plaintiffs as also the defendants passed away pending suit and appeal and in the nature of the suit, their legal representatives have not been brought on record.

9. Heard Adv.Sri.A.N.Rajan Babu for defendants 1 and 2, Adv.Sri.D.Anil Kumar for the surviving plaintiffs and Adv.Sri.P.B.Krishnan for the third defendant.

10. The learned counsel for defendants 1 and 2 contended at the outset that the suit is not maintainable as the Yogam is neither an express nor a constructive trust created for public purposes of a charitable or religious nature. The learned counsel attempted to demonstrate the said contention pointing out that there is no pleading or evidence in the case to show that the Yogam is the successor body of Aruvipuram Kshetra Yogam as found by the court below. According to the learned counsel, the Yogam is an independent body registered as a company and none of the assets of Aruvipuram Kshetra Yogam got vested in or transferred to the Yogam. It was also

contended by the learned counsel that only a trust, the beneficiaries of which belong to public or a class thereof, which is unascertainable, could be regarded as a trust falling within the scope of Section 92. It was argued by the learned counsel that even if it is found that the Yogam is a trust, insofar as its members are ascertainable, it can only be regarded as a private trust. It was also argued by the learned counsel that at any rate, there is no finding by the court below that there is breach of trust on the part of the defendants and the court below, in the circumstances, ought not have directed framing of a scheme for the administration of the Yogam. As regards the facts pleaded by the plaintiffs in the plaint to seek a decree for settling a scheme for the administration of the Yogam, it was argued by the learned counsel alternatively that none of them would justify the decree sought for by the plaintiffs. It was also argued by the learned counsel in this regard that the alleged defects, lacunas, loopholes, excessive powers etc. in the Articles of Association of the Yogam do not also justify the decree sought for by the

plaintiffs.

11. Per contra, the learned counsel for the plaintiffs argued that the relief under Section 92 of the Code could not only be claimed in cases where there are allegations of breach of trust, but also in cases where the direction of the court is deemed necessary for the administration of trusts falling under that statutory provision. It was pointed out by the learned counsel that until 1966, Articles of the Yogam was in accordance with Table 'A' of Schedule I to the Companies Act, 1956 and consequently, each member had a right to vote in the annual general meeting of the Yogam. Although the Articles were amended later to introduce a representative participation and voting of the members in the annual general meeting, and an order of exemption from the relevant provisions of the Act was obtained from the Central Government for the said purpose, it was submitted by the learned counsel that a challenge against the representative participation and voting introduced by amending the Articles of the Yogam was upheld by this Court in

W.P.(C) Nos.8382 of 2020 and 1385 of 2021. It was also submitted by the learned counsel that even though it was clarified in the judgment in the said case that the same will not in any way nullify the meetings and elections conducted earlier, it has been categorically declared that the decisions taken by the Yogam to restrict the voting rights of its members will not gain sanctity of law and all the members of the Yogam have right to vote in any election to be held by the Yogam. It was also argued by the learned counsel that Article 39 of the Articles of the Yogam as amended in the year 1999 gives unbridled and arbitrary powers to the General Secretary. Placing reliance on the uncontroverted averments made by the plaintiffs in paragraph 18 of the plaint, the learned counsel submitted that it has been established in the suit that the General Secretary of the Yogam was abusing the said power. It was also argued by the learned counsel that the company law does not empower the Yogam to establish Branches or Unions and the provisions made for the said purpose in the Articles are unsustainable in

law. It was also pointed out by the learned counsel that the jural relationship between the Yogam and its Unions and similarly, the Yogam and its Branches has always been a cause for litigations, especially in respect of the rights over the educational and other institutions established by the Branches and Unions. The learned counsel has drawn our attention to the documents pertaining to some of such litigations. The submission made by the learned counsel in this regard was that it is therefore necessary in the best interest of the community to have a legal pronouncement as to the status of the Branches and Unions of the Yogam. It was also pointed out by the learned counsel that the assets and liabilities as also the income and expenditure of the Branches and Unions are not shown in the annual statement of accounts of the Yogam, taking the stand that they are independent bodies. But at the same time, it was pointed out by the counsel that Yogam is retaining disciplinary control over its Branches and Unions and asserting rights over the institutions run by the Branches and Unions. It was also

argued by the learned counsel that if the Branches and Unions of the Yogam are independent bodies, there is no need for any provision in the Articles of Association enabling the Yogam to control their activities. Considering the large number of memberships in the Yogam, it is submitted by the learned counsel that it is imperative to have a legal framework for a proper democratic representation of members in the general meeting of the Yogam. The upshot of the submissions made by the learned counsel was that there is absolutely no justification to interfere with the impugned decision directing framing of a scheme for a proper administration of the Yogam.

12. Although the third defendant is a person who filed written statement along with defendants 1 and 2, the learned counsel appearing for him, in fact, supported the impugned judgment on the premise that a decree directing framing of a scheme for the proper administration of the Yogam is only in the best interests of not only the members of the Yogam in particular, but also the members of Ezhava community

in general.

13. In reply to the arguments advanced by the learned counsel for the plaintiffs, the learned counsel for defendants 1 and 2 submitted that powers given to the General Secretary under the Articles of Association are not inconsistent with the company law. Placing reliance on Sections 2(9) and 2(14) of the Companies Act, 2013, the learned counsel for defendants 1 and 2 refuted the argument advanced by the learned counsel for the plaintiffs that the company law does not contemplate the concept of Branches and Unions. According to the learned counsel, Branches and Unions are necessary to achieve the aims and objectives of the Yogam and also for the administrative convenience of the Yogam.

14. We have examined the arguments advanced by the learned counsel for the parties on either side.

15. In the absence of any comprehensive law on the subject of public trusts in India, Section 92 of the Code has attained great significance insofar as it provides for various

methods to remedy the malfunctioning of public trusts. In order to attract Section 92 of the Code, it is now well settled that the suit in the first place should be one relating to a trust created for public purposes of a charitable or religious nature. In the second place, it must proceed either on an allegation of breach of trust or of the necessity of having directions from the court for administration of the trust. In the third place, the reliefs claimed must be one or other reliefs specified in the section and lastly, the suit must be one brought in a representative capacity in the interest of the public or of the trust itself and not for vindicating the private rights of the plaintiffs. There is no dispute in this case on the last two aspects referred to above. Going by the arguments advanced by the learned counsel for the defendants 1 and 2, the dispute pertains only on the first two aspects. The first and foremost question arises for consideration therefore is whether the Yogam is a trust created for public purposes of a charitable or religious nature. If the question aforesaid is answered in the affirmative, necessarily, the question whether

the plaintiffs are entitled to a decree for settlement of a scheme for the administration of the Yogam would also arise for consideration. We shall first deal with the question as to whether the Yogam is a trust created for public purposes of a charitable or religious nature.

16. A trust is nothing but a confidence reposed in a person or body with respect to property under his possession or over which he can exercise a power, for holding the property or exercising the power, for the benefit of some other person or object [See Halsbury's Laws of England (2nd Edition, Vol. 33 Page 87)]. A trust of a religious nature is a trust created with the object of securing the spiritual well being of a person or persons according to his/their faith. A trust of a charitable nature, on the other hand, is a trust created with the object of bestowing upon persons who are in need of benevolence in any form. A public trust differs from a private trust in important particulars. In the case of the former, the beneficial interest is vested in an uncertain and fluctuating body and the trust itself is of a

permanent character, whereas, in the case of the latter, the beneficial interest is vested absolutely in one or more ascertainable individuals and the trust need not be a permanent one. The fact that the uncertain and fluctuating body is only a section of the public or members of a particular community does not make the trust a private one. In order to see whether a trust is a public or private one, the real substance of the trust and the primary intention of the creator of the trust must be looked into, which are essentially questions of facts. No deed is necessary and no trustee need be appointed for creation of a trust, for the law imposes the duties of trustee upon the founder or his heirs or successors or such other person as might have control or possession over the endowed property. It is now trite that if there is a trust created for public purposes of a charitable or religious nature, the fact that a company or other body is formed subsequently for executing the trust does not change the character of the trust or the subject matter of the trust namely, the property which has been constituted as a trust

property [See **Kesava Panicker v. Damodara Panicker and others**, 1975 KLT 797 (FB)]. In other words, for the application of Section 92 of the Code, it makes no difference whether the trustee is an individual or a company [See **M.Gomathinarayagam Pillai and others v. Sri.Manthramurthi High School Committee, Tirunelveli**, AIR 1963 Mad 387]. With the aforesaid principles in mind, let us examine the question as to whether the Yogam is a public trust.

17. In the plaint, the Yogam was arrayed as the first defendant and the then members of the council of the Yogam were arrayed defendants 2 to 16. It is alleged in the plaint that the first defendant is the trust and defendants 2 to 16 are the trustees. In the context of the contention taken by the contesting defendants that the suit is not maintainable since the Yogam is not a public trust, the stand taken by the plaintiffs is that the registration of the Yogam as a company for administration does not alter its character and the Yogam continued to be a public trust notwithstanding its registration as

a company. Of course, there is no pleading in the plaint that the Yogam was an existing body which was subsequently registered as a company. As is well known, the courts have *parens patriae* jurisdiction over public trusts for safeguarding the same [See **Imayam Trust v. Balakumar**, 2015 SCC OnLine Mad 2685]. As such, according to us, strict application of rules of pleadings, especially in the matter of adjudicating the question as to whether the body in respect of which a suit is instituted under Section 92 is a public trust, may not be warranted or justified, for strict application of rules of pleadings may at times affect larger public interest.

18. As noted, there is no dispute between the parties to the fact that the Yogam is a body constituted, among others, for administering the affairs of Aruvipuram Siva temple and other temples that are brought under it. While the plaintiffs assert that the Yogam is the reconstituted body of Aruvipuram Kshetra Yogam, defendants 1 and 2 assert that the Yogam has nothing to do with the said body. Defendants 1 and 2 would

attempt to establish the said case pointing out that none of the properties of Aruvipuram temple got vested or transferred to the Yogam and all the properties of the Yogam are properties either purchased or acquired by the Yogam after its incorporation as a company. They have also submitted at the time of arguments that the properties of Aruvipuram Siva temple were transferred to Sivagiri Dharma Sangham Mutt by Sree Narayana Guru in terms of a will executed by him. As noted, the court below found on facts that the Yogam is the reconstituted body of a public trust of religious and charitable nature namely Aruvipuram Kshetra Yogam which was in existence at Aruvipuram Siva temple and it is on that basis that the court came to the conclusion that the Yogam is a public trust amenable to the jurisdiction of the Court under Section 92 of the Code. The contentions aforesaid namely that none of the properties of Aruvipuram temple got vested or transferred to the Yogam; that all the properties of the Yogam are properties either purchased or acquired by the Yogam after its

incorporation as a company and that the properties of Aruvipuram Siva temple were transferred to Sivagiri Dharma Sangham Mutt by Sree Narayana Guru, do not appear to have been raised before the court below and the same have therefore not been dealt with in the impugned judgement.

19. Ext.A37 produced on the side of the plaintiffs is the chapter of a book dealing with the establishment of the Yogam published by the Yogam itself. The book is one written by the then General Secretary of the Yogam. The fifth plaintiff is the person who gave evidence in the suit on behalf of the plaintiffs as PW1. Ext.A37 has been produced by the fifth plaintiff along with his proof affidavit. The relevant portion of the proof affidavit reads thus:

“The official history of the SNDP Yogam prepared and published at the instance of the SNDP Yogam by Prof.P.S.Velayudhan, who was the then General Secretary and Principal Officer of the SNDP Yogam at pages 86 to 95 shows that the SNDP Yogam originated as a trust for the administration and management of the Aruvipuram Siva Temple and other properties obtained by way of gift from various persons who entrusted the same to the SNDP Yogam for the purpose and for the benefit of donors and other

beneficiaries, who form a substantial section of the public. The mere registration and incorporation of an association formed for charitable purposes as a company for the management of such properties among other objects will not have the effect of making it anything other than a public trust. The copy of the relevant pages have been extracted and produced and marked as Exhibit A37". (underline supplied)

The contesting defendants have neither discredited the said evidence of the fifth plaintiff as PW1 nor have they disputed the contents of Ext.A37 in any other manner known to law. Ext.A37 is the chapter in the book dealing with the emergence of Sree Narayana Guru as a renowned spiritual leader and social reformer. It is recited in Ext.A37 that even before Dr.Palpu started his movement for the upliftment of those belonging to Ezhava community, Sree Narayana Guru started a parallel movement for their spiritual and social upliftment. It is also recited in Ext.A37 that the Siva Temple established by Sree Narayana Guru at Aruvipuram in the course of time became a place of pilgrimage. It is also recited in Ext.A37 that it became a practice at the premises of the Aruvipuram temple in course of

time to give food to the pilgrims and a body called "Vavoottu Yogam" was established for the said purpose. It is also recited in Ext.A37 that shortly a hermitage also came to be established as part of the Aruvipuram temple and it was felt in course of time that the hermitage shall be retained as a permanent institution. It is also recited Ext.A37 that properties have been received in course of time by way of gift/donation from the general public for the development of the Aruvipuram Shiva temple and the hermitage attached to it, and a manager was also appointed for the properties of the temple and hermitage. It is also recited in Ext.A37 that in course of time, it became necessary to expand "Vavoottu Yogam" for the proper administration of the temple, the hermitage and institutions attached to it, as also the properties received by way of gift/donation and consequently, "Vavoottu Yogam" was reconstituted as "Aruvipuram Kshetra Yogam". It is also recited in Ext.A37 that later during 1078 ME, as directed by Sree Narayana Guru, a special general body of Aruvipuram Kshetra

Yogam was convened with a view to develop "Aruvipuram Kshetra Yogam" further as a mass organisation of those belonging to Ezhava community and it was decided in the said special general body to convert Aruvipuram Kshetra Yogam as Sree Narayana Dharma Paripalana Yogam for the said purpose and register the same as a company. The relevant portion of Ext.A37 reads thus:

"അധികം താമസിയാതെതന്നെ അരുവിപ്പുറം ഒരു തീർത്ഥാടന കേന്ദ്രമായിത്തീർന്നു. വാവുന്നൂൾ 'ബലി' യിടുന്നതിനു ഭക്തജനങ്ങൾ അവിടെ കൂടുക സാധാരണമായി. ബലിയർപ്പിച്ചുകഴിഞ്ഞു ആളുകൾ അവിടെ വിശ്രമിച്ചും സ്വാമികളുടെ ഉപദേശങ്ങൾ ശ്രവിച്ചും കോവിലിൽ തൊഴുതും ആണ് മടങ്ങിയിരുന്നത്. വാവുന്നൂൾ വന്നുകൂടുന്ന ഭക്തജനങ്ങൾക്ക് ആഹാരം അവിടെനിന്നു കൊടുത്തുതുടങ്ങി. ചില പ്രമാണികളെ അതിന്റെ ഭാരവാഹികളായി നിശ്ചയിച്ചു; "വാവുട്ടുയോഗം" എന്നൊരുപേരും അതിനുണ്ടായി. അരുവിപ്പുറം ക്ഷേത്രത്തോടൊത്തു സന്യാസിമഠമുണ്ടായി; മഠത്തെ ഒരു സ്ഥിരം സ്ഥപനമാക്കി വളർത്തേണ്ടതും ഒരാവശ്യമായി. അക്കാലത്താണ് കൊട്ടാർ ചിന്മയാനന്ദസ്വാമികൾ തന്റെ കീഴിലുള്ള സ്വത്തുക്കളൊക്കെയും മൂവായിരം പണം (ഒരു പണം = 15 ന. പ.) വാങ്ങിക്കൊണ്ട് 1864 -ൽ (കൊല്ലവർഷം 1069 മേടം 12 -ആം തീയതി) സ്വാമിയുടെ പേർക്കെഴുത്തികൊടുത്തത്. അന്നുതന്നെ പേട്ടയിൽ പി.പരമേശ്വരൻ (ഡാ.പല്ലുവിന്റെ ജ്യേഷ്ഠൻ) അവർകളെ അരുവിപ്പുറം കാര്യങ്ങൾക്കു മാനേജരാക്കി

മുക്യാർനാമാവുന്നതുകി നിയമിക്കയും ചെയ്തു."

x x x x x x

1899 ൽ വാവുട്ടുയോഗം കൂറേക്കുടി വിപുലപ്പെടുത്തി പരിഷ്കരിച്ചു. ക്ഷേത്രകാര്യങ്ങളും ധർമ്മസ്വത്തും കൂടുതൽ ഭംഗിയായും ഉത്തരവാദിത്വത്തോടു കൂടിയും നോക്കുന്നതിന് അങ്ങനെ ഒരു യോഗത്തിന്റെ അവശ്യംനേരിട്ടു. മഹാകവി കുമാരനാശാന്റെ ഭാഷയിൽ പറഞ്ഞാൽ, കൊല്ലവർഷം 1074 അരുവിപ്പുറം ക്ഷേത്രത്തിന്റെ അടിവ്യഭിയേയും ഭരണത്തേയും ഉദ്ദേശിച്ച് നെയ്യാറ്റിൻകര തിരുവനന്തപുരം ഈ താലൂക്കുകളിലുള്ള സ്വജനങ്ങളിൽ ഏതാനും മാന്യന്മാരെ കൂട്ടിച്ചേർത്ത് 'അരുവിപ്പുറം ക്ഷേത്രയോഗം' എന്ന പേരിൽ ഒരുസംഘം ഏർപ്പെടുത്തി.

x x x x x x

1078 ൽ സ്വാമിയുടെ ആജ്ഞാനുസരിച്ച് തിരുവനന്തപുരത്തും സമീപ പ്രദേശങ്ങളിലുമുള്ള ഇഴുവ പ്രമാണികൾക്ക് ഒരു ആലോചനായോഗം കൂടുന്നതിന് കുമാരനാശാൻ ക്ഷണക്കത്തുകൾ അയച്ചു കുന്നുകുഴിയിലുള്ള കമലാലയം ബംഗ്ലാവിൽവെച്ച് പ്രേത്യകം ക്ഷണിക്കപ്പെട്ടവരുടെയും 'അരുവിപ്പുറം ക്ഷേത്രയോഗംഗങ്ങളുടെയും ഒരു സംയുക്തയോഗം ചേർന്നു. ഡോക്ടർ പല്ല, കുമാരനാശാൻ, എം.ഗോവിന്ദൻ തുടങ്ങിയവർക്കു പുറമെ എൻ.കുമാരൻ, വാരണപ്പള്ളിൽ പത്മനാഭപ്പണിക്കർ മുതലായ കോളേജുവിദ്യാർത്ഥികളും ആ യോഗത്തിൽ സംബന്ധിച്ചിരുന്നു. അരുവിപ്പുറം ക്ഷേത്രയോഗത്തെ വിപുലപ്പെടുത്തി കമ്പനി നിയമമനുസരിച്ച് രജിസ്റ്റർചെയ്തു ഒരു ഇഴുവ ബഹുജനസംഘടന സ്ഥപിക്കുക എന്നതായിരുന്നു ആലോചനാവിഷയം. പലർക്കും പലവിധ സംശയങ്ങളുമായി, വലിയ വാദപ്രതിവാദങ്ങളും അന്നു നടന്നു. ആലോചന യോഗത്തിൽ ഉന്നയിച്ച സംശയങ്ങൾക്ക് ഡോക്ടറും

കുമാരനാശാനും മറുപടിപറഞ്ഞു. യോഗത്തിന്റെ ആവശ്യം തീർത്തും ബോധ്യപ്പെടുത്തി. 1078 ധനുമാസം23-ാം തീയതി, മുൻ നിശ്ചയമനുസരിച്ച് 'അരുവിപ്പുറം ക്ഷേത്രയോഗ' ത്തിന്റെ ഒരു വിശേഷാൽ സമ്മേളനം കൂടി. ആ യോഗത്തിൽവെച്ച് 'ഇപ്പവർക്ക് പൊതുവിൽ മതസംബന്ധവും ലൗകികവുമായ മാർഗ്ഗങ്ങളിൽ അടങ്ങുന്നതി കൈവരുത്തുന്നതിന് 'അരുവിപ്പുറം ക്ഷേത്രയോഗത്തെ 'ഒരു മഹജനയോഗമാക്കിത്തീർക്കണമെന്നും തീരുമാനിച്ചു:' എല്ലായിടത്തുമുള്ള യോഗ്യന്മാരായ സമുദായംഗങ്ങളെ അംഗങ്ങളായിച്ചേർത്ത് ഒരു ജോയ്ന്റ്സ്റ്റോക്ക് കമ്പനിയായി യോഗത്തെ രജിസ്റ്റർ ചെയ്യണമെന്നും നിശ്ചയം ചെയ്തു. 1078 ഇടവം 2-ാം തീയതി ((ക്രിസ്തുവർഷം1903 മെയ് 15-ാം തീയതി) അരുവിപ്പുറം ക്ഷേത്രയോഗത്തെ അരുവിപ്പുറം ശ്രീനാരായണ ധർമ്മ പരിപാലനയോഗ എന്ന പേരിൽ തിരുവിതാംകൂറിലെ 1063-ാ മാണ്ടത്തെ 1-ാം റഗുലേഷൻ (1882 ലെ 6-ാം നമ്പർ ഇന്ത്യൻ കമ്പനീസ് ആക്ട്) അനുസരിച്ച് രജിസ്റ്റർ ചെയ്തു."

(underline supplied)

The recitals aforesaid in Ext.A37 would establish beyond doubt that Yogam is the reconstituted body of "Aruvipuram Kshetra Yogam" which was subsequently registered as a company with a view to expand the same as a mass organisation of those belonging to Ezhava community. As noted, the main object of the Yogam as disclosed in its Memorandum of Association is to conduct the daily poojas, annual festivals as also other

requirements in relation to Aruvipuram Siva Temple and other temples brought under it. The relevant clause of the Memorandum of Association of the Yogam reads thus:

“അരുവിപ്പുറം ശിവക്ഷേത്രത്തിലും അതോടു ചേർന്നതോ, അതിന്റെ കീഴിൽ ഉൾപ്പെട്ടതോ ഉൾപ്പെടുന്നതോ ആയ ക്ഷേത്രങ്ങളിലും ഉള്ള നിത്യപൂജ, വർഷോത്സവം മുതലായ സകല കാര്യങ്ങളും നടത്തുക.”

The aforesaid object of the Yogam would reinforce the finding aforesaid that the Yogam is the reconstituted body of “Aruvipuram Kshetra Yogam”. As noted, the contesting defendants have no case that the Aruvipuram Kshetra Yogam was not a public trust of religious and charitable nature. Similarly, they have also no case that Aruvipuram Kshetra Yogam continued to exist even after the establishment of the Yogam. Even otherwise, going by the principles of Hindu Law dealing with the essentials of a religious and charitable trust, the recitals in Ext.A37 would show that Aruvipuram Kshetra Yogam was a public trust of a religious and charitable nature in respect of Aruvipuram temple and the various institutions attached to it

and the properties owned by it.

20. The object of the Yogam as extracted in the preceding paragraph would also show that there is no substance in the argument advanced by defendants 1 and 2 that Yogam had no properties when it was incorporated as a company. The object aforesaid, if understood in the light of Ext.A37 would show that Yogam being the successor of Aruvipuram kshetra Yogam had control over Aruvipuram Shiva Temple and the institutions attached to it and the properties owned by it. There is also no substance in the argument that all the properties of Aruvipuram Temple have been later divested by Sree Narayana Guru to Sivagiri Dharma Sangham Mutt, for the said properties being properties dedicated for a public purpose, going by the principles of Hindu Law, its original owners including the founder of the trust cannot claim any more rights over the same [See page 33, B.K.Mukherjea on the Hindu Law of Religious and Charitable Trust Fifth Edition]. As noted, one of the contentions raised by the learned counsel for defendants 1 and 2 at the time

of arguments was that even if it is assumed that the Yogam is a trust, it can never be construed as a public trust in order to attract the provision contained in Section 92 of the Code, for the beneficiaries of the Yogam are only ascertainable members of the Yogam who belong to Ezhava community. There is no substance in this contention also, for the very purpose of reconstitution of Aruvipuram Kshetra Yogam as Yogam as revealed from the objects disclosed in the Memorandum of Association of the Yogam was to expand the Aruvipuram Kshetra Yogam as a mass organisation for enhancing the spiritual and temporal education and developing the industrial habits of those belonging to Ezhava community and for matters incidental thereto. In the light of the said object, it cannot be said that the beneficiaries of the Yogam are only members of the Yogam who belong to Ezhava community. On the other hand, going by the Memorandum of Association of the Yogam, beneficiaries of the Yogam are those belonging to Ezhava community. In the light of the discussion aforesaid, we do not find any infirmity in the

finding rendered by the court below that Yogam is a public trust falling within the scope of Section 92 of the Code.

21. As noted, it was argued by the learned counsel for defendants 1 and 2 that in order to grant relief in a suit under Section 92 of the Code, it has to be established that there is breach of trust on the part of the trustees and insofar as the plaintiffs have not made out a case of breach of trust on the part of the defendants, the court below ought not have passed a decree for settling a scheme for the administration of the Yogam. Going by the plain meaning of the words used in Section 92 of the Code, the relief provided for under that Section can be granted in cases where the direction of the court is deemed necessary for the administration of a public trust of religious or charitable nature also. But, that does not mean that relief under that Section can be claimed merely on an assertion that the direction of the Court is necessary for the administration of a trust. The expression “where the direction of the court is deemed necessary for the administration of any

such trust” indicates that what is provided for in the provision is that for the purpose invoking the jurisdiction of the court under section 92 of the Code, it should appear to the court or the court should come to think that its direction is necessary for the administration of the trust. Although the object of Section 92 of the Code is to protect the interests of the public who are beneficiaries of trusts created for public purposes of a charitable or religious nature, having regard to the scheme of the said provision that administration of public trusts shall not be put to halt on account of frivolous and vexatious litigations, according to us, the expression “where the direction of the court is deemed necessary for the administration of any such trust”, would take within its fold only cases where in the absence of a direction of the court, the objects of the trust would be defeated. In other words, the provision aforesaid is intended to cover only cases where, in the absence of a direction by the Court, there would be breach of trust in a wider sense that the trust may not achieve its object for want of proper administration.

22. Let us now examine the question whether the plaintiffs have made out a case for direction of the court under Section 92 of the Code for the administration of the Yogam. The Yogam which had a humble beginning has now grown up as a mighty organisation of those belonging to Ezhava community. It has established directly and indirectly through its Branches and Unions, large number of temples, hermitages, schools, colleges and other educational institutions. Its membership has increased many-fold in course of time and it has now several lakhs of persons as members. As noted, going by the Articles of Association of the Yogam, the Management of the Yogam is vested in a Board of Directors who are to be elected at its annual general meeting and they are entitled to continue in office until a new Board of Directors is elected at the succeeding annual general meeting of the Yogam. The Board consists of a President, a Vice-President, a General Secretary and a Devaswom Secretary and other members. The fact that the office bearers of the Yogam shall be duly elected for the proper

administration of the Yogam is not disputed by anyone. As noted, the main case of the plaintiffs is that although the Articles of Association of the Yogam originally framed conferred a right on all members of the Yogam to participate in the process of electing its office bearers at its annual general meeting, the relevant provision in the Articles of Association was amended on 19.03.1966 and a provision was introduced in its place for a representative annual general meeting of one percentage of the total members of the Yogam and later even the said percentage was reduced to half by way of another amendment and that the said amendments which take away the right of the members of the Yogam to participate in the process of electing its office bearers are illegal. It is also the case of the plaintiffs that even if the said amendments are valid, while amending the Articles of Association of the Yogam, appropriate provisions have not been made to ensure that the participants of the annual general meetings are the true representatives of the members of the Yogam by prescribing an immutable time

schedule for the election of representatives of the members of the Yogam to attend the annual general meetings. It is also the case of the plaintiffs that the Articles of Association of the Yogam was amended on several occasions thereafter and the said amendments include an amendment permitting the former office bearers of the Yogam and various others to participate in the annual general meeting which elects the office bearers of the Yogam and that the aforesaid amendment which permits participation of persons other than the elected representatives of the Yogam has brought about a situation where even the elected representatives of the members of Yogam have no role in the matter of electing the office bearers of the Yogam. In short, according to the plaintiffs, the office bearers of the Yogam elected from time to time after the amendments aforesaid are not the true representatives of the members of the Yogam and the direction of the court is necessary to restore the right of the members of the Yogam to participate in the process of electing its office bearers and to ensure that the Yogam is

being administered by the office bearers elected by its members.

23. As noted, the Yogam was registered as a public limited company under the Indian Companies Act, 1882, as applied to the erstwhile State of Travancore. The registration of a body like the Yogam as a company was permissible under the Indian Companies Act, 1882. Indian Companies Act, 1882 was later replaced by the Indian Companies Act, 1913. When Indian Companies Act, 1913 was replaced later by the Companies Act, 1956, the Yogam continued to be governed by the replaced enactment. While so, the Kerala Non Trading Companies Act, 1961 (the Kerala Act) came into force with effect from 01.03.1962. It is admitted by the contesting defendants that by virtue of the provisions contained in the Kerala Act, the Yogam is governed by the said statute thereafter and not by the Companies Act, 1956 and its successor enactment. In terms of Sections 3 to 6 of the Kerala Act, registration of the Yogam as a Non Trading Company under the Indian Companies Act, 1882 is

deemed to be a registration in the State of Kerala under the Kerala Act. In other words, after coming into force of the Kerala Act, the Yogam ceased to be governed by the Indian Companies Act, 1882 and its successor enactments. Regulation 5(6) of the Regulations framed under the Kerala Act stipulates that no alteration shall be made to the Memorandum of Association or Articles of Association of companies falling under the said statute, unless the alteration has been previously submitted to and approved by the Government.

24. The fact that the Articles of Association of the Yogam framed originally conferred a right to all members of the Yogam to participate in the process of electing the office bearers of the Yogam at its annual general meeting and the fact that the said provision was replaced by way of an amendment on 19.03.1966 with a provision for a representative annual general meeting, are not disputed. It is seen that the aforesaid amendment was made when the Yogam found it difficult to convene annual general meetings of all its members running to

several lakhs. The amendment aforesaid was held to be void as violative of Table C of Schedule 1 of the Companies Act, 1956 by a Division Bench of this Court on 28.11.1972 in A.S.No.116 of 1971. It is seen that without taking note of the fact that the Companies Act, 1956 does not apply to the Yogam after the introduction of the Kerala Act, it was observed in the judgment in the said case that to tackle the situation, the Yogam would be at liberty to obtain exemption from the provisions of the Companies Act invoking the power of the Central Government under Section 25(6) of the Companies Act, 1956. In the light of the said observation, the Yogam moved the Central Government under Section 25(6) of the Companies Act 1956 and without taking note of the fact that the Companies Act, 1956 does not apply to the Yogam after the introduction of Kerala Act, the Central Government has exempted the Yogam from the provisions of Sections 172(2), 219 and Article 14 of Table C of Schedule 1 of the Companies Act, 1956 on 20.08.1974. Ext.B5 is the order issued by the Central Government in this regard. It is

on the strength of Ext.B5 order, the Yogam got over the judgment of this Court in A.S.No.116 of 1971 and the members of the Yogam were denied opportunity to participate in the process of electing its office bearers at its annual general meeting since 1974.

25. It is seen that Ext.B5 order has been challenged before this court by some of the members of the Yogam in W.P. (C) Nos.8382 of 2020 and 1385 of 2021 and it was found in the said case that in the light of the provisions contained in the Kerala Act, the registration of the Yogam as a Non Trading Company under the Companies Act, 1882 is deemed to be a registration in the State of Kerala under the Kerala Act and that the application under Section 25(6), in the circumstances, should have been preferred by the Yogam before the State Government. On the above findings, this Court set aside Ext.B5 order. The relevant findings contained in paragraphs 20 and 21 of the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 read thus:

“20. Ext.P5 purports to have been issued on an application submitted before the Central Government under Section 25(6) of the Companies Act, 1956. The application has been preferred admittedly after the Kerala Act came into force in 1962. The apparent reason for preferring the application before the Central Government is the observation contained in the judgment in Aravindhan (supra). In the said judgment, this Court had only observed that the Yogam is not without remedy and they can always approach the Central Government under Section 25. This Court had not considered whether such an application has to be preferred before the Central Government or the State Government in view of the Kerala Act. As a matter of fact it was not even brought to the notice of the Court that the Kerala Act applies to the Yogam. Thus Ext.P5 cannot be justified as an order issued on the basis of directions issued by this Court.

21. By operation of Sections 3 to 6 of the Kerala Act, the registration of Yogam as a non-trading company under the Companies Act, 1956 is deemed to be a registration in the State of Kerala. The Kerala Act is a statute falling under Entry 32 of List II of the Seventh Schedule of the Constitution and the State Legislature has exclusive power to make laws with respect to the matter. After coming into force of the Kerala Act, the Companies Act, 1956 can no longer govern the Yogam. Sections 3 to 6 of the Kerala Act in effect facilitates the transfer of governance from under the Companies Act, 1956 to the Kerala Act. Section 3 specifically says that the operation of the Companies Act, 1956 with regard to companies coming under the Kerala Act, will be subject to such modifications specified in the Schedule to the Kerala Act. One such modification made by the Schedule is that references to “the

Central Government” and “Government” where it refers to the Central Government shall be construed as references to the Government of Kerala”. Section 25 of the Companies Act, 1956 will thus have to be read with the above modification and the necessary result is that an application under Section 25(6) has to be preferred before the State Government and not the Central Government, in the case of the Yogam, after 1.3.1962. Admittedly, Ext.P5 was issued on the basis of an application preferred much after 1962. Ext.P5 is hence not issued by the competent authority and hence cannot stand the test of law.”

A perusal of the judgment in the said case also reveals that the Yogam has not disputed in the case the fact that it is governed by the Kerala Act, with effect from its promulgation namely, 01.03.1962. It is also revealed from the judgment that in the light of the provisions contained in the Kerala Act, the Yogam has even preferred applications before the competent authority under the central statute to transfer the records relating to it to the State Government. Another issue considered in the said case was whether the passage of time and continued acceptance of Ext.B5 order for several years would legitimise the order, and the said issue was answered by the court in the

negative. It is however seen that even though the order of exemption granted by the Central Government was set at naught by this court in terms of the judgment in in W.P.(C) Nos.8382 of 2020 and 1385 of 2021, having regard to the ramification of that decision, this court did not set aside all actions that had been carried out on the basis of the order that was set aside by clarifying that the judgment will not in any way nullify the meetings held by the Yogam or elections conducted earlier. Nevertheless, it is reiterated in the Judgment that the decision taken in the meetings to restrict the voting right will not gain sanctity of law. The operative portion of the judgment reads thus:

x x x x “In the result, Ext.P5 order is set aside. It is declared that clause 44 of the Articles of Association of the SNDP Yogam is ultra vires the statutory provisions contained in the Companies Act, 1956 read with the provisions of the Kerala Non-Trading Companies Act,1961. It is declared that all the members of the Yogam have a right to vote in any election to be held by the Yogam”.

It is admitted by the parties that the judgment in W.P.(C) Nos. 8382 of 2020 and 1385 of 2021 has become final. We have perused the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 and we are in agreement with the findings and conclusion therein. In other words, the case set out by the plaintiffs that the exemption granted by the Central Government to the Yogam from the provisions of the Companies Act, 1956, on the strength of which the members of the Yogam are deprived of their right to participate in its annual general meeting and elect the office bearers of the Yogam is bad in law is to be accepted as correct. Needless to say, the finding to the contrary rendered by the court below and challenged by plaintiffs 5 and 6 in the cross objection is unsustainable in law.

26. The only inference possible from the finding that denial of opportunity to the members of the Yogam to participate in its annual general meeting and elect the office bearers of the Yogam is bad in law, is that the Yogam was not managed and administered by duly elected office bearers right

from 19.03.1966. The judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 was rendered on 24.01.2022. The contesting defendants have no case that they have obtained exemption from the State Government from the requirements of the company law in terms of the Kerala Act so as to justify convening of a representative annual general meeting of the members of the Yogam. On the other hand, it has come out that the office bearers of the Yogam who have assumed office as early as on 9.8.2015 are continuing even now on the strength of the invalid provisions in the Articles of Association. Of course, it is open to the contesting defendants to argue that since the elections of office bearers of the Yogam held prior to the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 have not been set at naught by this court, though held to be invalid, the Yogam could obtain exemption from the relevant provisions of the Company Law from the State Government in terms of the Kerala Act. But, what would be the situation if the State Government does not exempt the Yogam from the

provisions of the said statute? Even if the State Government grants exemption as done by the Central Government, the questions viz, whether the members of the Yogam could be deprived of their right to participate in the annual general meeting to elect its office bearers and whether the election of the office bearers of the Yogam by the representatives of the members of the Yogam would be sufficient for the due administration of the Yogam so as to achieve its objects etc. would remain unanswered. True, the inability of the Yogam to convene the annual general meeting of all its members running to several lakhs is a genuine difficulty to be addressed. Whether a representative annual general meeting would be a solution for the said difficulty, is another question which needs to be addressed. That apart, the fact that the Articles of Association of the Yogam have been subsequently amended and large number of persons other than the representatives of the Yogam have been permitted to participate in the annual general meeting which elects the office bearers of the Yogam is not disputed by

the contesting defendants. The specific case pleaded by the plaintiffs in this regard is that Article 44 of the Articles of Association which permits such participation is against the provisions of the Companies Act and not conducive for a proper administration of the Yogam. The court below has accepted the said case of the plaintiffs. Paragraph 51 of the impugned judgment dealing with the said aspect reads thus:

“Section 41 of the Companies Act defines member of the company. There is no dispute to the fact that the annual general body meeting of the company means the meeting of the members of the company. Therefore reading of Section 41 along with section 166 of the Companies Act show that only members of the company can participate the general body meeting. Clause 44 of Ext.A4 authorises some other persons like Ex-President, Vice President, Devaswom Secretary, Yogam Directors, Union President, Union Secretary, Union Council etc. to participate the annual general body meeting even if they are not elected by the members from their respective unions, sakhas etc. It seems that these provisions in the Clause 44 of Ext.A4 bye law is against the spirit of the Companies Act. Therefore that provision also require reconsideration and modification”.

We do not find any infirmity in the said finding of the court below. Are these issues that could be tackled by the Yogam is

the next question. As indicated, if these are issues that could be tackled by the Yogam, an interference by the Court under Section 92 of the Code may not be justified. But, as far as the Yogam is concerned, according to us, the affairs as regards persons who are entitled to participate in its annual general meeting to elect its office bearers, appear to be in an untidy state which cannot be tackled by the Yogam. We are, therefore, of the view that the plaintiffs are justified in seeking direction of the court under Section 92 of the Code for administration of the Yogam on that ground. We take this view also for the reason that having regard to the large number of members of the Yogam, it is imperative for the Yogam to have a legal framework for a proper democratic representation of the members in its annual general meeting in the interests of the Yogam.

27. As revealed from the pleadings of the plaintiffs, one aspect highlighted by the plaintiffs in the plaint for justifying an approach to the court invoking the power under Section 92 of the Code is that arbitrary and unbridled powers are reserved in

favour of the offices and officers of the Yogam and the said arbitrary and unbridled powers are being abused by person/persons holding the respective offices. According to the plaintiffs, such unbridled and arbitrary powers are not conducive for the proper administration of an organisation in the nature of Yogam. The case of the contesting defendants in this regard is that the powers reserved in terms of the Articles of Association in favour of its offices are neither arbitrary nor excessive and that the same are necessary for the proper administration of the Yogam. Whether the powers reserved in terms of the Articles of Association of the Yogam in favour of its various offices are reasonable and necessary for the proper administration of the Yogam is a question to be addressed by the competent body of the Yogam itself. But, when there is a serious dispute as to the authority of persons who are to elect the Board of Directors and other office bearers of the Yogam on whom the administration of Yogam vests, the plaintiffs cannot be faulted for having approached the Court for a direction for the administration of

the trust under Section 92 of the Code on this ground as well, for want of a competent forum for redressal of the genuine grievances of the members of the Yogam is a fact that can certainly be reckoned in the matter of deciding the question whether the case on hand is a case for direction of the court under Section 92 of the Code.

28. As noted, it is also the case of the plaintiffs that the Memorandum of Association of the Yogam does not provide for formation of Branches and Unions for the Yogam and the formation of Branches and Unions for the Yogam is therefore unauthorised. It is alleged by the plaintiffs that even if it is assumed that it is permissible for the Yogam to have Branches and Unions, it is not defined anywhere as to what shall be the status of the Branches and Unions of the Yogam, more precisely as to whether the Branches and Unions of the Yogam are integral part of the Yogam or independent bodies, as a result of which there have been litigations between the Yogam and its Branches and Unions right from the very inception of its

functioning. It is also alleged by the plaintiffs that in the absence of any indication as to the status of the Branches and Unions of the Yogam, the assets and liabilities as also the income and expenditure of the Branches and Unions are never shown in the annual accounts and balance sheet of the Yogam. It is also alleged by the plaintiffs that the said state of affairs as regards the status of Branches and Unions of the Yogam is not conducive for a proper administration of the Yogam. According to the plaintiffs, for a proper administration of the Yogam to achieve its objects, the Branches and Unions of the Yogam shall be integral part of the Yogam and the Yogam is thereby bound to include the income and expenditure as also the assets and liabilities of the Branches and Unions in the annual statements submitted in the annual general meeting with the auditors report regarding it. It is stated that this is a serious defect in the administration of the Yogam which needs to be remedied by a drastic re-framing of the Articles of Association of the Yogam for which the direction of the Court is necessary and having regard

to the present state of affairs of the Yogam, the existing structure of the Yogam cannot be corrected.

29. As rightly pointed out by the plaintiffs, the Memorandum of Association of the Yogam does not provide for establishment of Branches and Unions for the Yogam. Article 12 of the Articles of Association of the Yogam however provides that the Yogam can have Branches and Unions in accordance with the sub-rules prescribed in this regard. As contended by the plaintiffs, the Articles of Association of the Yogam does not define as to what shall be the status of the Branches and Unions of Yogam, especially as to whether they are integral part of the Yogam or independent bodies capable of holding assets and incurring liabilities. At the same time, it is an admitted fact that the Articles of Association of the Yogam provides for disciplinary control over the Branches and Unions of the Yogam by the Board of Directors and that the powers conferred on the Board of Directors in this regard include even powers to take over the Branches and Unions and their assets, and to manage the same.

The stand taken by the contesting defendants in their written statement is that the Branches and Unions have been formed for the Yogam in accordance with the sub-rules framed as provided for under Article 12 of the Articles of Association and that the Branches and Unions of the Yogam have no independent existence and that the assets of the Branches and Unions of the Yogam belong to the Yogam and are under its control. As regards the case set out by the plaintiffs that the assets and liabilities and the income and expenditure of the Branches and Unions are never shown in the annual statement of accounts and the balance sheet of the Yogam, it is stated in paragraph 27 of the written statement by the contesting defendants that the assets and liabilities and income and expenditure of the Branches and Unions need not be shown in the annual statement of accounts and the balance sheet of the Yogam.

30. While the specific case of the plaintiffs is that formation of units like Branches and Unions is neither provided

for nor contemplated under the Companies Act, 1886 or its successor enactments, the contesting defendants assert that there is no prohibition in law for a company like the Yogam in forming Units like Branches and Unions for the proper administration. To bring home the case put forward by the contesting defendants, their learned counsel argued that the Branches and the Unions would fall within the scope of Section 2(9) of the Companies Act, 1956 as also Section 2(14) of the Companies Act, 2013. Section 2(9) of the Companies Act, 1956 defines a branch office in relation to a company as any establishment described as a branch by the company or any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company or any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under Section 8 of the said statute. Section 8 of the Companies Act, 1956 confers power on the Central Government

to declare by order in the case of a company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company or any establishment engaged in any production, processing or manufacture, shall not be treated as a branch office of the company for all or any of the purposes of the said statute. Section 2(14) of the Companies Act, 2013 defines branch office in relation to a company as any establishment described as such by the company. According to the contesting defendants, as trading companies run branches for administrative convenience, the Yogam is entitled to have branches for administrative convenience. The contesting defendants, however, have no case that a body like Union as provided for in the Articles of Association is either provided for or contemplated by the relevant Companies Act, 1956 or its successor enactments.

31. Since the Yogam is registered as a company, it can have Branches and Unions only if such Branches and Unions

are either provided for or contemplated by the relevant law governing companies. The branches contemplated and provided for under the Companies Act, 1882 and its successor enactments are not independent or separate entities and in terms of the aforesaid statutes, company and its branches would constitute one single entity [See **English Electric Co. of India Ltd v. Deputy Commercial Tax Officer** (1976) 4 SCC 460]. Ext.A42 is the objection filed by the then General Secretary of the Yogam in Company Petition No.33 of 2007. In Ext.A42, the stand taken by the Yogam is that the Branches of the Yogam are unincorporated associations who are entitled to have separate assets and liabilities; that the internal administration of the Branches are vested in Branches itself and all income in the Branches shall be its special assets so also its liabilities. In Ext.A43, another statement filed by the Yogam in the very same proceedings, it is also stated that the assets of the Branches of the Yogam are not the assets of the Yogam and similarly, the liabilities of the Branches are not the liabilities of

the Yogam. Ext.A39 which is another affidavit filed by the then general secretary of the Yogam in Company Petition No.18 of 1957. In the said affidavit, it is stated that the Branches of the Yogam have nothing to do with the Yogam, for it has separate existence, separate membership, separate assets, separate constitution, independent of the Yogam financially. As noted, even though the fact that the assets and liabilities and income and expenditure of the Branches and Unions of the Yogam are not shown in the annual statement of accounts and the balance sheet of the Yogam, despite the objections raised by the auditors of the Yogam is not denied or disputed by the contesting defendants, it is asserted by the contesting defendants in the written statement that the assets of the branches and Unions of the Yogam are under the control of Yogam. It is thus evident that the Yogam does not have a consistent case as to whether its Branches and Unions are independent bodies capable of owning assets and incurring liabilities. The inconsistency in the stand taken by the Yogam,

according to us, is due to the lack of clarity as to the status of the Branches and Unions of Yogam in terms of the Articles of Association of the Yogam. It is all the more so since the Branches and Unions as provided for in the Articles of Association of the Yogam as also in the sub-rules framed under the Articles of Association, are not provided for or contemplated under the Companies Act, 1882 and its successor enactments.

32. If the Yogam and its Branches and Unions constitute one single entity, if at all the same is the stand of the Yogam, there is absolutely no reason why the assets and liabilities as also the income and expenditure of the Branches and Unions cannot be regarded as assets and liabilities and income and expenditure of the Yogam. On the other hand, if the Unions and Shakha are independent units, there is absolutely no reason why the Yogam should exercise disciplinary control over its Branches and Unions. Be that as it may, the materials indicate that the stand of the Yogam is that it intends to have control over the assets of the Branches and Unions and at the

same time, it does not want to take up their liabilities. Even though it was contended by the contesting defendants in the written statement filed by them that the assets of the Branches and Unions of the Yogam are under the control of the Yogam, it has come out that the Branches and Yogam are acquiring assets in their name as also incurring liabilities. It has also come out in evidence that there are several litigations between Yogam and its Branches and Unions concerning the assets of the Branches and Unions of the Yogam. It seems that lack of clarity as regards the inter relationship between the Yogam and its Branches led to frequent disputes between the Yogam and its Branches and Unions, especially over the assets of the Branches and Unions. Needless to say, it is necessary that a legal pronouncement as to the legal relationship between the Yogam and its Branches and Unions is to be made for the proper management of the Yogam in the best interests of its beneficiaries. The fact that the disputes between the Yogam and its Branches and Unions have been existing for the last several

years and the Yogam could not find a solution for this during all these years is also prompting us to hold that a permanent solution on this issue is not possible without the interference of the Court. In other words, a situation of this nature is also one warranting direction of the court for administration of the Yogam under Section 92 of the Code.

33. As indicated, the cross objection of plaintiffs 5 and 6 is filed mainly challenging the decision of the court below in declining the plaintiffs the relief sought for in the plaint for removal of defendants 2 to 16 from the administration of the Yogam. As noted, defendants 2 to 16 in the suit were the members of the council of the Yogam at the time when the suit was instituted. Admittedly, the council of the Yogam was reconstituted on many occasions after the institution of the suit, although some among defendants 2 to 16 are continuing as the members of the council of the Yogam even now. Having regard to the facts and circumstances of the case, the court below found that the plaintiffs have not made out a case for removal of

the said defendants from the administration of the Yogam. Serious arguments have not been advanced by the plaintiffs in respect of the said finding of the court below obviously for the reason that the council of the Yogam was reconstituted after the institution of the suit. Even otherwise, having regard to the materials on record, we do not find any infirmity in the said finding rendered by the court below.

34. In the light of the foregoing discussion, we are of the view that there is no infirmity in the decision of the court below that the plaintiffs have made out a case for a direction under Section 92 of the Code for the administration of the Yogam. It is all the more so since in terms of impugned judgment, the direction issued by the court is only for framing of a scheme for the administration of the Yogam in accordance with the requirements of the relevant statute governing companies.

In the result, the appeal is dismissed and cross objection is allowed to the limited extent indicated in paragraph 25 above.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
C.S.SUDHA, JUDGE.

YKB/ds/Mn